



Infosheets on the Application of EU Procedural Rights Directives

Executive summary

This infosheet is part of the CrimiLAW project and aims to facilitate the understanding of how the procedural rights directives on access to a lawyer, the presumption of innocence and legal aid are implemented at national level in France.

As regards the application of the three directives referred to, the only one that required a real change in French legislation is Directive 2013/48/EU on access to a lawyer. It prompted great strides in French positive law, and in particular has settled the question of the right to a lawyer in a free hearing ("audition libre") or when a suspect is brought before the prosecutor at the time when the consequences of deprivation of liberty are decided. It has also strengthened the right of suspects to the assistance of a lawyer during the investigation and inquiry and improved the right of persons deprived of liberty to inform and communicate with a third party.

Directives 2016/343/EU and 2016/1919/EU on the right to be presumed innocent and the benefit of legal aid, respectively, did not have the effect of significantly transforming our law, insofar as it was considered that French law was already in line with European law.

It is true that the law on legal aid already provided for the minimum standards set out in Directive 2016/1919/EU. As regards the presumption of innocence, many provisions were already codified, and the legislator considered that it was not necessary to introduce new provisions. However, the issue of the right to be presumed innocent still needs to be improved.

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Right of access to a lawyer

Directive 2013/48/EU

Directive 2013/48/EU was transposed into French law by a law of [May 27, 2014](#), at the same time as Directive 2012/13/EU on information in criminal proceedings.

It was further transposed by a law of [June 3, 2016](#) and a decree of [October 28, 2016](#).

For decades, the harmonisation of rules on the fundamental rights of suspects in the Member States had been carried out through the case law of the European Court of Human Rights.

French criminal procedure had been thus thoroughly reformed under the influence of ECHR case law through the adoption of the law of [April 14, 2011](#) on police custody.

Nevertheless, this law did not take into account all the lessons of European jurisprudence.

The transposition of the two directives mentioned above marked the entry into force of the European Union in French criminal procedure, and enabled French law to fully recognise the procedural rights of suspects.

I. The law of May 27, 2014

The law of [May 27, 2014](#) allowed for the creation of a true status for suspects heard outside the framework of police custody – called free suspect ("*suspect libre*") - effectively ensuring the protection of the rights of all suspects, regardless of their hearing setting.

The main consequence of the transposition of the 2013/48/EU directive was that suspects in free hearings now benefit from a wide range of rights, including the right to the assistance of a lawyer if the offence for which the suspect is heard is punishable by imprisonment.

In practice, a suspect can only be freely heard ("*audition libre*") on the facts after having been informed of his or her rights, and in particular the right to be assisted by a lawyer.

The suspect can then be assisted by a lawyer (chosen by the suspect or appointed by the court) during the hearing or when heard at the same time as victims or other suspects ('confrontation').

Under the same conditions as in police custody, the lawyer has the right to speak with the client before the hearing or confrontation, to ask questions at the end of the hearing or confrontation, and to submit written observations that must be attached to the case file.

In addition, the transposition laws [provided](#), for foreign persons in custody in France, the right to notify the consular authorities of the State of which they are nationals and to communicate with them.

II. The 2016 law and decree

The 2016 law and decree have, on the one hand, strengthened the right of suspects to the assistance of a lawyer during the investigation and inquiry, and on the other hand improved the right of persons deprived of liberty to inform and communicate with a third party.

A. Assistance of a lawyer

Based on the 2016 transposition [law](#), every suspect has the right to the assistance of a lawyer (chosen or court-appointed) when participating in a crime reconstruction operation, and for the lawyer to be present alongside the judicial police officer and the witness during a suspect identification session.

The person must be informed of these rights before these operations are carried out. At the close of operations, the lawyer may submit written observations which will be attached to the proceedings.

In addition, if a European Arrest Warrant is issued by France, and if the person arrested in the executing Member State so requests, the Public Prosecutor's Office must provide him/her with all relevant information enabling him/her to choose a lawyer or to have a lawyer appointed by the court.

If France is the [executing state](#), the Public Prosecutor must also inform the arrested person that he/she may be assisted by a lawyer in the issuing Member State. If the person so requests, the request is immediately forwarded to the competent judicial authority in the issuing Member State.

