Basic information

2013/0407(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial **Subject** 1.10 Fundamental rights in the EU, Charter 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	GRIESBECK Nathalie (ALDE)	22/07/2014
	Shadow rapporteur GÁL Kinga (PPE) SIPPEL Birgit (S&D) UJAZDOWSKI Kazimierz Michał (ECR) DE JONG Dennis (GUE/NGL) ALBRECHT Jan Philipp (Verts/ALE)	

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	DURAND Pascal (Verts/ALE)	03/09/2014

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs		

Council of the European Union	

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3445	2016-02-12
Justice and Home Affairs (JHA)	3336	2014-10-10
Justice and Home Affairs (JHA)	3354	2014-12-04

European Commission	

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
27/11/2013	Legislative proposal published	COM(2013)0821	Summary
13/01/2014	Committee referral announced in Parliament, 1st reading		
10/10/2014	Debate in Council		
20/10/2014	Resumption of business from the previous parliamentary term		
04/12/2014	Debate in Council		
31/03/2015	Vote in committee, 1st reading		
31/03/2015	Committee decision to open interinstitutional negotiations with report adopted in committee		
21/04/2015	Committee report tabled for plenary, 1st reading	A8-0133/2015	Summary
19/01/2016	Debate in Parliament		
20/01/2016	Decision by Parliament, 1st reading	T8-0011/2016	Summary
20/01/2016	Results of vote in Parliament		
12/02/2016	Act adopted by Council after Parliament's 1st reading		
12/02/2016	End of procedure in Parliament		
09/03/2016	Final act signed		
11/03/2016	Final act published in Official Journal		

Technical information

Procedure reference	2013/0407(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p2

Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/00267

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE546.756	21/01/2015	
Amendments tabled in committee		PE546.821	06/03/2015	
Committee opinion	JURI	PE546.831	26/03/2015	
Committee report tabled for plenary, 1st reading/single reading		A8-0133/2015	21/04/2015	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0011/2016	20/01/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00063/2015/LEX	09/03/2016	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0821	27/11/2013	Summary
Document attached to the procedure	SWD(2013)0478	27/11/2013	
Document attached to the procedure	SWD(2013)0479	27/11/2013	
Document attached to the procedure	SWD(2013)0500	27/11/2013	
Commission response to text adopted in plenary	SP(2016)191	16/03/2016	
Follow-up document	COM(2021)0144	31/03/2021	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0821	05/02/2014	
Contribution	ES_PARLIAMENT	COM(2013)0821	27/02/2014	
Contribution	IT_CHAMBER	COM(2013)0821	27/02/2014	
Contribution	IT_SENATE	COM(2013)0821	27/02/2014	

Contribution	CZ_SENATE	COM(2013)0821	05/06/2014	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Directive 2016/0343 OJ L 065 11.03.2016, p. 0001	Summary

Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial

2013/0407(COD) - 27/11/2013 - Legislative proposal

PURPOSE: to ensure the right to a fair trial by setting out common minimum standards on certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Stockholm Programme **put a strong focus on the strengthening of the rights of individuals in criminal proceedings.** The European Council invited the Commission to consider establishing minimum procedural rights for suspects or accused persons, and to **address the issue of presumption of innocence**, in order to promote better cooperation in that area.

Up to now, three measures have been adopted: Directive 2010/64/EU on the right to interpretation and translation, Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

The proposal continues this work and is part of a series of measures on criminal justice which includes: (i) a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings; (ii) a directive on procedural safeguards for children suspected or accused in criminal proceedings

Moreover, on 14 June 2011, the Commission published a Green Paper on the application of EU criminal justice legislation in the field of detention to reflect on ways to **strengthen the application of the principle of mutual recognition** in the area of detention, within the limits of the EU's competence.

The principle of presumption of innocence has been developed over the years. The European Court of Human Rights (ECtHR) has held that Article 6 (2) of the ECHR encompasses three key requirements: (i) the right not to be publicly presented as convicted by public authorities before the final judgment; (ii) the fact that the burden of proof is on prosecution and that any reasonable doubts on guilt should benefit the accused; and (iii) the right of the accused to be informed of the accusation against him.

The right to be present at trial is also an essential right of defence.

IMPACT ASSESSMENT: the Commission’s analysis considers that there exist points in which legal safeguards should be improved with regard to certain aspects the presumption of innocence to strengthen this fundamental right.

CONTENT: the draft directive aims to lay down minimum rules concerning certain aspects of the right of suspects and accused persons to be presumed innocent unless proven guilty by a final judgment.

The proposal covers the following rights:

1) The right not to be presented guilty by public authorities before the final judgment: the ECtHR established as one of the basic aspects of the principle of presumption of innocence the fact that a court or public official may not publicly present the suspects or accused persons as if they were guilty of an offence if they have not been tried and convicted of it by a final judgment.

