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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	8097/15 DROIPEN 32 COPEN 91 CODEC 546
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 - Preparation of second trilogue

On 29 April, the first trilogue was held on the proposal for a Directive on POI (presumption of innocence). All the Articles were reviewed, and it was agreed to refer certain provisions for examination to the technical meeting. ¹

On 5 May, the first technical meeting was held, in which the designated Articles were discussed.

¹ The following Articles were referred to the technical meeting:

- Art. 1 on subject matter
- Art. 2 on scope (temporal aspect)
- Art. 4 on public reference to guilt (except paragraphs 1a and 4)
- Art. 4a on presentation on suspects and accused persons
- Art. 8 on the right to be present at one's trial (except paragraph 2a)
- Art. 9 on the right to a retrial
- Art. 9a on vulnerable persons
- Art. 10 on remedies
- Art. 11 on data collection
- Art. 11a on report
- Art. 12 on non-regression clause

On 19 May, the second trilogue will take place (in Strasbourg).

In view of this, delegations will find attached a five-column table. In the fourth column, the Presidency has set out observations, sometimes accompanied by compromise solutions in the fifth column.

At the meeting on 13 May, the Presidency would like to review all observations marked with "for discussion" (these basically concern the provisions that have been discussed at the technical meeting).

In respect of the other provisions, the Presidency has mentioned PM ("pro memoria") the observations made by Member States at the meeting on 28 April; these provisions will in principle not be discussed at the meeting on 13 May, but Member States who consider that the observations can be further improved are invited to indicate so.

The recitals have not yet been examined; in various instances, they may need to be adjusted in line with changes in the Articles.

NB: Abbreviations used:

GA = Council General Approach (as adopted in December 2014)

CNS = Council

MS = Member States

EP = European Parliament

PRES = Presidency

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

Title

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
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	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	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		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<p><i>(-1) 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 judgements ad judicial decisions...' while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system of the Member States. (AM 1)</i></p>		
		<p><i>(-1a) Article 11(1) of the Universal Declaration of Human Rights (the UDHR) adopted by the United Nations in 1948 states that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". Article 14 of the International Covenant on Civil and Political Rights (the</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<p><i>ICCPR) stipulates that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law" and establishes "the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing". Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects the right to a fair trial, which implies that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law and has a right to defend himself in person or through legal assistance of his choosing. Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) stipulates that everyone who has been charged shall be</i></p>		

Recitals				
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		<i>presumed innocent until proved guilty according to law; respect for the rights of the defence of anyone who has been charged shall be guaranteed. (AM 2)</i>		
(1) 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.	(1) [transferred to recital 4a]	(1) 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 <i>and to ensure that suspects and accused persons in criminal proceedings in the Member States receive a common and high level of protection with full respect for procedural guarantees throughout the EU, without prejudice to the higher protection standards which may be in use in a given Member State. (AM 3)</i>		
	(1a) Articles 47 and 48 of the Charter of Fundamental			

Recitals

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	<p>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.</p>			
	<p>(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</p>			

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	<p>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.</p>			
	<p>(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...’</p>			
	<p>(1d) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other’s</p>			

Recitals

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	<p>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.</p>			
<p>(2) 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</p>	<p>(see recital 5 GA)</p>	<p>(2) 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. (...) (AM 4)</p>		

Recitals				
Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
of the Member States.				
(3) The Stockholm Programme ² put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals setting out a step by step approach to strengthening the rights of suspects or accused persons. The EU agenda on procedural rights is designed to operate as a whole, only when all its components are implemented will its benefits be felt in full.	(see recital 3b GA)	(3) The Stockholm Programme ³ put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals setting out a step by step approach to strengthening the rights of suspects or accused persons. The EU agenda on procedural rights is designed to operate as a whole, only when all its components are implemented will its benefits be felt in full.		
	(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	<i>(2a) 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</i>		

² OJ C 115, 4.5.2010, p. 1.

³ OJ C 115, 4.5.2010, p. 1.

Recitals				
Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	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.	<i>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. (AM 5)</i>		
	(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'). ⁴ 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			

⁴ OJ C 295, 4.12.2009, p. 1.

Recitals				
Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	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). ⁵ 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.			

⁵ OJ C 115, 4.5.2010, p.1.

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or 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.</p>		<p>(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or 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.</p>		
<p>(5) Three measures have already been adopted: Directive 2010/64/EU of the European Parliament and of the Council⁶, Directive 2012/13/EU of the European Parliament and of the Council⁷ and Directive 2013/48/EU of the European Parliament and of the Council⁸.</p>	<p>(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 proceedings⁹, Directive</p>	<p>(5) Three measures have already been adopted: Directive 2010/64/EU of the European Parliament and of the Council¹², Directive 2012/13/EU of the European Parliament and of the Council¹³ and Directive 2013/48/EU of the European Parliament and of the Council¹⁴.</p>		

⁶ 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).

⁷ 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).

⁸ 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).

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	<p>2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings¹⁰, 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.¹¹</p>			

⁹ 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).

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁰ 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).

¹¹ 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).

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	(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.			
(6) This Directive should apply only to criminal proceedings. Administrative	(6) This Directive should apply only to criminal proceedings. Administrative	(6) This Directive should apply (...) to criminal proceedings <i>as well as similar</i>		

