

Access to justice: Defendants need more information and better access to legal assistance

"In criminal proceedings not everyone is treated equally before the law as is their right," says FRA Director [Michael O'Flaherty](#). "Member States need to do better so defendants know their rights and get the legal assistance they need to ensure fair and equal access to justice."

FRA's report '[Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings](#)' tackles how certain key criminal procedural rights are applied in practice.

Some of the key findings include:

- The police inform defendants of their rights but practices vary. These range from written to oral information, including leaflets, which may be difficult to understand. Member States should ensure defendants properly understand what their rights are, and provide information in writing and orally as soon as they are a suspect. They should also pay attention to people who may have difficulties due to language or a disability, for example.
- Very often defendants receive minimal or unclear information about the charges against them. This makes it difficult for them to defend themselves. The police should properly, clearly, and fully inform suspects of their crimes and why they were arrested, as soon as possible.
- Receiving legal assistance promptly and directly does not also always occur, particularly for people that have been locked up. Member States should ensure all defendants receive prompt, direct and confidential access to a lawyer before they question jailed defendants.
- Sometimes the police treat suspects as witnesses or informally question them. However, this deprives suspects of their right to remain silent and not to incriminate themselves. Member States should treat all suspects as suspects to respect their rights.

The report also looks at European Arrest Warrants that come from another EU Member State. As well as the issues above, defendants also face rights issues arising from having two countries involved.

- Linguistic differences often make it difficult for defendants to understand their rights when it comes to warrants and their right to consent to be transferred abroad for questioning. Member States should provide translation and interpretation services so that defendants can fully understand the charges against them and what the European Arrest Warrant entails.
- Defendants often have difficulties getting legal representation in both countries. This can be due to linguistic differences, as well as the

police's lack of knowledge about other countries' legal systems and unwillingness to interfere in another country's jurisdiction. Authorities in the country that process the warrant should help defendants get legal assistance in the country that issued the warrant. Member States could provide legal association lists when issuing the warrant.

FRA interviewed over 250 defendants and justice professionals in Austria, Bulgaria, Denmark, France, Greece, the Netherlands, Poland and Romania. Quotes from respondents are throughout the report.

The European Commission asked FRA for this work. It complements their report, also issued today, on [how EU Member States have implemented the EU's Access to a Lawyer Directive](#). It also complements earlier FRA work on the [right to information](#).

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