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#### **NOTE**

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From:	Presidency
To:	Working Party on Substantive Criminal Law
No. Cion doc.:	17621/13 DROIPEN 158 COPEN 235 CODEC 2929
Subject:	Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings - Outcome of meeting of CATS on 2 July 2014 / Follow-up

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#### Introduction

1. On 2 July 2014, CATS held a orientation debate on the proposal for a Directive on the presumption of innocence, on the basis of three questions set out in doc 11235/14. The aim of the orientation debate was to prepare the work in the Working Party on the proposal, which is scheduled to start with the meeting on Tuesday 15 July.
2. The aim of the present paper is to provide a provisional outcome of the discussions in CATS, so as to facilitate the Working Party to take account of the results of those discussions.

### Question 1 : The advisability of laying down minimum rules

3. Responding to the first question, a very large majority of delegations confirmed in CATS that it is advisable to lay down minimum rules to enhance the presumption of innocence and other aspects related thereto, and that the proposal, as submitted by the Commission, constitutes in this regard a good basis for discussions.
4. The Chair of CATS invited the few delegations that had expressed reserves to reflect whether it would be possible to support the majority view as well.
5. Given the outcome of the general discussion on the proposal held in CATS, the Presidency considers that at this point it will be most fruitful to get into the work and start with an article-by-article examination of the proposal, so as to allow Member States, from the very beginning of the Working Party, to highlight the most problematic aspects of every single provision and to suggest possible ways to address them.

### Question 2 : Scope

#### *Temporal scope*

6. Responding to the first half of the second question, some delegations in CATS indicated that they would prefer aligning the wording of this Directive with the wording of the other Directives that have already been adopted on the basis of the Roadmap, so that the Directive would apply when suspects or accused persons are *made aware* that they are suspected or accused of having committed a criminal offence.
7. A large majority of delegations, however, considered that the Directive should apply *ab initio* to all suspects and accused persons, without it being necessary to set a particular kick-off point. The delegations referred to the particular nature of the proposal, which sets principles that should always apply.

8. In this light, the Presidency considers that the drafting should in principle remain as in the Commission proposal. The Presidency considers, however, that the concept of the "conclusion of the proceedings" might be further clarified, in line with the previous Directives.

*Objective / material scope*

9. During the meeting of CATS, a majority of delegations said that the Directive should not contain an exception for minor offences, in view of the particular nature of the Directive, which contains "principles" that should apply in respect of all offences. Some delegations, however, stated that they would favour the insertion in this Directive of an exception for minor offences, on the same line as provided for in the other measures. Most delegations showed flexibility to work on a commonly acceptable solution.
10. The Presidency considers that in particular a full application of Article 5(1) of the Directive, regarding the burden of proof, can cause problems in respect of minor offences (for example minor traffic offences).
11. In this light, it could be envisaged whether a solution can be found in relation to minor offences by addressing this issue in Article 5(2), instead of inserting in Article 2 an exclusion for minor offences in relation to the *entire* Directive.

Question 3 : Right to be present at one's trial (Articles 8 and 9)

12. While a majority of delegations in CATS confirmed that they would in principle favour maintaining a provision in the Directive on the right to be present at one's trial, many Member States stated that Articles 8 and 9 as currently drafted were not acceptable to them.

13. **As regards Article 8**, the Presidency observes that the Article, as currently drafted, largely recalls the wording of the Framework Decision 2009/299/JHA on trials in absentia.<sup>1</sup> The Presidency wonders whether the provisions of paragraph 2 and 3 - which are very detailed and prescriptive - are really needed in the context of this Directive ; it might perhaps be sufficient to retain only paragraph 1 and, as requested by some Member States, add a provision allowing Member States to make a (temporary) exception to the right of the suspect or accused person to be present at his trial in some specific cases, to be identified by the Working Party (example of a possible case: when a suspect or accused person disturbs the hearing and must be escorted out on order of the judge).
14. **As regards Article 9**, a possible solution may be found along the line of Article 16(2) of the general approach in the children Directive (see doc. 10065/14).

### Conclusion

15. Member States are invited to reflect on the above issues and on the possible solutions suggested by the Presidency, in view of the meeting of the Working Party on Substantive Criminal Law on 15 July 2014.
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<sup>1</sup> OJ L 81, 27.3.2009, p. 24.