2) The burden of proof is on prosecution and any reasonable doubts on the guilt should benefit the accused: this presupposes that a court's judgment must be based on evidence as put before it and not on mere allegations or assumptions.

3) The right not to incriminate one-self and not to cooperate and the right to remain silent: these rights lie at the heart of the notion of a fair trial under Article 6 of the ECHR.

- the right not to incriminate oneself presupposes that the prosecution in a criminal case seeks to prove the case against the accused **without resort to evidence obtained through methods of coercion or oppression;**
- the right to remain silent must be ensured and **any inferences drawn from the fact that suspects make use of this right should be excluded**.

Suspects should be promptly informed of their right to remain silent. Such information should also refer to the content of the right to remain silent and of the consequences of renouncing to it and of invoking it.

4) Right to be present at one's trial: the proposal lays down this right, established by the ECtHR, of an accused to be present at the trial and also establishes limited exceptions to this right, in line with the Charter, the ECHR and EU law. It provides that Member States must ensure that the right to be present applies to any trial **aiming at assessing the question of the guilt of the accused person (both conviction and acquittal decisions).**

Non-regression clause: the proposal aims to ensure that setting common minimum standards does not have the effect of lowering standards in certain Member States and that the standards set in the Charter and in the ECHR are maintained.

Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial

2013/0407(COD) - 09/03/2016 - Final act

PURPOSE: to ensure the right to a fair trial by setting out common minimum standards on certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.

NON-LEGISLATIVE ACT: Directive (EU) 2016/343 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 the trial in criminal proceedings.

CONTENT: this Directive lays down common minimum rules concerning: (a) certain aspects of the **presumption of innocence** in criminal proceedings; (b) **the right to be present at the trial** in criminal proceedings. It upholds the fundamental rights and principles recognised by the Charter and by the ECHR. It aims to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

This Directive aims to **strengthen the trust of Member States in each other's criminal justice systems** and thus to facilitate mutual recognition of decisions in criminal matters.

Scope: this Directive applies to **natural persons who are suspects or accused persons** in criminal proceedings. It applies at **all stages of the criminal proceedings**, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.

Presumption of innocence: Member States shall ensure that suspects and accused persons are **presumed innocent until proved guilty according to law**.

Under this Directive:

- Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence;
- public statements made by public authorities, and judicial decisions, other than those on guilt, must not refer to that person as being guilty for as long as a suspect or an accused person has not been proved guilty according to law;
- the competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, **through the use of measures of physical restraint**, unless the use of such measures is required for case-specific reasons, either relating to security;
- the **burden of proof** for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person.

Right to remain silent and right not to incriminate oneself: the exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

With regard to **minor offences**, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.

- **Right to be present at the trial**: Member States shall ensure that suspects and accused persons have the right to be present at their trial. They may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:
- the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
- 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.

Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also **informed of the possibility to challenge the decision** and of the right to a new trial or to another legal remedy.

As regards the **right to a new trial**, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

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

Data collection and reporting: Member States shall, by 1 April 2020 and every three years thereafter, send to the Commission available data showing how the rights laid down in this Directive have been implemented.

The Commission shall, by **1 April 2021**, submit a report on the implementation of this Directive.

ENTRY INTO FORCE: 31.3.2016.

TRANSPOSITION: 1.4.2018.

Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial

2013/0407(COD) - 20/01/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 577 votes to 48 with 86 abstentions, a legislative resolution on the 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.

Parliament's position, adopted in first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

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

Legal actions and remedies that are available only once that decision has become definitive, including actions before the European Court of Human Rights, should not fall within the scope of the Directive.

Public references to guilt: public statements made by public authorities, and judicial decisions, other than those on guilt, **must not refer to that person as being guilty** for as long as a suspect or an accused person has not been proved guilty according to law, appropriate measures must be available in the event of a breach of the obligation.

However, the obligation not to refer to suspects or accused persons as being guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings **where this is strictly 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 to the public interest.

Presentation of suspects and accused persons: competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of **measures of physical restraint**, such as handcuffs, glass boxes, cages and leg irons),

Member States may apply measures of physical restraint **that are required** for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

Burden of proof: the text states that that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. However, in various Member States not only the prosecution, but also **judges and competent courts are charged with seeking both inculpatory and exculpatory evidence**. Parliament provided that Member States which do not have an adversarial system should be able to maintain their current system provided that it complies with the Directive and with other relevant provisions of Union and international law.

In addition, **any doubt as to the question of guilt must be to benefit the suspect** or accused person, including where the court assesses whether the person concerned should be acquitted.

