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Committee on Civil Liberties, Justice and Home Affairs

2013/0407(COD)

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AMENDMENTS 45 - 224

Draft report
Nathalie Griesbeck
(PE546.756v01-00)

on the proposal for a directive of the European Parliament and of the Council
on the strengthening of certain aspects of the presumption of innocence and of
the right to be present at trial in criminal proceedings

Proposal for a directive
(COM(2013)0821 – C7-0427/2013 – 2013/0407(COD))

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EN

United in diversity

EN

Amendment 45
Kinga Gál, Pál Csáky

Proposal for a directive
Recital -1 (new)

Text proposed by the Commission

Amendment

(-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.

Or. en

Amendment 46
Kinga Gál, Pál Csáky

Proposal for a directive
Recital -1 a (new)

Text proposed by the Commission

Amendment

(-1 a) Article 11(1) of the Universal Declaration of Human Rights (the UDHR) adopted by the United Nations, Article 14 of the International Covenant on Civil and Political Rights (the ICCPR), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), and the Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) enshrine the principle of the presumption of innocence and the right to fair trial.

Amendment 47
Jan Philipp Albrecht

Proposal for a directive
Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) Article 48 of the Charter of Fundamental Rights of the European Union stipulates that everyone who has been charged shall be presumed innocent until proved guilty according to law; respect for the rights of the defence of anyone who has been charged shall be guaranteed. 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. Article 14 of the International Covenant on Civil and Political Rights stipulates that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law and the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.

Or. en

Amendment 48
Laura Ferrara

Proposal for a directive
Recital -1 (new)

Text proposed by the Commission

Amendment

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

Or. it

Amendment 49

Laura Ferrara

Proposal for a directive

Recital 1

Text proposed by the Commission

Amendment

(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) 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, ***so as to ensure that suspected and accused persons in criminal proceedings in the Member States receive a high level of protection with full respect for procedural guarantees.***

Or. it

Amendment 50

Jan Philipp Albrecht

Proposal for a directive

Recital 1

Text proposed by the Commission

(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.

Amendment

(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, ***and to ensure that a common and sufficiently high level of protection and the procedural safeguards linked thereto are available to suspects and accused persons throughout the EU, without prejudice to the higher protection standards which may be in use in a given Member State.***

Or. en

Amendment 51
Therese Comodini Cachia

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Article 11(1) of the Universal Declaration of Human Rights (the UDHR) adopted by the United Nations, Article 14 of the International Covenant on Civil and Political Rights (the ICCPR), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), and the Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) enshrine the principle of the presumption of innocence and the right to fair trial.

Or. en

Amendment 52
Therese Comodini Cachia

Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) 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 and judicial decisions while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system of the Member States.

Or. en

Amendment 53
Laura Ferrara

Proposal for a directive
Recital 2

Text proposed by the Commission

Amendment

(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 of the Member States.***

(2) The principle of mutual recognition of judgments and other decisions made by judicial authorities is the cornerstone of judicial cooperation in both civil and criminal matters within the Union. By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive ***seeks to*** 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.

Or. it

Amendment 54
Kinga Gál, Pál Csáky

Proposal for a directive
Recital 2

Text proposed by the Commission

(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 of the Member States.

Amendment

(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 ***could have an impact on removing*** obstacles to the free movement of citizens throughout the territory of the Member States.

Or. en

Amendment 55
Therese Comodini Cachia

Proposal for a directive
Recital 2

Text proposed by the Commission

(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 of the Member States.

Amendment

(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 ***could have an impact on removing*** obstacles to the free movement of citizens throughout the territory of the Member States.

Or. en

Amendment 56
Traian Ungureanu

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(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 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.

Or. en

Amendment 57
Traian Ungureanu

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) The Stockholm Programme³¹ 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) 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'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only

indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole. Only when all its components are implemented will its benefits be felt in full.

³¹ OJ C 115, 4.5.2010, p. 1.

Or. en

Amendment 58
Traian Ungureanu

Proposal for a directive
Recital 4

Text proposed by the Commission

(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.

Amendment

(4) **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)**. 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.

Or. en

Amendment 59
Laura Ferrara

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) This Directive should apply only to criminal proceedings. Administrative 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***.

(6) This Directive should apply only to criminal proceedings, ***including*** administrative proceedings ***that may lead to penalties such as deprivation of liberty, irrespective of whether or not the proceedings are classified as criminal***.

Or. it

Amendment 60

Dennis de Jong

on behalf of the GUE/NGL Group

Proposal for a directive

Recital 6

Text proposed by the Commission

Amendment

(6) This Directive should apply ***only*** to criminal proceedings. ***Administrative 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***.

(6) This Directive should apply to criminal proceedings, ***as well as*** administrative proceedings ***insofar as the sanctions are punitive in nature***.

Or. en

Justification

The amendment should be read in conjunction with recitals 6a and 6b as proposed by the Rapporteur. The latter can be seen as a further specification of the general paragraph, but by limiting recital 6 to criminal proceedings only, the paragraphs may seem contradictory.

Amendment 61
Jan Philipp Albrecht

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) This Directive should apply only to criminal proceedings. **Administrative** 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.

