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**Interinstitutional File:  
2013/0407 (COD)**

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**DROIPEN 142  
COPEN 297  
CODEC 2316**

**NOTE**

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From:	Presidency
To:	Council
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 - General approach

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1. On 27 November 2013, the Commission submitted a proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.<sup>1</sup>
2. On 2 July and on 16 September 2014, CATS held an orientation debate on the proposal. The Working Party discussed the proposal on 15 July, 4/5 and 29 September, 27 October, and on 4 and 17 November. Coreper on 20 November agreed on submitting this file to the Council.
3. The Council is invited to reach a general approach on the text, which will constitute the basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure.

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<sup>1</sup> 17621/13 + ADD 1 + ADD 2 + ADD 3.

(draft)

**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<sup>2</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,<sup>3</sup>

Having consulted the Committee of the Regions,<sup>4</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

**(1a) Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) and Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) enshrine the principle of the presumption of innocence and the right to a fair trial.**

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<sup>2</sup> NL has a Parliamentary scrutiny reservation on the entire Directive.

<sup>3</sup> Opinion of 25 March 2014 (SOC 498).

<sup>4</sup> See renunciation letter of 14 April 2014.

**(1b) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.**

**(1c) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), ‘judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions...’**

**(1d) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other’s criminal justice systems. The extent of the mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.**

(1) [transferred to recital 4a]

(2) [transferred to recital 5]

- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.**
- (3a) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap').<sup>5</sup> Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E).**
- (3b) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens (point 2.4).<sup>6</sup> The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.**

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<sup>5</sup> OJ C 295, 4.12.2009, p. 1.

<sup>6</sup> OJ C 115, 4.5.2010, p.1.

- (4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council of **20 October 2010 on the right to interpretation and translation in criminal proceedings**<sup>7</sup>, Directive 2012/13/EU of the European Parliament and of the Council of **22 May 2012 on the right to information in criminal proceedings**<sup>8</sup>, and Directive 2013/48/EU of the European Parliament and of the Council of **22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty**.<sup>9</sup>
- (4a) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.
- (5) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.

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<sup>7</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>8</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

<sup>9</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (6) This Directive should apply only to criminal proceedings. Administrative proceedings, **including administrative proceedings that can lead** to sanctions, such as proceedings relating to competition, trade, financial services, or tax, **including tax surcharge**, and investigations by administrative authorities in relation to such proceedings, **as well as** civil proceedings, are not covered by this Directive.
- (7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial.
- (8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply **from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and therefore** even before **suspects or accused** persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence. **The Directive should apply at any stage of the criminal proceedings until the final determination of the question whether the suspect or accused person has committed the offence and that decision has become definitive. This means that legal actions and remedies which only can come into play when the decision concerned has already become enforceable, such as actions before the European Court of Human Rights in Strasbourg, do not fall within the scope of application of this Directive.**
- (9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons. Such protection as regards natural persons is reflected in abundant case law of the European Court of Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.

- (10) In the current state of development of national legislations and of case law at national level and at the level of the Court of Justice it is premature to legislate at Union level on the right to be presumed innocent of legal persons.
- (11) Protection of the right of legal persons to be presumed innocent should be ensured by the existing legislative safeguards and case law, the evolution of which in the future should determine an assessment of the need for Union action.
- (12) [deleted]
- (13) The presumption of innocence is violated if, without **suspects or accused persons** having previously been proved guilty **according to law, public statements** refer to those persons as if they were **guilty. For the purposes of this Directive "public statements by public authorities"** should mean any statement whose content is referable to a criminal offence, and which originates either from an authority involved in the criminal proceedings concerning that offence (such as judicial authorities, police and other law enforcement authorities) or from another public authority (such as Ministers and other public officials). It's understood that this Directive does not apply to statements made by media and that it is without prejudice to any rules on immunity, in particular for Members of Parliament.