Recitals

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<p>proceedings leading to sanctions such as competition, trade, tax, financial services proceedings and other investigations by administrative authorities in relation to these proceedings, and also civil proceedings are not covered by this Directive.</p>	<p>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.</p>	<p><i>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 are classified as criminal. In the light of the case law of the Court of Justice of the European Union and the European Court of Human Rights (ECtHR), the safeguards regarding a fair trial apply if the proceedings belong to the ‘criminal sphere’ as defined by the ECtHR. Accordingly, it is not always enough, when seeking to determine whether proceedings belong to the criminal sphere, to consider only their status under national law but also to consider the nature of the offence involved and/or the severity of the penalty which the accused person faces. The safeguards provided for by this Directive should therefore</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<p><i>apply in all proceedings of a criminal nature, in which restrictive measures, including deprivation of liberty, are liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental, and to proceedings liable to give rise to a criminal record.</i> (AM 6)</p>		
<p>(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.</p>	<p>(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.</p>	<p>(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, <i>with due regard for the adversarial principle and balance between the rights of the parties.</i> (AM 7)</p>		
<p>(8) This Directive should apply to natural persons who</p>	<p>(8) This Directive should apply to natural persons who</p>	<p>(8) This Directive should apply to natural persons <i>and, where applicable, legal</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>are suspected or accused of having committed a criminal offence. It should apply at any stage of the proceedings, even before those 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, until the conclusion of such proceedings.</p>	<p>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</p>	<p><i>persons</i> who are suspected or accused of having committed a criminal offence. It should apply at <i>every</i> stage of the proceedings, <i>from the moment these</i> persons are <i>suspected or accused of having committed a criminal offence, until the conclusion of such proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the</i> offence. (AM 8)</p>		

Recitals

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	<p>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.</p>			
		<p><i>(8a) Several Member States already have the concept of criminal responsibility of legal persons under their national law. This Directive should apply in such cases but does not require the introduction of criminal responsibility of legal persons in Member States who do not use this concept.</i> (AM 9)</p>		
<p>(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</p>	<p>(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</p>	<p>(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</p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
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.	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.	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.	(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.	<i>(deleted)</i>		
(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.	(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.	<i>(replaced by new recital 11, see below)</i>		
		(11) <i>If a person other than a suspect or accused person, for</i>		

Recitals

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		<p><i>example a witness, becomes a suspect or accused person, that person's right to the presumption of innocence and his or her right not to incriminate him or herself should be protected, and he or she should have the right to remain silent, as confirmed by the case law of the ECtHR. This Directive therefore makes express reference to the practical situation where such a person becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings.</i> (AM 11)</p>		
		<p><i>(11a) This Directive should also apply to proceedings initiated by the European Public Prosecutor's Office referred to in Article 86(1) of the Treaty on the Functioning of the European Union.</i> (AM 12)</p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
(12) "Law enforcement or judicial authorities" for the purposes of this Directive refers to public authorities which, according to national law, exercise powers in the realm of criminal proceedings.	(12) [deleted]	(12) "Law enforcement or judicial authorities" for the purposes of this Directive refers to public authorities which, according to national law, exercise powers in the realm of criminal proceedings.		
		<i>(12a) The right to access to an effective remedy could include, for example, the imposition of penalties, the right to a retrial or compensation measures.</i> (AM 13)		
(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if they were convicted.	(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	(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if <i>their guilt has already been established beyond doubt.</i> (AM 14)		

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	<p>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.</p>			
		<p><i>(13a) For the purposes of this Directive, the term 'public statement' should mean any official, unofficial or informal statement or other act by a judicial or public authority, which contains information about ongoing criminal proceedings and which concerns a criminal offence. This includes statements about related subsequent proceedings, which were</i></p>		

Recitals

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		<i>concluded by a final acquittal of the suspect or accused person, and statements in court during the pre-trial period. (AM 15)</i>		
		<i>(13b) For the purposes of this Directive, the term ‘public authorities’ should be understood to designate any persons holding a public office, be it judicial, administrative or political, or any employee or official agent of the public authorities. (AM 16)</i>		
		<i>(13c) Without prejudice to the freedom of the press and the right to information, presumption of innocence could be also infringed wherever suspects or accused persons are referred to in the press as if they have already been convicted. Member States should take measures banning the public authorities from disclosing to the media information concerning</i>		

Recitals

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		<p><i>ongoing criminal proceedings which might undermine the presumption of innocence, including in interviews and in communications issued through or in conjunction with the media, as well as leaking information to the press which could create prejudice or bias against the suspect or accused person before final conviction in court. Member States should also take the necessary measures to protect against public declarations of guilt before conviction, and should promote the adoption of codes of ethical practice in cooperation with the media. Member States should furthermore conduct independent investigations of any leaks from criminal proceedings to the public.</i> (AM 17)</p>		
		<p><i>(13d) In order to properly protect suspects or accused persons from public</i></p>		

Recitals

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		<p><i>pronouncements of guilt before final conviction, Member States should ensure that the appearance or presentation of the suspect or accused person in the courtroom before and during the trial is appropriate, since presentation in the media of suspects or accused persons in glass boxes, partitioned or in handcuffs, leg irons or prison clothes could create an impression of guilt from the outset. (AM 18)</i></p>		
	<p>(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</p>			

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	<p>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.</p>			
<p>(14) The burden of proof is on the prosecution, and any doubt should benefit the accused. Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to</p>	<p>(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</p>	<p>(14) The burden of proof is on the prosecution, and any doubt should benefit the accused. Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to</p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
the defence, without prejudice to any possible <i>ex officio</i> fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's guilt.	the defence, without prejudice to any possible <i>ex officio</i> fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's guilt.	the defence, without prejudice to any possible <i>ex officio</i> 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) However, in some cases shifting the burden of proof to the defence should not be incompatible with the presumption of innocence as long as certain safeguards are guaranteed: it should be	(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	(15) (deleted) (AM 19)		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>ensured that presumptions of fact or law are confined within reasonable limits, which take into account the importance of what is at stake, and that they are rebuttable, for example by means of new evidence on extenuating circumstances or on a case of <i>force majeure</i>.</p>	<p>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.</p>			
		<p><i>(15a) 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</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<i>competent court to seek both inculpatory or exculpatory evidence. (AM 20)</i>		
<p>(16) The right not to incriminate oneself and not to cooperate is an important aspect of the presumption of innocence. Suspect 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.</p>	<p>(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.</p>	<p>(16) The right not to incriminate oneself and not to cooperate and the right to remain silent are important aspects of the presumption of innocence. These rights mean that the competent authorities may not in any way compel or force suspects and accused persons, when the latter are asked to make a statement or answer questions, to produce evidence or documents or to provide information which may lead them to incriminate themselves. (AM 21)</p>		
		<p><i>(16a) Without violating the rights to remain silent and the privilege against self-incrimination, material could be obtained from the suspects or accused persons through the use of lawful powers and having an existence independent of the will of the</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<i>suspects or accused persons, such as material acquired pursuant to a judicial warrant, material in respect of which there is a legal obligation of retention or production, or breath, blood and urine samples and bodily tissues.</i> (AM 22)		
(17) Any compulsion used to compel the suspect or accused person to provide information should be limited. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the offense at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of	(17) (see recital 20a)	(deleted)		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>compulsion imposed on suspects or accused persons with a view to compelling them to provide information relating to charges against them should not destroy the very essence of their right not to incriminate one-self and their right to remain silent, even for reasons of security and public order.</p>				
<p>(18) The right not to incriminate oneself and not to cooperate 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</p>	<p>(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</p>	<p>(18) The right not to incriminate oneself and not to cooperate 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</p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
the purpose of DNA testing.	the purpose of DNA testing.	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.	(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.	(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination. <i>The right to remain silent cannot in any circumstances be used against the accused or suspected person and cannot be regarded as substantiation of the charges.</i> (AM 24)		
(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is	(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	(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
suspected or accused of having committed and not, for example, as regards questions relating to the personal identification of a suspect or accused person.	accused of having committed and not, for example, as regards questions relating to the personal identification of a suspect or accused person.	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			