Right to remain silent and right not to incriminate oneself: suspects and accused persons will have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed, and have the right not to incriminate themselves. These rights imply that competent authorities should not compel suspects or accused persons to provide information if those persons do not wish to do so.

The exercise of the right to remain silent or the right not to incriminate oneself should not be used against a suspect or accused person and should not, in itself, be considered to be evidence that the person concerned has committed the criminal offence concerned. This should be without prejudice to national rules concerning the assessment of evidence by courts or judges, provided that the rights of the defence are respected.

Judicial authorities **may take into account, when sentencing, cooperative behaviour** of suspects and accused persons.

Right to be present at the trial: the amended text states that it should also be possible to hold a trial which may result in a decision on guilt or innocence **in the absence** of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was-appointed by that person or by the State - to represent him or her at the trial and who represented the suspect or accused person.

Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met, for example because the person has fled or absconded, the amended text states that it should nevertheless be **possible to take a decision in the absence of the suspect or accused person and to enforce that decision.**

In that case, Member States should ensure that when suspects are informed of the decision, in particular when they are apprehended, they should also be **informed of the possibility of challenging the decision and of the right to a new trial or to another legal remedy**. In case of a **new trial**, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

Remedies: Members stipulated that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings must be respected.

Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial

2013/0407(COD) - 21/04/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Nathalie GRIESBECK (ADLE, FR) on the 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.

The committee recommended that Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Scope: Members specified that the Directive should apply to criminal proceedings, as well as similar proceedings of a criminal nature leading to comparable sanctions of a punitive and deterrent nature, such as deprivation of liberty, irrespective of whether or not the proceedings were classified as criminal. **Suspects must be presumed innocent until proven guilty by a final decision** delivered according to law, in a trial at which they have had all the safeguards necessary for their defence.

Public references to guilt before proven guilty: statements must not reflect an opinion that the person was guilty and be of such a nature as to potentially encourage the public to believe the person was guilty. Public authorities must be **prohibited from providing to the media** any information concerning ongoing criminal proceedings that might undermine the principle of the presumption of innocence.

In the event of a breach of those requirements, independent investigations must take place on the breach and ensure that the suspect or accused person whose right to the presumption of innocence had been violated had access to an effective remedy.

Suspects must not presented in court or in public **in a manner that suggested their guilt**, before final conviction.

Burden of proof: Members considered that the **reversal of the burden of proof in criminal proceedings was unacceptable.** The principle that the burden of proof rested with the prosecution must be left untouched. 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.

Use of force: Members stressed that authorities **must not use coercion in order to obtain information from a suspect or an accused person.** The Directive must state clearly that the use of physical or psychological violence or threats against suspects or accused persons was banned, on the grounds that it constituted a violation of the right to human dignity and the right to a fair trial.

Right not to incriminate oneself and not to cooperate: the suspect or accused persons must be informed of their right not to incriminate themselves and not to cooperate, prior to any questioning by public authorities, and prior to the suspect giving testimony in court as well as at the moment of the arrest. Exercise of the right not to incriminate oneself and not to cooperate **shall never be considered as a corroboration of the facts or as a reason in itself** to adopt or maintain measures which restrict liberty before the final decision on the issue of guilt is taken.

Nevertheless cooperative behaviour by the suspect or accused person might be taken into account as a mitigating factor, when deciding the actual penalty.

Right to remain silent: the report sets out what constituted in practice the exercise of the right to silence and stated that the exercise of this right must **never be considered as a corroboration of the facts,** nor as a reason in itself to adopt or maintain measures which restricted liberty before the final decision on the issue of guilt was taken.

Right to be present at one's trial: Members wanted to **place strict limits** to cases where judgment might be rendered in the absence of the accused. Accordingly, proceedings might be conducted in the absence of the accused person only if:

- the accused person, after being duly informed that he or she faced trial, **explicitly** and unequivocally renounced the right to be present, and only if he or she were represented in the proceedings;
- if the offence which gave rise to the proceedings was **punishable by a fine**, and the suspect or accused person must always be present if the offence was punishable by a term of imprisonment.

Right to a new trial: with a view to preserving the right to a fair trial, Members established that examination of **new evidence** might take place. Where the suspects were not present at the trial, the person concerned had the right to a new trial which allowed a **fresh determination of the merits of the case** – with the opportunity to secure new evidence and, if appropriate, to call the previous evidence into question through cross-examination.

Vulnerable persons: in the implementation of the Directive the particular needs of vulnerable persons who became suspects or accused persons must be taken into account.

Report: 2 years after the deadline for transposition, the Commission shall submit a report assessing the extent to which the Member States had taken the necessary measures to comply with the Directive.