



Breaking THE BARRIERS

DIRECTIVE (EU) 2016/1919 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Introduction. The Directive is to be regarded as a kind of mandate or a strong recommendation to the Member States (MS) and thus it provides a framework-guideline in the context towards which MS should orient their national legislations.

1.DEFINITION: Legal aid is the funding of the assistance of a layer by the Member State in order to enable the right to access a lawyer in either: **A) criminal cases-proceedings** or **B) European Arrest Warrant proceedings**

2. APPLICATION:

- Suspects or accused persons (paramount importance as the right to legal aid is extended in a wide area of proceedings from preliminary investigations to court proceedings)
- Subjects in European Arrest Warrant proceedings

3. SCOPE OF INTEREST:

A. SUSPECTS OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

(In cases of)

- Liberty deprivation
- Required lawyer assistance according to EU or National Law
- Investigations or evidence gathering (namely identifying parade, confrontation, reconstruction of the scene)
- Minor criminal offences only when sanctions that are imposed by any (other than judicial) authority can be appealed before a court
- Persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority
- Decisions to be taken on detention

B. EUROPEAN ARREST WARRANT: upon arrest in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU.

4. CRITERIA OF PROVIDING LEGAL AID

Key points to be taken under consideration by Member States

A. IN CRIMINAL CASES-PROCEEDINGS

- When the interest of Justice dictates such a requirement
- Determination of criteria by Member States regarding:
 - enacting means tests before granting legal aid on the bases of objective factors (i.e. income, capital, family situation etc)
 - enacting merit tests considering (mainly):
 - a.seriousness of the criminal offence
 - b.complexity of cases
 - c.severity of the sanction
 - d.suspect before court competent to decide detention
 - e.during detention
- Without undue delay (at the latest before questioning by law enforcement or judicial authorities or evidence gathering)
- only for the purposes of the criminal proceedings in which the person concerned is suspected or accused

B. IN EAW PROCEEDINGS

- Upon arrest and until surrender or final decision (time framework criteria)
- Facilitation of ensuring legal aid between lawyers of the issuing Member State and the executing Member State (place framework criteria)
- Means test (objective criteria) (may be applied)

5. KEY POINTS ON DECISIONS granting or refusing legal aid

- No undue delay
- Diligently
- Written information on granting or refusal

6. QUALITY OF LEGAL SERVICES

- Effective both legal system and legal services of adequate quality of legal representation
- Promotion of adequate training of lawyers that undertake cases of legal aid
- Training of staff involved in the decision making process on legal aid
- replacement of the designated legal aid lawyer, if circumstances so justify

7. EFFECTIVE REMEDIES

Availability of remedies in cases of the event of breaching the rights preserved by the Directive

8. CONSIDERATION ON VULNERABLE suspects or accused or requested persons

This feature mandates the inclusion of particular needs of vulnerable categories of suspects, accused or requested such as minors, immigrants etc.

9. SAFEGUARDS!!!!

NON-REGRETION OF THE PROVISIONS OF THE DIRECTIVE

The provisions and the mandates of the directives should not be interpreted or conclude in the limitation or derogation of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection. This provides with a special interpretation tool to practitioners implementing provisions of national law that derive from the Directive!

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