Amendment

(6) This Directive should apply only to criminal proceedings **and similar administrative** proceedings leading to **comparable** sanctions **of a punitive and deterrent nature** **Administrative** proceedings **leading to sanctions of a non-punitive nature and** investigations by administrative authorities in relation to these proceedings, and also civil proceedings are not covered by this Directive.

Or. en

Amendment 62
Kazimierz Michał Ujazdowski

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) This Directive should apply only to criminal proceedings. Administrative 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.

Amendment

(6) This Directive should apply only to criminal proceedings. **Proceedings for minor offences are not covered by this Directive, unless they are conducted before a court having jurisdiction in criminal matters.** Administrative 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.

Or. pl

Justification

This amendment makes clear that the Directive does not apply to proceedings for minor offences conducted by a body other than a court having jurisdiction in criminal matters. This refers, in particular, to violations subject to fines, such as traffic offences.

Amendment 63

Dennis de Jong

on behalf of the GUE/NGL Group

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The safeguards provided for by this Directive should therefore apply in all proceedings in which restrictive measures, including deprivation of liberty, are liable to be imposed as a punishment and to proceedings liable to give rise to a criminal record. At all events, application of the Directive should not be prevented by the fact that the proceedings were not initiated in response to acts regarded as criminal offences under national law, that they are not taking place before a criminal court and that they will not lead to the imposition of criminal penalties under national law.

Or. en

Justification

The introduction of sanctions having to be ‘appreciably detrimental’ may create legal uncertainty. It is therefore better to stick to the general criteria ‘punishment’ and ‘liable to give rise to a criminal record’.

Amendment 64

Birgit Sippel

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who 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.***

Amendment

(8) This Directive should apply to natural persons ***and legal persons*** who are suspected or accused of having committed a criminal offence. It should apply at any stage of the proceedings, ***from the moment these persons are 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 offence, including, where applicable, sentencing and the resolution of any appeal.***

Or. en

Amendment 65
Laura Ferrara

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who 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.

Amendment

(8) This Directive should apply to natural persons who 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 ***with a sentence being handed down.***

Or. it

Amendment 66
Jan Philipp Albrecht

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who 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.

Amendment

(8) This Directive should apply to natural **and legal** persons who 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.

Or. en

Amendment 67
Timothy Kirkhope, Helga Stevens

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who 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.***

Amendment

(8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply at any stage of the proceedings.

Or. en

Amendment 68
Dennis de Jong
on behalf of the GUE/NGL Group

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons. Such protection as regards natural persons is reflected in abundant case law of the European Court of Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.

deleted

Or. en

Justification

The Rapporteur rightly includes legal persons into the scope of the directive. In that case, there is no need to highlight the differences between legal and natural persons.

Amendment 69
Jan Philipp Albrecht

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(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

deleted

Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.

Or. en

**Amendment 70
Birgit Sippel**

**Proposal for a directive
Recital 9**

Text proposed by the Commission

(9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons. ***Such protection as regards natural persons is reflected in abundant case law of the European Court of Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.***

Amendment

(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. ***However, bearing in mind the lack of consistency between Member States concerning the distinction between natural and legal persons, which results in an atmosphere of distrust and in a malfunctioning of mutual recognition, this Directive should apply to natural and legal persons.***

Or. en

Justification

Enlarging the scope of the Directive to natural persons will be of particular profit with regard to the Directive's intention to strengthen the procedural safeguards applying in proceedings conducted by the European Public Prosecutor's office, the European Investigation Order and further EU instruments of mutual recognition.

**Amendment 71
Tomáš Zdechovský**

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons. Such protection as regards natural persons is reflected in abundant case law of the European Court of Human Rights. ***The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.***

Amendment

(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.

Or. en

Justification

Recitals 9, 10 and 11 are incoherent. Recital 9 refers to both natural and legal persons, whereas recitals 10 and 11 deal with legal persons only. In order to restore coherence of the aforementioned recitals, the third sentence from recital 9 about legal persons was grouped with recitals 10 and 11 which also deal with legal persons and these recitals were grouped into one new recital 10 dealing exclusively with the issue of legal persons. (See Guideline 1.4.1 of the Joint Practical Guide for drafting EU legislation.)

Amendment 72
Timothy Kirkhope, Helga Stevens

Proposal for a directive
Recital 9

Text proposed by the Commission

(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***

Amendment

(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.

Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.

Or. en

**Amendment 73
Jan Philipp Albrecht**

**Proposal for a directive
Recital 10**

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

**Amendment 74
Tomáš Zdechovský**

**Proposal for a directive
Recital 10**

Text proposed by the Commission

Amendment

(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) The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons. 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. ***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.***

Or. en

Justification

Recitals 9, 10 and 11 are incoherent. Recital 9 refers to both natural and legal persons, whereas recitals 10 and 11 deal with legal persons only. In order to restore coherence of the aforementioned recitals, the third sentence from recital 9 about legal persons was grouped with recitals 10 and 11 which also deal with legal persons and these recitals were grouped into one new recital 10 dealing exclusively with the issue of legal persons. (See Guideline 1.4.1 of the Joint Practical Guide for drafting EU legislation.)

