

Presumption of innocence: Council confirms the agreement found with EP

On 4 November 2015, the Permanent Representatives Committee (Coreper) approved a compromise text agreed with the European Parliament on a directive on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.

The purpose of the 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. In this way, the directive will complement the legal framework provided by the European Convention of Human Rights and the Charter of Fundamental Rights. The directive will strengthen mutual trust and confidence between the different judicial systems of the member states and will facilitate the mutual recognition of decisions in criminal matters.

"This agreement reached under the Luxembourg Presidency with the European Parliament is an important step in the creation of a European judicial area. The presumption of innocence is a fundamental principle of the legal process and one of the most important rights of the defence. This directive will strengthen the rights of suspects and accused persons in the EU by setting common minimum standards which will govern the basic rights of a fair trial", said Félix Braz, Luxembourg Minister for Justice and President of the Council.

According to the directive, member states will have to ensure that suspects and accused persons are presumed innocent until proven guilty under the law. The Directive provides two rights linked to this principle: the right to remain silent and the right not to incriminate oneself. In addition, member states will have to respect the following related obligations: before the final judgement, suspects and accused persons must not be presented as being guilty through the use of measures of physical restraint and the burden of proof must be on the prosecution while any reasonable doubts as to the guilt should benefit the accused. The right to be present at one's trial is also addressed by this directive.

Moreover, member states will have to ensure that suspects and accused persons have an effective remedy if their rights under this directive are breached.

Next steps

Now that the agreement has been confirmed by the Permanent Representatives Committee, on behalf of the Council, the directive will be submitted, following legal-linguistic revision, to the European Parliament for a vote at first reading, and to the Council for adoption.

Once adopted, member states will have two years to bring into force the laws, regulations and administrative provisions necessary to comply with this directive.

Background

The Commission presented its proposal on 27 November 2013. In a package adopted on the same date, the Commission presented also the following texts:

- a proposal for a directive on procedural safeguards for children who are suspected or accused in criminal proceedings;
- a proposal for a directive on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant;
- a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings;
- a recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

Since 2009, the work in the European Union on strengthening procedural rights for suspects and accused persons in criminal proceedings has been carried out on the basis of the [roadmap](#), which was adopted by the Council on 30 November 2009. The

roadmap sets out a gradual approach towards establishing a full catalogue of procedural rights for suspects and accused persons in criminal proceedings. The European Council has made the roadmap part of the Stockholm programme, in which explicit reference was made to a measure on the presumption of innocence.

Three measures have already been adopted on the basis of the roadmap: [Directive 2010/64/EU](#) on the right to interpretation and translation in criminal proceedings, [Directive 2012/13/EU](#) on the right to information in criminal proceedings, and [Directive 2013/48/EU](#) 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.

In June 2013 the Council reached a general approach on the proposal for a directive on procedural safeguards for children. The negotiations with the European Parliament to reach an agreement on that text are ongoing.

[Text of the compromise agreement](#)

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