



State of play regarding the transposition of Directive 2012/13/EU on the right to information in the EU Member States

ERA Conference Lisbon
27-28 February 2020

Introduction

- **Second instrument** adopted pursuant to the **Roadmap** for strengthening the procedural rights of suspects and accused persons
- Directive 2012/13/EU adopted on **22 May 2012**
- Transposition period ended on **2 June 2014**
- COM **Infringement proceedings** for non-transposition against 7 Member States (*CY, CZ, ES, LU, MT, SI, SK*), last proceedings closed in January 2018.

Main elements of the Directive

The Directive establishes the right to information in criminal proceedings and EAW proceedings. It lays down the **following rights**:

The right to information about procedural rights orally or in writing if the person is deprived of liberty or subject to a European arrest warrant;

The right to information about the accusation

The right of access to materials of the case.

Conformity Assessment

Compliance assessment by COM together with external contractor

Implementation Report by COM, 18.12.2018

COM(2018) 858 final

Report by FRA , 9.11.2016

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf

Several projects funded by EU, *e.g. inside Police Custody, Trainac Report, Fair Project, ...*

State of Play

Assessment of national implementing measures have raised **certain issues of compliance** in several Member States.

Main issues:

- **Scope** of the rights;
- **Letter of Rights** in criminal and EAW proceedings;
- **Right to information about the accusation;**
- Right of **access to the case file.**

Scope of application of the Directive

- National legislations do not necessarily specify the moment of being 'made aware', but conformity often inferred, e.g. from provisions applying at any stage of the proceedings.
- Certain discrepancies of the terms "suspects" and "accused"; problematic where the notion of suspect does not exist.
- Issues with regard to MS where rights apply only when persons are deprived of liberty.

Right to information about procedural rights

- Correctly transposed in most Member States.
- Conformity issues have been found initially with regard to legal aid and conditions/evolved with entry into application of legal aid directive.
- Sometimes right to information about interpretation and translation not clearly regulated.
- Information not always provided in “simple and accessible” language.
- Certain discrepancies/gaps with regard to vulnerable persons.

Letter of Rights in criminal proceedings

- All Member States have national rules on a Letter of Rights.
- Sometimes different templates are used; not always clear whether these templates contain all relevant rights.
- Not all suspects/accused have the possibility to read and keep the Letter of Rights. Not always drafted in simple and accessible language.
- Certain issues arise also with regard to translations.

Letter of Rights in EAW proceedings

- A large majority of Member States transposed this provision adequately.
- In some Member States there are no separate provisions but so called "*bridge provisions*", meaning the rules applicable in criminal proceedings apply also to EAW proceedings.
- This might raise concerns as the content of the Letter of Rights in criminal proceedings differs from the one required under EAW proceedings.

Right to information about the accusation

- A large majority of Member States comply with the obligation to provide promptly information about the criminal act and the reasons for arrest or detention; certain issues arise linked to the scope.
- In all Member States the suspect or accused person is informed about the accusation, meaning the nature and legal classification of the criminal offence and the nature of participation.
- Disparities, notably with regard to the timing and the content of the information.
- Judgment of CJEU, 5 June 2018, C-612/15, *Kolev*.

Right of access to materials of the case

- **Right of access to essential documents for challenging the arrest or detention**
 - Only few Member States specify "essential documents".
 - Issues arise with regard to the timing and possible restrictions.
- **Right of access to all material evidence**
 - Access to the case file is granted in all Member States.
 - Issues arise with regard to the timing and derogations.

Conclusions

- **Considerable EU added value** by strengthening the rights of suspects and accused persons in criminal proceedings and EAW proceedings.
- **Extent of impact varies** according to the national criminal system in place.
- **Certain conformity issues** with regard to key provisions persist. Important to ensure also application in practice!
- **Efforts to be continued:** Member States (to ensure conform legislation and application in practice), COM (dialogue, guidance, infringements), Practitioners (awareness raising, training) and stakeholders (awareness raising, information).

Thank you for your attention!

Questions and Answers?

**Dr. Ingrid Breit, Team-leader
European Commission
DG JUST
Unit B2 – Criminal Procedural Law**