- (13a) The obligation not to refer to suspects or accused persons as guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings when this is necessary for reasons relating to the criminal investigation (such as when video material is released, and the public is asked to help in identifying the alleged perpetrator of the criminal offence) or for the public interest (such as when information is provided, for safety reasons, to the inhabitants of a certain area relating to an alleged environmental crime that has been committed in that area, or when the prosecution or another competent authority provides objective information on the state of criminal proceedings in order to prevent public order disturbance). In any case, the manner and context in which the information is disseminated should not create the impression that the person is guilty before he or she has been proved guilty according to law.**
- (14) The burden of proof is on the prosecution, and any doubt should benefit the accused. The presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to the defence, without prejudice to any possible *ex officio* fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's guilt.
- (14a) In various Member States not only the prosecution, but also judges and competent courts are charged with seeking both inculpatory and exculpatory evidence. Member States who do not have an adversarial system may maintain their current system provided it complies with this Directive and with other relevant European and international law.**



- (15) **Member States may provide for the use of presumptions of facts or law concerning the criminal liability of a person who is suspected or accused of having committed a criminal offence. Such presumptions should be confined within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence. The means employed have to be reasonably proportionate to the legitimate aim sought to be achieved. The presumptions should be rebuttable, for example by means of new evidence on extenuating circumstances or on a case of force majeure; in any case, the presumptions may only be used provided the rights of the defence are respected.**
- (16) The right not to incriminate oneself is an important aspect of the presumption of innocence. Suspects or accused persons should not be forced, when asked to make a statement or answer questions, to produce evidence or documents or to provide information which may lead to incriminate themselves.
- (17) (transferred to recital 20a)
- (18) The right not to incriminate oneself should not extend to the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

- (19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination. **The right to remain silent should be without prejudice in minor offences, such as minor road traffic offences, to the conduct of proceedings, or certain stages thereof, in writing and/or without questioning of the suspect or accused person by the police or other law enforcement or judicial authorities in relation to the offence concerned, provided this is in conformity with the right to a fair trial.**
- (20) The right not to incriminate oneself and the right to remain silent should apply as regards questions material to the offence that someone is suspected or accused of having committed and not, for example, as regards questions relating to the personal identification of a suspect or accused person.
- (20a) **The right not to incriminate oneself and the right to remain silent imply that competent authorities should not compel suspects or accused persons to provide information if these persons do not wish to do so. In order to determine whether the right not to incriminate oneself or the right to remain silent has been violated, the interpretation by the ECtHR of the right to a fair trial under the ECHR should be taken into account.**
- (20b) **Member States should ensure that the exercise of the right not to incriminate oneself or the right to remain silent should not be used against a suspect or accused person at a later stage of the proceedings and should not be considered as evidence that the person concerned has committed the offence concerned. This should be without prejudice to national rules or systems which allow a court or a judge to take account of the silence of the suspect or accused person as an element of corroboration of evidence obtained by other means, provided the rights of the defense are respected.**

- (20c) Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right not to incriminate oneself or the right to remain silent, the rights of the defence and the fairness of the proceedings are respected.**
- (21) The right to a fair trial is one of the basic principles in a democratic society. The right of an accused person to be present at the trial is based on that right and should be guaranteed throughout the Union.
- (21a) The right to be present at one's trial can only be exercised if a trial is held. A trial is carried out, because of its nature, through one or more hearings. This means that the right to be present at one's trial cannot apply if no hearing is foreseen in accordance with national rules of procedure, it being understood that these rules should be in conformity with the standards of the Charter of Fundamental Rights and of the ECHR, as interpreted in the relevant case-law, in particular with the right to fair trial. This is the case, for example, if the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or in which no hearing is foreseen.**
- (22) The right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may, expressly or tacitly but unequivocally, waive that right.
- (22a) Competent authorities in the Member States should also be allowed to temporarily exclude a suspect or accused person from the trial when this is in the interest of securing the smooth operation or the proper course of the criminal proceedings. This could, for example, be the case when a suspect or accused person disturbs the hearing and must be escorted out on order of the judge, or when it appears that the presence of a suspect or accused person prevents the proper hearing of a witness.**