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	<p>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.</p>			
	<p>(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.</p>			
		<p><i>(20a) Any evidence obtained in violation of the right not to</i></p>		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<p><i>incriminate oneself and to refuse to cooperate and in violation of the right to remain silent, as laid down in this Directive, should be declared inadmissible. Any evidence obtained in violation of Article 3 of the ECHR on the ban on the use of torture is inadmissible. The use in criminal proceedings of statements or evidence obtained in violation of these rights automatically renders the proceedings as a whole unfair. These principles should apply not only when the victim of the treatment which violates Article 3 of the ECHR is the accused person, but also when he or she is a third party. (AM 27)</i></p>		
		<p><i>(20b) The non-admissibility of any evidence obtained in the breach of the right not to incriminate oneself and not to cooperate and the right to remain silent should also extend to evidence collected in</i></p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<i>proceedings which are not formally criminal proceedings but which might lead to a criminal sanction being imposed. (AM 28)</i>		
(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.	(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.	(21) The right to a fair trial is one of the basic principles in a democratic society, <i>as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms</i> . The right of an accused person to be present at the trial is based on that right and should be guaranteed throughout the Union. (AM 29)		
	(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			

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	<p>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.</p>			
		<p><i>(21a) The right to be present at one's own trial is a fundamental right. Accordingly, proceedings may be conducted in the absence of the suspect or the accused person only if the suspect or the accused person, after being duly informed that he or she faces trial, explicitly and unequivocally renounces the right to be present, and only if</i></p>		

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		<p><i>he or she is represented in the proceedings. Proceedings may be held in the absence of the suspect or accused person only if the offence which gave rise to the proceedings is punishable by a fine, and the suspect or accused person must always be present if the offence is punishable by a term of imprisonment.</i></p> <p>(AM 30)</p>		
<p>(22) However, 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.</p>	<p>(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.</p>	<p>(22) However, the right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may, expressly <i>and</i> unequivocally, waive that right.</p> <p>(AM 31)</p>		
	<p>(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</p>			

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	<p>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.</p>			
	<p>(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.</p>			
	<p>(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</p>			

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	<p>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. 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.</p>			
	<p>(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</p>			

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	<p>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.</p>			
	<p>(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</p>			

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
	<p>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.</p>			
<p>(23) Under certain well defined conditions which ensure effective compliance with the right to a fair trial, it should be possible for a trial resulting in the decision on guilt or innocence to take place in the absence of the suspect or accused person.</p>	<p>(23) (deleted)</p>	<p>(23) Under certain well defined conditions which ensure effective compliance with the right to a fair trial, it should be possible for a trial resulting in the decision on guilt or innocence to take place in the absence of the suspect or accused person.</p>		
		<p><i>(23a) Where a suspect or accused person is prevented from being present at the trial for reasons beyond his or her control or in instances of force majeure, that suspect or accused person should always</i></p>		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<i>have the right to a re-trial.</i> (AM 32)		
(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.	(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.	(deleted) (AM 33)		
(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.	(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.	(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 <i>should</i> , where appropriate, also be paid <i>on the one hand to the diligence exercised by the public authorities in order to inform the person concerned and, on the other hand</i> , to the diligence exercised by the person concerned in order to receive information addressed to him or her. (AM 34)		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>(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 principles 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.</p>	<p>(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.</p>	<p>(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, <i>including a right to appeal.</i> An effective remedy available in the event of a breach of any of the principles laid down in this Directive should (...) <i>both consist of an appropriate mechanism of compensation for damages and have</i> 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. (AM 35)</p>		
<p>(27) In order to monitor and evaluate the effectiveness of this Directive, Member States should collect data with regard to the implementation of the rights set out in this Directive. Such data should include data recorded by law enforcement</p>	<p>(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</p>	<p>(27) In order to monitor and evaluate the effectiveness of this Directive, Member States should collect data with regard to the implementation of the rights set out in this Directive. Such data should include data recorded by law enforcement</p>		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
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.	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.	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.	<i>(27a) Vulnerable persons should be given a specific degree of protection, therefore, in respect of some of the rights foreseen in this Directive, additional procedural safeguards should be applicable. Children who are the most vulnerable should be given a specific degree of protection, therefore, in respect of some of the rights foreseen in this Directive, additional procedural safeguards should be applicable, set out in the Directive on procedural safeguards for children suspected or accused in criminal proceedings.</i>		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		(AM 36)		
(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.	(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.	(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	(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	(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. (...) The		

Recitals

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
<p>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.</p>	<p>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.</p>	<p>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. (AM 37)</p>		
		<p><i>(29a) The transposition of this Directive should contribute to the creation of an Area of Freedom, Security and Justice within the Union, whose overarching value is the respect of fundamental rights. Consequently, if there are substantial grounds for believing that this Directive</i></p>		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
		<i>may have the effect of modifying the obligation incumbent on public authorities to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings, such obligations should remain unaffected. (AM 38)</i>		
<p>(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</p>	<p>(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</p>	<p>(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</p>		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
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.	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.	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.	(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.	(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	(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	(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		