Finally, it is now provided that a person who is the subject of a free hearing, police custody or prosecution, and who has not initially requested the assistance of a lawyer, may subsequently change his or her position and make such a request at any time.

B. Right to inform and communicate with third parties

Concerning the right to communicate with a third party during police custody, the right to notify a third party was already provided for in French law. The new provisions indicate that the judicial police officer can decide on the modalities of this interview, and can refuse to notify a third party when this would facilitate the commission of an offence. However, if the request concerns consular authorities, the judicial police officer may never oppose it beyond the forty-eighth hour of custody.

In addition, the framework for the decision of the competent judicial authority to postpone informing the parent or employer of the person in custody has been reinforced (it is allowed only if this decision is, in view of the circumstances, indispensable in order to collect or preserve evidence or to prevent a serious attack on the life, liberty or physical integrity of a person).

After 48 hours, the decision to extend the postponement must be made by a [judge](#).

However, on September 23, 2021, the Commission decided to open an infringement procedure against France (as well as 3 other Member States) by sending a letter of formal notice, on the grounds that France had not correctly transposed Directive 2013/48/EU. The Commission considered that certain national transposition measures notified by the four Member States fall short of the requirements of the directive. In particular, the Commission has identified shortcomings in relation to possible derogations from the right of access to a lawyer as well as from the right to have a third person informed when being deprived of liberty. The Member States have two months from the notification to reply and take the necessary measures to address the shortcomings identified by the Commission. Failing this, the Commission may decide to go to the next stage of infringement proceedings by sending a reasoned opinion.

Right to be presumed innocent

Directive (EU) 2016/343

The deadline for transposition of the directive was April 1, 2018.

This deadline has not been met by many Member States, including France, which has still not adopted a specific transposition text for Directive 2016/343/EU, since it considers that its law was in conformity with Community law.

In France, the right to the presumption of innocence is governed by:

- [Article 9](#) of the Declaration of the Rights of Man and of the Citizen of 1789;
- [Article 9-1](#) of the Civil Code;
- [Article 226-13](#) and [Article R. 642-1](#) of the Criminal Code;
- [Article 65](#) and [Article 413 bis](#) Customs Code;

as well as provisions of the Code of Criminal Procedure.

The law of [June 15, 2000](#) reinforced the protection of the presumption of innocence. The text of the law of June 15, 2000 harmonised French legislation with European standards. The reform included the introduction of appeals against the verdicts of the assize courts ("*Cour d'assises*") and the strengthening of the protection of the presumption of innocence of persons implicated by the justice system.

Given the massive/systematic use of cubicles (glass cages) in correctional courtrooms, after April 1, 2018 the European Commission was [alerted](#) by French lawyers as the body responsible for monitoring the implementation of Union law, concerning the problems of transposition of Directive 2016/343, and particularly its Articles 5 & 10 (having regard to the fact that the use of glass cages in a trial is a discretionary power for the presiding judge).

On June 12, 2018 the Commission [responded](#) that it was currently analysing France's transposition measures and that it would take all appropriate measures to ensure the effective application of the Directive.

However, as of today, this question put to the Commission does not seem to have been answered.

Right to legal aid

Directive (EU) 2016/1919

Directive 2016/1919/EU had to be transposed into national law by the Member States by 25 May 2019.

France has not transposed this directive.

In France, this issue was already provided for by:

- [Law No. 91-647 of July 10, 1991](#);
- [Decree No. 91-1266 of December 19, 1991](#);
- [Decree No. 2005-790 of July 12, 2005](#).

In fact, the law in France was already largely in line with the European provisions on legal aid, which already went beyond the minimum standards provided for by Directive 2016/1919/EU.

In France, legal aid :

- does not depend on the seriousness of the offence;
- is granted within a reasonable period of time, including before any questioning, in particular by the police, or before certain investigative or evidence-gathering measures, as provided for in the directive;
- may be granted provisionally (this is automatic for persons in police custody);
- is continued in the event of an appeal being lodged;
- gives the beneficiary the right to the assistance of court officers and to exemption from the fees and expenses that he or she would normally have to bear;
- gives the person a free choice of lawyer and the right to change lawyers;
- is granted to minors.