- (22b) If, for reasons beyond their control, suspects or accused persons are unable to be present at the trial, they should have the possibility to request a new date for the trial within the time frame provided by national law.**
- (22c) Under certain circumstances, a decision on the guilt or innocence of the suspect or the accused person can be handed down despite the absence of the person concerned at the trial. This can be the case when the suspect or accused person has been informed in due time of the trial and of the consequences of a non-appearance, but the person nevertheless doesn't appear. For the purpose of this Directive, the fact that the suspect or accused person has been informed of the trial means that this person either has been summoned in person or by other means has received official information of the scheduled date and place of that trial (...).<sup>10</sup> The fact that the suspect or accused person has been informed of the consequences of a non-appearance, means notably that the person has been informed that a decision might be handed down if he or she does not appear for the trial.**
- (22d) A trial, which can result in a decision on guilt or innocence, can also be held in the absence of the suspect or accused person, if the latter has been informed of the trial and has given a mandate to a lawyer, who was appointed either by the suspect or accused person, or by the State, to represent him at the trial, and the lawyer indeed represented the suspect or accused person at the trial.**

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<sup>10</sup> COM is opposed to the deletion of the part indicated by (...), which read as follows: "*in such a manner that it was unequivocally established that he or she was aware of the scheduled trial.*"

- (22e) **Where the conditions for taking a decision following the absence of a suspect or accused person at the trial have not been met, it should nevertheless be possible to enforce a decision that was taken following the absence of the person concerned at the trial. This could be the case, for example, when suspects or accused persons could not be informed of the trial for reasons depending on their conduct, e.g. if they have fled or absconded. In such a case, Member States should ensure that suspects or accused persons, as soon as they are found and informed of the decision, have the possibility to contest the decision and request a new trial, or another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.**
- (23) **(deleted)**
- (24) This Directive should not regulate the forms and methods, including procedural requirements, that are used to achieve the results specified as regards the right to be present at one's trial, which are a matter for the national laws of the Member States.
- (25) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy available in the event of a breach of any of the **rights** laid down in this Directive should have, as far as possible, the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, **with a view to preserving the right to a fair trial and the right to defence.**

- (27) In order to monitor and evaluate the effectiveness of this Directive, Member States **are encouraged to** collect data with regard to the implementation of the rights set out in this Directive. Such data could include data recorded by law enforcement and judicial authorities as regards the remedy applied where there has been a breach of any of the aspects of the right to presumption of innocence covered by this Directive and a breach of the right to be present at one's trial.
- (27a) **Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of some of the rights foreseen in this Directive, additional procedural safeguards are set out in Directive [...] on procedural safeguards for children suspected or accused in criminal proceedings.**<sup>11</sup>
- (28) This Directive upholds the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence.
- (29) As this Directive establishes minimum rules, Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice and of the European Court of Human Rights.

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<sup>11</sup> Directive under discussion. See for the Council General Approach doc 10065/14.

- (30) Since the objectives of this Directive, namely setting common minimum rules for certain aspects of the right to presumption of innocence and for the right to be present at trial in criminal proceedings, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (31) In accordance with Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (32) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER 1

### Subject matter and Scope

#### *Article 1*

#### *Subject matter*

This Directive lays down minimum rules concerning:

- (a) the right to the presumption of innocence in criminal proceedings, **and certain aspects related thereto;**
- (b) the right to be present at trial in criminal proceedings.

#### *Article 2* <sup>12</sup>

#### *Scope*

**This Directive applies to natural persons who are suspected or accused in criminal proceedings. It applies from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the final determination of the question whether the person has committed the offence concerned and that decision has become definitive.**

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<sup>12</sup> See also recital 8.



## CHAPTER 2

### Right to the presumption of innocence

#### *Article 3*

#### *Presumption of innocence*

Member States shall ensure that suspects and accused persons are presumed innocent until proven guilty **according to law**.

#### *Article 4*<sup>13</sup>

#### *Public references to guilt before proven guilty according to law*

1. **Member States shall take the necessary measures to ensure that, before suspects or accused persons have been proven guilty according to law, public statements by public authorities do not refer to the suspects or accused persons as if they were guilty.**
2. [text transferred to recital 13]
3. Member States shall ensure that appropriate measures are **available** in the event of a breach of the **obligation set out in paragraph 1 not to refer to the person as if they were guilty**.
4. **The obligation set out in paragraph 1 not to refer to persons as if they were guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings when this is necessary for reasons relating to the criminal investigation or for the public interest.**

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<sup>13</sup> See also accompanying recitals 13 and 13a.

