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► **B** DIRECTIVE (EU) 2016/1919 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 October 2016

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

(OJ L 297, 4.11.2016, p. 1)

Corrected by:

► **C1** Corrigendum, OJ L 91, 5.4.2017, p. 40 (2016/1919)

▼B**DIRECTIVE (EU) 2016/1919 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL****of 26 October 2016****on legal aid for suspects and accused persons in criminal
proceedings and for requested persons in European arrest
warrant proceedings***Article 1***Subject matter**

1. This Directive lays down common minimum rules concerning the right to legal aid for:

- (a) suspects and accused persons in criminal proceedings; and
- (b) persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).

2. This Directive complements Directives 2013/48/EU and (EU) 2016/800. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.

*Article 2***Scope**

1. This Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:

- (a) deprived of liberty;
- (b) required to be assisted by a lawyer in accordance with Union or national law; or
- (c) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.

2. This Directive also applies, 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.

3. This Directive also applies, under the same conditions as provided for in paragraph 1, to 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.

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4. Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

this Directive applies only to the proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive applies when a decision on detention is taken, and during detention, at any stage of the proceedings until the conclusion of the proceedings.

*Article 3***Definition**

For the purposes of this Directive, ‘legal aid’ means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer.

*Article 4***Legal aid in criminal proceedings**

1. Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.

2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1.

3. Where a Member State applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer.

4. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations:

(a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and

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(b) during detention.

5. Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts referred to in point (c) of Article 2(1) are carried out.

6. Legal aid shall be granted only for the purposes of the criminal proceedings in which the person concerned is suspected or accused of having committed a criminal offence.

*Article 5***Legal aid in European arrest warrant proceedings**

1. The executing Member State shall ensure that requested persons have a right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or until the decision not to surrender them becomes final.

2. The issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice.

3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to a means test in accordance with Article 4(3), which shall apply *mutatis mutandis*.

*Article 6***Decisions regarding the granting of legal aid**

1. Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, without undue delay, by a competent authority. Member States shall take appropriate measures to ensure that the competent authority takes its decisions diligently, respecting the rights of the defence.

2. Member States shall take necessary measures to ensure that suspects, accused persons and requested persons are informed in writing if their request for legal aid is refused in full or in part.

*Article 7***Quality of legal aid services and training**

1. Member States shall take necessary measures, including with regard to funding, to ensure that:

(a) there is an effective legal aid system that is of an adequate quality;
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(b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.

2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.

3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.

4. Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.

*Article 8***Remedies**

Member States shall ensure that suspects, accused persons and requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.

*Article 9***Vulnerable persons**

Member States shall ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive.

*Article 10***Provision of data and report**

1. By ►**C1** 5 May 2021 ◀, and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in this Directive have been implemented.

2. By ►**C1** 5 May 2022 ◀, and every three years thereafter, the Commission shall submit a report on the implementation of this Directive to the European Parliament and to the Council. In its report, the Commission shall assess the implementation of this Directive as regards the right to legal aid in criminal proceedings and in European arrest warrant proceedings.

▼B*Article 11***Non-regression**

Nothing in this Directive shall be construed as limiting or derogating from any 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.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ►C1 5 May 2019 ◄. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

*Article 13***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 14***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.