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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Orientation vote LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,	is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,	is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,		

ARTICLES

CHAPTER 1

INTRODUCTORY PROVISIONS

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 1				
<i>Subject matter</i>	<i>Subject matter</i>	<i>Subject matter</i>		
<p>This Directive lays down minimum rules concerning:</p> <p>(a) certain aspects of the right to the presumption of innocence in criminal proceedings;</p> <p>(b) the right to be present at trial in criminal proceedings.</p>	<p>This Directive lays down minimum rules concerning:</p> <p>(a) the right to the presumption of innocence in criminal proceedings, and certain aspects related thereto;</p> <p>(b) the right to be present at trial in criminal proceedings.</p>	<p>This Directive lays down minimum rules concerning:</p> <p>(a) certain aspects of the right to the presumption of innocence in criminal proceedings;</p> <p>(b) the right to be present at trial in criminal proceedings.</p>	<p><u>For discussion:</u></p> <p>The question is whether</p> <p>a) the right to remain silent and the right not to incriminate oneself are aspects of the presumption of innocence, or</p> <p>b) whether these rights are aspects related to this principle.</p> <p>PRES defended the point of view under b), whereas EP and COM supported the point of view under a).</p> <p>This seems not the most important question in the Directive.</p>	Text of COM/EP ?

			<p>Could MS perhaps accept the point of view under a), and hence the COM/EP text, in a spirit of compromise?</p> <p>If not, which compelling arguments could we use to convince EP and COM that the point of view under b) is better?</p>	
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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 2				
<i>Scope</i>	<i>Scope</i>	<i>Scope</i>		
<p>This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.</p>	<p>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.</p>	<p>This Directive applies to criminal proceedings and similar proceedings of a criminal nature leading to comparable sanctions of a punitive and deterrent nature, against natural persons and, where applicable, legal persons suspected or accused in these proceedings, regardless of their nationality, place of residence or place of registration or incorporation, at every stage, from the time they become suspects or accused persons until the final conclusion of those proceedings, with a final judgment being handed down. (AM 38)</p>	<p><u>For discussion:</u></p> <p>The temporal scope was discussed. Subject to verification, EP can accept the GA text, on condition that it is made clear that the Directive applies <i>at every/any stage</i> in the indicated time frame.</p> <p>PRES stated that this clarification is better suited in the recitals - see words <i>at any stage</i> in recital 8 GA - but EP very much insisted having it in the operative part.</p> <p><i>Could MS accept the reworded text, suggested by lawyer-linguists, in a spirit of compromise?</i></p> <p><u>PM - not for discussion</u></p> <p>At the trilogue, PRES defended the following points of view regarding other elements:</p>	<p>This Directive applies to natural persons who are suspected or accused in criminal proceedings. It applies <i>at all stages</i> 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.</p>

			<p>a) Including "similar proceedings" in the scope of the Directive is not acceptable to CNS:</p> <ul style="list-style-type: none"> - it is not consistent with the already adopted procedural rights Directives; - it would lead to legal uncertainty; - it would (therefore) be detrimental to the objective of enhancing mutual trust; - it is not compatible with the legal basis of Article 82(2)(b) TFEU (which speaks of "criminal procedure"); - the notion of "criminal proceedings", as interpreted in the case-law of the ECtHR, is wide enough; - codifying the Engel case-law is dangerous, since it fixes too much a legal situation deriving from case-law, which can change. <p>b) CNS is opposed to including legal persons in the scope of this Directive:</p>	
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			<ul style="list-style-type: none"> - MS have negotiated this Directive assuming that, like the three preceding Directives, it was only meant to address natural persons (see Article 82.2.b TFEU: "right of <i>individuals</i> in criminal procedure"); - legal persons are treated differently in ECHR and CJEU case-law than natural persons (e.g. companies in competition cases may be obliged to provide certain information - the right to remain silent and the right not to incriminate oneself do not apply to legal persons, at least not fully); - the idea of EP that the Directive could apply "where applicable" to legal persons – so that it would apply in some MS, and in other MS not – is contradictory to the idea of setting minimum rules, and it (therefore) goes against the objective of reinforcing mutual trust. 	
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CHAPTER 2
RIGHT TO THE PRESUMPTION OF INNOCENCE

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 3				
<i>Presumption of innocence</i>	<i>Presumption of innocence</i>	<i>Presumption of innocence</i>		
Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty according to law.	Member States shall ensure that suspects and accused persons are presumed innocent until proven guilty according to law.	Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty <i>by a final decision delivered according to law, in a trial at which they have had all the guarantees necessary for their defence.</i> (AM 40)	<u>PM - not for discussion</u> CNS has substantial difficulties with the EP amendment. The EP seems to mix two concepts: the presumption of innocence and the right to a fair trial. The presumption of innocence should always apply, also if the guarantees for a trial are not respected. "All the guarantees necessary for their defence" seems by the way a vague notion; how far does this stretch? It is therefore best to keep the COM text.	