*Article 5*  
*Burden of proof*<sup>14</sup>

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution, **and any doubt is to benefit the suspect or accused person. This is without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence.**
  
2. **Member States may provide for the use, within reasonable limits, of presumptions of facts or law concerning the criminal liability of a person who is suspected or accused of having committed a criminal offence. Such presumptions shall be rebuttable; in any case, they may only be used provided the rights of the defence are respected.**

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<sup>14</sup> See accompanying recitals 14, 14a and 15.

*Article 6*

*Right not to incriminate oneself and to remain silent*

1. Member States shall ensure that suspects **and** accused persons have the right not to incriminate themselves.
  
- 1a **Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the offence that they are suspected or accused of having committed.**
  
2. **The exercise of the right not to incriminate oneself or of the right to remain silent shall not prevent gathering evidence** which may be obtained through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons.
  
3. The exercise of the right not to incriminate oneself or **of the right to remain silent** shall not be used against a suspect or accused person at a later stage of the proceedings and shall not be considered **as evidence that the person concerned has committed the offence which he is suspected or accused of having committed.** <sup>15</sup>
  
4. [deleted <sup>16</sup>]
  
5. **In minor offences, and provided this is in conformity with the right to a fair trial, Member States may decide that the right to remain silent shall be without prejudice to the conduct of proceedings, or certain stages thereof, in writing and/or without questioning of the suspect or accused person by the police or other law enforcement or judicial authorities in relation to the offence concerned.** <sup>17</sup>

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<sup>15</sup> See recital 20b.

<sup>16</sup> See however recital 20c ; COM objects to the deletion of this paragraph, which concerned the issue of the admissibility of evidence obtained in breach of the rights set forth in this Article.

<sup>17</sup> COM asked for the deletion of this paragraph.

*Article 7 - Right to remain silent*

[merged into Article 6]

### **CHAPTER 3**

#### **Right to be present at one's trial**

*Article 8*<sup>18</sup>

*Right to be present at one's trial*

1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.
  
2. **Member States may provide that a trial, which can result in a decision on guilt or innocence of the suspect or accused person, can be held in the absence of the latter, provided that:**
  - a) **the suspect or accused person has been informed in due time of the trial and of the consequences of a non-appearance; or**
  
  - b) **the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person, or by the State.**

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<sup>18</sup> See accompanying recitals 21-22e. The Council Legal Service indicated that the wording of Article 8 should be reviewed in order to bring it closer to the wording already used in the existing *acquis* as set out in Framework Decision 2009/299/JHA on trials in absentia (OJ L 81, 27.3.2009, p. 24).

3. **Member States may provide that a decision, which has been taken following the absence of the suspect or accused person at the trial, can be enforced, even though the conditions of paragraph 2 have not been met. In that case, Member States shall ensure that suspects or accused persons, as soon as they are informed of the decision, have the possibility to contest this decision and request a new trial, or another legal remedy, within the time frame provided by national law. When suspects or accused persons are informed of the decision, they shall also be informed about this possibility to contest the decision and request a new trial, or another legal remedy.**
  
4. **Member States may provide that the judge or the competent court can temporarily exclude a suspect or accused person from the trial when this is necessary in the interest of securing the smooth operation or the proper course of the criminal proceedings, provided that the rights of the defence are respected.**
  
5. **This Article does not apply when, in accordance with national rules of procedure, the proceedings, or certain stages thereof, are conducted in writing, provided this is in conformity with the right to a fair trial.**

## **Article 9**

### **Right to request a new trial**

Member States shall ensure that suspects or accused persons **who** were not present at the trial referred to in Article 8(1) and **who allege that** the conditions laid down in Article 8(2) were not met, have the right to **request a new trial or other legal remedy** which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.

## CHAPTER 4

### General and final provisions

#### *Article 10*

##### *Remedies*

Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.

#### *Article 11*

##### *Data collection*

Member States shall by [ ...] and every three years thereafter, send to the Commission **available** data showing how the rights set out in this Directive have been implemented.<sup>19</sup>

#### *Article 12*

##### *Non-regression clause*

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 of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

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<sup>19</sup> See recital 27.

*Article 13*  
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 months after publication of this Directive]. They shall **immediately inform the Commission thereof**.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 14*  
*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 15*  
*Addressees*

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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