

ECBA press release – LIBE vote on Directive on access to a lawyer - 19 June 2013

The European Criminal Bar Association (www.ecba.org) very much welcomes the historic vote today in the European Parliament's Civil Liberties and Fundamental Freedoms' Committee (LIBE) to adopt a Directive giving the right of access to a lawyer to accused and suspected persons in criminal proceedings the EU. The right of access to a lawyer and the right to communicate upon arrest in criminal proceedings, also covered in this Directive, are core rights and are at the heart of a fair trial.

The ECBA has followed the development of this right from its inception in the European Commission's Green Paper on Procedural Safeguards back in 2003 and has been involved in each stage of the process. The Commission has been pushing for EU legislation on this since putting forward its first proposals on defence rights in 2004 and the ECBA has given its support and practical help throughout the process. During its Presidency of the EU in 2007, Germany made it a Presidency priority to see EU fair trial rights legislation adopted; as a gesture of solidarity, the ECBA hosted its spring conference 2007 in Potsdam and invited Ms Brigitte Zypries (then German Justice Minister) to speak. That first attempt at EU legislation failed as a direct result of 6 Member States' opposition, but this was a temporary setback. In 2009, the Swedish Presidency of the EU proposed a Roadmap calling on the Commission to put forward a number of proposals for legislation setting in place various rights crucial for fair trials. In 2010, the first Directive, on the right to interpretation and translation in criminal proceedings, was adopted followed, in 2012, by a Directive on the right to information. The Commission put forward this, the third proposal (Measure C part 1 – i.e. without issues of legal aid which have to be discussed after the future separate proposal in the next months - and Measure D) in the series, in June 2011. The ECBA welcomed the Commission's original draft Directive as adding value to the provisions of the ECHR and the European Court of Human Rights case-law, but was disappointed to read the response of Member States as expressed in the Council's June 2012 General Approach (see [ECBA Cornerstones](#)). The ECBA had applauded the LIBE report of February 2012, penned by Rapporteur Antonescu and the LIBE orientation vote July 2012. The ECBA supported the European Parliament throughout the difficult negotiation in which a number of Member States attempted to include numerous derogations and exceptions.

The ECBA welcomes nevertheless the final text agreed between the EP, COM and the Council in a Trilogue in May 2013. In particular, the ECBA thanks the EP Rapporteur on this file, Oana Antonescu, for her strong commitment, outstanding diplomacy and excellent understanding of the issues at the heart of the negotiation. For example, the agreement on the principle of confidentiality **without derogations** is a real success. The provisions allowing a person subject to a European Arrest Warrant to have **dual representation** (in both the issuing and executing Member State) represent a huge step forward and will go some way to reducing the miscarriages of justice stemming from EAWs. However, we regret that our suggestions in relation to the waiver, minor offences, derogations and remedies were not fully taken up but recognise that such a difficult negotiation as this involves some degree of compromise.

The ECBA is confident that the final outcome will lead to substantial improvements for many EU Member States, to fairer trials, fewer miscarriages of justice and ultimately greater trust between EU Member States. For further queries please contact: secretariat@ecba.org.