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 4				
<i>Public references to guilt before conviction</i>	<i>Public references to guilt before conviction</i>	<i>Public references to guilt before proven guilty</i>		<i>Public references to guilt before proven guilty</i>
<p>Member States shall ensure that, before a final conviction, public statements and official decisions from public authorities do not refer to the suspects or accused persons as if they were convicted.</p>	<p>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.</p>	<p>1. Member States <i>must take the necessary measures</i> to ensure that, before a final conviction <i>or before or after a final acquittal</i>, public statements, official decisions, <i>including on pre-trial detention, and other acts</i> from public authorities do not refer to the suspects or accused persons as if they were <i>guilty</i>.</p> <p><i>In particular, statements must not reflect an opinion that the person is guilty and be of such a nature as to potentially encourage the public to believe the person is guilty and/or to prejudice the assessment of facts by the competent judiciary authority.</i></p>	<p><u>For discussion:</u></p> <p>As regards the first part, PRES objected to the reference to "official decisions". EP and COM, referring to ECtHR case-law [Matijasevic v. Serbia, 23037/04, 19 September 2006], insisted however to include this reference.</p> <p>EP and COM objected the use of "take appropriate measures to", which would weaken the text, and also said that public references to guilt should not be made in case of an acquittal. PRES stated that it would verify this with MS.</p> <p><i>MS are therefore invited to consider whether the text at right could be acceptable.</i></p>	<p>1. Member States shall (...) ensure that, <u>until the final determination of the question whether the suspect or accused person has committed the offence concerned</u>, public statements <u>and official decisions</u> by public authorities do not refer to <u>the suspect or accused person as being</u> guilty.</p> <p>Revised recital 13:</p> <p>(13) The presumption of innocence is violated if public statements or official decisions refer to suspects or accused persons as if they were guilty, without those persons having previously been proved guilty according to law. <u>In particular, public statements or official</u></p>

			<p>As regards the second part, parties provisionally agreed to insert the text in recital 13 GA.</p> <p><i>MS are invited to confirm the acceptability of this solution.</i></p> <p>NB: first sentence of the recital was revised by lawyer-linguists. They also observed that "public statements by public authorities" is actually a definition which should be put in Article 3 ...</p>	<p><u>decisions should not reflect an opinion that the person is guilty and be of such a nature as to potentially encourage the public to believe the person is guilty and/or to prejudice the assessment of facts by the competent judiciary authority.</u> 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.</p>
	<p>2. [former text transferred to recital 13, see 15837/14]</p>	<p>1a. <i>Member States shall adopt appropriate measures to prohibit the public authorities</i></p>	<p><u>PM - not for discussion:</u> CNS considers that the EP text</p>	

		<i>from providing or divulging to the media any information concerning ongoing criminal proceedings that might undermine the principle of the presumption of innocence</i>	is difficult to accept. The text goes too far: this is not an issue to be organised by criminal law, and this new paragraph risks to jeopardize the balance in the rest of the article. The text is also unacceptable because it goes against the very principles of a free and open society.	
Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.	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.	2. <i>In the event of a breach of that requirement, Member States shall ensure that appropriate measures are taken, conduct independent investigations on the breach and ensure that the suspect or accused person whose right to the presumption of innocence has been violated has access to an effective remedy, as guaranteed in Article 10. (AM 41)</i>	<u>For discussion:</u> PRES stated that this part of amendment 41 is difficult to accept. MS feel that the "independent investigations" are intrusive and, moreover, that this is redundant, since the Council of Europe already performs independent inspections. The remedies foreseen in Article 10 seem sufficient. COM supported PRES, considering that the EP amendment on this point would be too far-reaching. COM also failed to see what relevance independent investigations would have if paragraph 1a would not be enacted, and it wondered how an independent investigation would help	

			<p>remedy a breach of Article 4.1.</p> <p>EP would verify if it can accept the GA text.</p> <p>NB: to be noted that COM objected the use of the word "available".</p>	
	<p>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.</p>		<p><u>PM - not for discussion:</u></p> <p>It is important to keep this provision of the GA in the text. In certain situations disseminating information on criminal proceedings can be necessary for reasons relating to the criminal investigation or for the public interest.</p> <p>Example: when a school teacher has been arrested because it is alleged that he sexually abused children, the authorities may want to inform the parents of the (other) children in the school, so as to verify whether there are more victims and so as to allow the parents to take appropriate action towards their children.</p>	

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 4a (new)				
		<i>Presentation of suspects or accused persons</i>		<i>Presentation of suspects or accused persons</i>
		<p><i>1. Member States shall ensure that suspects or accused persons are not presented in court or in public in a manner that suggest their guilt, before the final conviction.</i></p>	<p><u>For discussion:</u></p> <p>PRES indicated the problems that CNS has with this text.</p> <p>COM suggested clarifying that this is about the physical presentation of suspects or accused persons as guilty.</p> <p><i>MS are invited to indicate if the text at right would be acceptable (subject possibly to further linguistic refinement of the text).</i></p>	<p>1. Member States shall <u>take appropriate measures</u> to ensure that suspects or accused persons are not <u>physically presented, neither in court nor in public, in a manner that suggests that they are guilty.</u></p>
		<p><i>2. This shall not prevent a Member State from applying measures which are genuinely required for case-specific security reasons, on the basis of specific identified risks posed by the individual suspected or accused person.</i> (AM 42)</p>	<p><u>For discussion:</u></p> <p>PRES insisted that MS should retain the possibility to use security measures, such as obliging suspects or accused person to wear handcuffs, where warranted. The conditions should not be too strict – public security is at</p>	<p>2. The obligation in paragraph 1 shall not prevent Member States from applying measures which are required for specific security reasons.</p>

			<p>stake.</p> <p>EP could possibly accept text at right if condition of "case-specific" is moved to the recitals.</p> <p><i>MS are invited to indicate if the text at right would be acceptable.</i></p> <p>NB: The provision could be further clarified in a recital - see recital 13d of the EP (AM 18) for inspiration.</p>	
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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 5				
<i>Burden of proof and standard of proof required</i>	<i>Burden of proof</i>	<i>Burden of proof and standard of proof required</i>		
<p>1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any <i>ex officio</i> fact finding powers of the trial court.</p>	<p>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.</p>	<p>1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any <i>ex officio</i> fact finding powers of the trial court and to the right of the defence to submit evidence in accordance with the applicable national rules.</p>	<p><u>PM - not for discussion</u> The EP text seems more narrow than the GA. PRES asked EP if it can also accept the GA text (with the reference to judges and courts seeking both inculpatory and exculpatory evidence), given also that EP can accept similar wording in the recitals (see recital 15a, amendment 20).</p>	
<p>2. Member States shall ensure that any presumption, which shifts the burden of proof to the suspects or accused persons, is of sufficient importance to justify overriding that principle and is rebuttable.</p> <p>In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a</p>	<p><i>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</i></p>	<p>(deleted)</p>	<p><u>PM - not for discussion</u> This issue has been discussed at length in the Council. The GA text is a fine balance between the positions of the MS and should be maintained, since the use of presumptions is very important in practice (example: if a speeding offence is made, it is presumed that the owner of the car – recognisable via the licence plate – drove</p>	

reasonable doubt regarding the suspect or accused person's guilt.	<i>defence are respected.</i>		the car at the moment of the offence and is hence criminally responsible). It is in the interest of citizens to establish in this Directive the conditions for the use of presumptions (" <i>within reasonable limits</i> ", " <i>rebuttable</i> ", ...).	
		2a. <i>Member States shall ensure that any doubt always benefits the suspect or accused persons in criminal proceedings.</i>	<u>PM - not for discussion</u> This text is acceptable, but that it seems much better placed in paragraph 1, linked to the burden of proof - see text GA.	
3. Member States shall ensure that where the trial court makes an assessment as to the guilt of a suspect or accused person and there is reasonable doubt as to the guilt of that person, the person concerned shall be acquitted.		3. Member States shall ensure that where the trial court makes an assessment as to the guilt of a suspect or accused person and there is (...) doubt as to the guilt of that person, the person concerned shall be acquitted.	<u>PM - not for discussion</u> This seems to overlap largely with paragraph 2a. What is the added value?	

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 6				
<i>Right not to incriminate oneself and not to cooperate</i>	<i>Right not to incriminate oneself <u>and to remain silent</u></i>	<i>Right not to incriminate oneself and not to cooperate</i>		
1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves and not to cooperate in any criminal proceeding.	1. Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.	1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves and not to cooperate in any criminal proceeding.	<u>PM - not for discussion:</u> The institutions seem to agree that Article 6 (on the right to remain silent) should be merged with Article 7 (on the right not to incriminate oneself), since the provisions are closely linked and the texts are almost identical. PRES objected a reference to the right not to cooperate - EP seemed to accept.	
	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.	<i>1a. Member States shall promptly inform the suspect or accused persons of their right not to incriminate themselves and not to cooperate, and explain the content of this right and the consequences of renouncing or invoking it. This shall be done prior to any questioning by public authorities, prior to the suspect or accused person</i>	<u>PM - not for discussion:</u> Directive 2012/13 provides in Article 3(1)(e) that suspects and accused persons should be informed of their right to remain silent. CNS considers that this is sufficient; if EP thinks that information should also be provided on the right not to incriminate oneself, then this should be organised	

		<i>giving testimony in court as well as at the moment of the arrest.</i>	through a change of the said Directive.	
2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which may be obtained from the suspects or accused persons through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons.	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.	2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which may be <i>legitimately</i> obtained from the suspects or accused persons through the use of lawful (...) powers but which has an existence independent of the will of the suspects or accused persons.	<u>PM - not for discussion:</u> CNS considers that the texts are close, but that the GA text is more precise.	
		<i>2a. Exercise of the right not to incriminate oneself and not to cooperate must 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.</i>	<u>PM - not for discussion:</u> CNS has a different view on this issue. Reference is made to recital 20b GA, where it is said that this provision is " <i>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 <u>element of corroboration</u> of evidence obtained by other means, provided the rights of the defense are respected.</i> "	
		<i>2b. Member States may nevertheless take into account the cooperative behaviour of</i>	<u>PM - not for discussion:</u> PRES indicated that CNS can	

		<i>the suspect or accused person, as a mitigating factor, when deciding the concrete penalty to impose.</i>	accept this new text in the context of an overall compromise text, subject to redrafting (e.g. take out word "nevertheless").	
3. Exercise of the right not to incriminate oneself or of the right not to cooperate shall not be used against a suspect or accused person at a later stage of the proceedings and shall not be considered as a corroboration of facts.	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. ¹⁵	3. Exercise of the right not to incriminate oneself or of the right not to cooperate shall not be used against a suspect or accused person at any stage of the proceedings (...).	<u>PM - not for discussion:</u> CNS has difficulties accepting this newly proposed paragraph – see the comments under paragraph 2a.	
4. Any evidence obtained in breach of this Article shall not be admissible, unless the use of such evidence would not prejudice the overall fairness of the proceedings.	4. (deleted)	4. (deleted)	<u>PM - not for discussion:</u> See under Article 10(3).	
	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,		<u>PM - not for discussion:</u> It is important, for some MS, to keep this exception, which is e.g. used in certain traffic offences: if the suspect or accused person does not fill in a form asking certain	

¹⁵ See recital 20b.

	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. ¹⁶		information, he/she is presumed to be guilty.	
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¹⁶ COM asked for the deletion of this paragraph.

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 7				
<i>Right to remain silent</i>	<i>Right to remain silent</i>	<i>Right to remain silent</i>		
1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.	[merged into Article 6]	1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.	(merged with Article 6)	
2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the consequences of renouncing or invoking it.		2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the <i>legal</i> consequences of renouncing or invoking it. <i>This information must be immediately provided to the suspect or accused persons, prior to any questioning by public authorities, in court as well as at the moment of the</i>		

		<i>arrest.</i>		
		<i>2a. Exercise of the right to remain silent must never be considered as a corroboration of the facts, nor may it in any way be assessed for the purpose of ascertaining criminal responsibility, nor as a reason in itself to adopt or maintain measures which restrict liberty before the final decision on the issue of guilt is taken.</i>		
3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings and shall not be considered as a corroboration of facts.		3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings. (...)		
4. Any evidence obtained in breach of this Article shall not be admissible, unless the use of such evidence would not prejudice the overall fairness of the proceedings.		(deleted) (AM 45)		

CHAPTER 3
RIGHT TO BE PRESENT AT ONE'S TRIAL

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 8				
<i>Right to be present at one's trial</i>	<i>Right to be present at one's trial</i>	<i>Right to be present at one's trial</i>		
1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.	1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.	1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.	<p>Agreement.</p> <p><u>For discussion:</u></p> <p>PRES observed in general that the text of the GA on this Article is the result of extensive discussions in the Council, and that the text of the GA is a fine and delicate balance between the positions of the MS. It is therefore preferable to keep the text of the GA.</p> <p>PRES insisted that it is important that when a person has absconded and is tried in absentia, MS can immediately execute the decision rendered against that person as soon as he/she is apprehended.</p>	Text COM/EP/GA.

<p>2. Member States may provide for a possibility under which the trial court may decide on the guilt in the absence of the suspect or the accused person, provided that the suspect or accused person:</p> <p>(a) in due time:</p> <p>(i) either was summoned in person and thereby informed of the scheduled date and place of the trial, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;</p> <p>and</p> <p>(ii) was informed that a decision may be handed down if he or she does not appear for the trial; or</p> <p>(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who</p>	<p>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:</p> <p>a) the suspect or accused person has been informed in due time of the trial and of the consequences of a non-appearance; or</p> <p>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.</p>	<p>2. Member States may provide for a possibility under which the trial court may decide on the <i>guilt</i> in the absence of the suspect or the accused person, provided that the suspect or accused person:</p> <p>(a) in due time:</p> <p>(i) (...) was summoned in person and thereby <i>clearly and unequivocally</i> informed of the scheduled date and place of the trial (...);</p> <p>and</p> <p>(ii) was informed that a decision may be handed down if he or she does not appear for the trial <i>and of the consequences of an unjustified nonappearance</i>; or</p> <p>(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed</p>	<p><u>For discussion:</u></p> <p>COM stated that that it could accept the more readable text of the GA, on condition that recital 22c GA be slightly redrafted, see at right, in order to ensure the coherence with FD 2009/299.</p> <p>EP said that it was happy to accept the GA text on the same condition.</p> <p><i>MS are invited to indicate if they can accept the rewording of recital 22c, see at right.</i></p>	<p><u>Revised recital 22c GA:</u></p> <p>(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 <u>in such a manner that it was unequivocally established that he or she was aware of the scheduled trial.</u> 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</p>
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<p>was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial.</p>		<p>defended by that counsellor at the trial.</p>		<p>informed that a decision might be handed down if he or she does not appear for the trial.</p>
		<p><i>2a. Member States may provide for a possibility under which the trial court may decide on the guilt of the suspect or the accused person in the absence of that person only if the offence which gave rise to the proceedings is punishable by a fine, and under no circumstances if the offence is punishable by a term of imprisonment.</i></p>	<p><u>PM - not for discussion</u> PRES made clear that this text is not acceptable, because it is impossible in practice to make the distinction asked by the EP. The text is not transposable into national law.</p>	
<p>3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision intended in that paragraph if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including</p>	<p>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</p>	<p>3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision intended in that paragraph if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including</p>	<p><u>For discussion:</u> PRES indicated that CNS strongly prefers to keep the GA text. <i>This being, PRES would like to inquire with MS if it is possible to make Articles 8(3) and 9 more coherent, see text at right and in the fifth column relating to Article 9.</i></p>	<p>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 when suspects or accused persons are informed of <u>such</u> decision, they shall also be</p>

<p>examination of new evidence, and which may lead to the original decision to be reversed, the person:</p> <p>(a) expressly states that he or she does not contest the decision;</p> <p>or</p> <p>(b) does not request a retrial or appeal within a reasonable time frame.</p>	<p>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.</p>	<p>examination of new evidence, and which may lead to the original decision to be reversed, the person:</p> <p>(a) expressly states that he or she does not contest the decision;</p> <p>or</p> <p>(b) does not request a retrial or appeal within a reasonable time frame.</p>		<p>informed about the possibility to contest the decision and request a new trial, or another legal remedy, <u>in accordance with Article 9.</u></p>
	<p>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.</p>		<p><u>For discussion:</u></p> <p>EP/COM objected to this paragraph, and the suggestion was made to put it in a recital.</p> <p>PRES indicated that CNS prefers keeping this text in the operative text, since it should be clear that this exception to the (strong) rule in paragraph 1 can be made, e.g. when a person is behaving without respect.</p> <p>It was decided to further reflect.</p>	
	<p>5. This Article does not apply when, in accordance with national rules of procedure, the proceedings, or certain stages thereof, are</p>		<p><u>For discussion:</u></p> <p>PRES defended this provision, but EP and COM objected, considering that the wording is not sufficiently precise ("This</p>	<p>5. This Article is without prejudice to national rules providing that proceedings, or certain stages thereof, are conducted in writing,</p>

	<p>conducted in writing, provided this is in conformity with the right to a fair trial.</p>		<p>Article does not apply" should be substituted by "This Article is without prejudice to ..").</p> <p>EP also said that this provision should not be in the operative part, but in the recitals.</p> <p><i>PRES invites MS to indicate if the alternative wording at right is acceptable.</i></p>	<p>provided that this is in conformity with the right to a fair trial.</p>
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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 9				
<i>Right to a retrial</i>	<i>Right to request a new trial</i>	<i>Right to a retrial</i>		<i>Right to a retrial</i>
<p>Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and 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.</p>	<p>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.</p>	<p>Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which allows a fresh determination of the merits of the case – <i>with the opportunity to secure new evidence and, if appropriate, to call the previous evidence into question through cross-examination</i> – and which may lead to the original decision to be reversed. (AM 47)</p>	<p>For discussion: PRES stated that "calling into question of previous evidence through cross-examination" is excessively detailed and superfluous. COM supported PRES, observing that cross-examination is anyway part of the new trial, as appropriate. EP and COM objected the wording of Article 9, in particular the words "allege" and "request". PRES considers that paragraphs 2 and 3 partly overlap, and wonders whether problems can be avoided by revising the text of Article 8(3) and returning in this Article 9 to the COM text, with slight modifications. <i>PRES invites MS to indicate if they can accept the revised wording of Article 9 at right.</i> NB: please note that COM firmly opposed the insertion of "other legal remedy".</p>	<p>Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) (...) were not met, the person concerned has the right to a new trial or other legal remedy at which they have the right to be present and 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.</p>

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 9a (new)				
		<i>Vulnerable persons</i>		
		<p><i>Member States shall ensure that in the implementation of this Directive the particular needs of vulnerable persons who become suspects or accused persons are taken into account. (AM 48)</i></p>	<p><u>For discussion:</u></p> <p>PRES wondered why we need this article in this Directive. As regards which provisions MS should pay particular attention to vulnerable persons? PRES asked for examples, but did not (yet) get an entirely satisfactory answer.</p> <p>PRES observed that we should not address the particular needs of children at this place, since they will get their own Directive - see recital 27a.</p> <p>EP suggested that the text of Article 9a may perhaps be acceptable in a recital as well.</p> <p><i>MS are invited to state if the draft recital at right could be acceptable.</i></p>	<p><i>(27b) Member States should ensure that in the implementation of this Directive the particular needs of other vulnerable persons who become suspects or accused persons are taken into account.</i></p>

CHAPTER 4 - GENERAL AND FINAL PROVISIONS

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 10				
<i>Remedies</i>	<i>Remedies</i>	<i>Remedies</i>		
1. Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.	Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.	1. Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.	Agreement.	
2. The remedy shall have, as far as possible, the effect of placing 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.		2. The remedy <i>shall both consist of an appropriate mechanism of compensation for damages and have</i> the effect of placing 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.	<p><u>For discussion:</u></p> <p>COM supported PRES, who stated that inserting a mechanism of compensation for damages is too prescriptive and too intrusive into the MS procedural autonomy.</p> <p>EP then stated that they might accept the original COM text.</p> <p>PRES noted that placing a person in the same situation as before is very difficult and often impossible. PRES also referred to problems of implementation.</p>	Put COM text back ?

			<p>COM, however, underlined that the words "as far as possible", which are inspired by case law of the CJEU, are precisely meant to indicate that MS are not required to do the impossible.</p> <p>PRES observes that MS have been able to accept the words "as far as possible" in rec. 26.</p> <p><i>Could MS accept putting the original COM text back in the Directive (without the EP reference to the mechanism of compensation)?</i></p>	
		<p>3. Any evidence obtained in violation of Articles 6 or 7 shall be inadmissible. (AM 49)</p>	<p><u>PM - not for discussion:</u></p> <p>PRES explained that CNS considers that a rule, which categorically declares certain evidence inadmissible, goes against the legal traditions of those Member States that have a system of free assessment of evidence by judges. Also, the ECtHR does not request such a categorical approach.</p> <p>PRES suggested that a solution could perhaps be found by making recital 20c GA stronger - inspiration could be drawn</p>	

			from recital 50 in Directive 2013/48 on A2L.	
Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 11				
<i>Data collection</i>	<i>Data collection</i>	<i>Data collection</i>		
Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights under this Directive have been implemented.	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. ¹⁷	Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights under this Directive have been implemented.	<u>For discussion:</u> PRES explained that CNS considers that this Directive should not put an unnecessary administrative burden on MS. PRES therefore requested to maintain the word "available", which is based on other recently adopted texts, notably Article 28 of the Victims Directive (2012/29/EU). EP indicated that it would prefer to delete the word "available", but said that it would verify with the shadows whether this word could be maintained.	

¹⁷ See recital 27.

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 11a (new)				
		<i>Report</i>		
		<p><i>The Commission shall submit to the European Parliament and to the Council, by [2 years after the deadline for transposition], a report assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.</i> (AM 50)</p>	<p><u>For discussion:</u></p> <p>PRES stated that CNS can be flexible on this amendment, since it aims at imposing an obligation on COM and since similar text also figures in the procedural rights Directives that have already been adopted (2010/64, 2012/13, 2013/48).</p> <p>After some rewording, the text at right was provisionally agreed.</p> <p><i>Could MS accept this text?</i></p>	<p>The Commission shall, by [2 years after the deadline for transposition], submit a report to the European Parliament and to the Council <u>on the implementation of this Directive by the Member States.</u></p>

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 12				
<i>Non-regression clause</i>	<i>Non-regression clause</i>	<i>Non-regression clause</i>		
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.	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.	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.	Agreement	
		<i>1a. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings, and any obligations incumbent on</i>	<u>For discussion:</u> PRES objected that the EP text actually says that the Directive should not affect the Treaty. No secondary legislation, however, can affect the Treaty - it seems therefore not necessary to recall this, and it may actually be wrong to do	(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

		<p><i>public authorities in this respect shall remain unaffected. (AM 51)</i></p>	<p>so.</p> <p>EP recognized that the Council has a valid point. It asked whether text could be inserted in a recital, since this is an important issue for some MEP's.</p> <p>PRES suggests adding some text in recital 28.</p> <p><i>MS are invited to indicate whether the text at right could be acceptable.</i></p>	<p>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. <i>Regard should be had in particular to Article 6 of the Treaty on European Union, according to which the Union recognizes the rights, freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</i></p>
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Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 13				
<i>Transposition</i>	<i>Transposition</i>	<i>Transposition</i>		
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after publication of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after publication of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>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.</p>	<p><u>PM - Not for discussion</u></p> <p>It was agreed to discuss this Article at the end of the negotiations.</p>	
<p>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.</p>	<p>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.</p>	<p>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.</p>	<p>Agreement.</p>	

Commission proposal (ST 17621/13)	Council GA (ST 16531/14)	Draft amendments LIBE (DS 1228/15)	Observations Presidency	Possible Compromise
Article 14				
<i>Entry into force</i>	<i>Entry into force</i>	<i>Entry into force</i>		
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	Agreement	
Article 15				
<i>Addressees</i>	<i>Addressees</i>	<i>Addressees</i>		
This Directive is addressed to the Member States in accordance with the Treaties. Done at Brussels, <i>For the European Parliament</i> <i>For the Council</i>	This Directive is addressed to the Member States in accordance with the Treaties. Done at Brussels, <i>For the European Parliament</i> <i>For the Council</i>	This Directive is addressed to the Member States in accordance with the Treaties. Done at Brussels, <i>For the European Parliament</i> <i>For the Council</i>	Agreement	