Amendment 75 **Ramon Tremosa i Balcells**

Proposal for a directive **Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) Member States' governments should not leak false information to the media in order to politically attack a person and undermine its right to be presumed innocent.

Or. en

Amendment 76 **Jan Philipp Albrecht**

Proposal for a directive **Recital 11**

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Amendment 77

Tomáš Zdechovský

Proposal for a directive

Recital 11

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Justification

For justification, see above in respect of recitals 9 and 10.

Amendment 78

Jan Philipp Albrecht

Proposal for a directive

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) If a person other than a suspect or accused person, for 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 European Court of Human Rights. 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. Where, in the course of such questioning, a person other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended immediately. However, it should be possible to continue the questioning if the person concerned has been informed that he or she is a suspect or accused person and of his or her procedural rights in accordance with Directive 2012/13/EU. Evidence collected prior to the notification of rights should not be admissible during the criminal proceedings which follow.

Or. en

Amendment 79
Laura Ferrara

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(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.

deleted

Or. it

Amendment 80
Tomáš Zdechovský

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Justification

This recital is not a recital but a substantive provision (definition) which should appear in the operative part of the text. Given that in the operative part of the text it appears only once, namely in Art. 7 (1), it was moved there as a second paragraph.

Amendment 81
Caterina Chinnici

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(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) "Law enforcement or judicial authorities" for the purposes of this Directive refers to public authorities which exercise powers in the realm of criminal proceedings.

Or. it

Justification

Since this Directive should also apply to proceedings instituted by the European Public Prosecutor's Office under Article 86 TFEU, it does not seem appropriate to limit its

application to public authorities exercising powers in the realm of criminal proceedings 'according to national law'. A more general wording that could in future also apply to other authorities exercising powers in accordance with Union law seems more appropriate.

Amendment 82

Laura Ferrara

Proposal for a directive

Recital 13

Text proposed by the Commission

(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.

Amendment

(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. ***For the purposes of this Directive, 'public statements' means any statement relating to a crime and issued by the judicial authorities, police and any other public authorities, including ministers and other public officials. Without prejudice to the freedom of the press and the right to information, presumption of innocence is also infringed wherever suspects or accused persons are referred to in the press as if they have already been convicted.***

Or. it

Amendment 83

Caterina Chinnici

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having

Amendment

(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*.

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 *their guilt has already been established beyond doubt*.

Or. it

Justification

This amendment, together with the corresponding amendment to Article 4, seeks to clarify and strengthen the guarantee provided therein, since merely to state that suspects or accused persons must not be presented 'as if they were convicted' might be insufficient (or in certain cases even incongruous if a sentence, albeit not definitive, has been handed down).

Amendment 84 **Jan Philipp Albrecht**

Proposal for a directive **Recital 13**

Text proposed by the Commission

(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.

Amendment

(13) The presumption of innocence is violated if, without the accused's having been proved guilty according to law, a judicial decision, a public statement *or other act* by judicial or other public authorities *or public officials* presents the suspects or accused persons as if they were convicted.

Or. en

Amendment 85 **Kinga Gál, Pál Csáky**

Proposal for a directive **Recital 13**

Text proposed by the Commission

(13) The presumption of innocence is

Amendment

(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.

violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial, *police and other law enforcement authorities or* other public authorities presents the suspects or accused persons as if they were convicted.

Or. en

Amendment 86
Therese Comodini Cachia

Proposal for a directive
Recital 13

Text proposed by the Commission

(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.

Amendment

(13) The presumption of innocence is violated if, without the accused having previously been proved guilty according to law, *persons holding public office, be it judicial, administrative or political, refer to* the suspects or accused persons as if they were convicted *or act in a manner that reflects guilt on the suspects or accused persons.*

Or. en

Amendment 87
Birgit Sippel

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) For the purposes of this Directive, the term 'public statement' should mean any official, unofficial or informal statement which contains information about ongoing proceedings concerning a criminal offence. This includes statements about related subsequent proceedings,

which were concluded by a final acquittal of the suspect or accused person, and statements in court during the pre-trial period. The term should also cover interviews and 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. The latter is without prejudice to freedom of the press.

Or. en

Amendment 88
Birgit Sippel

Proposal for a directive
Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) For the purposes of this Directive, the term 'public authorities' should be interpreted broadly and should be understood to designate not only the judicial and police authorities involved in the proceedings and any other judicial, police or law enforcement authority, but also any other public authority of any kind, including State representatives, employees or agents.

Or. en

Amendment 89
Birgit Sippel

Proposal for a directive
Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) Member States should take the necessary measures to protect against public declarations of guilt before conviction by putting in place adequate contempt of court regulations, to ensure that journalists and media are not able to prejudice proceedings, 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.

Or. en

Amendment 90

Birgit Sippel

Proposal for a directive

Recital 13 d (new)

Text proposed by the Commission

Amendment

(13d) In order to properly protect suspects or accused persons from public pronouncements of guilt before final conviction, Member States should also 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 tends to create an impression of guilt from the outset.

Or. en

Amendment 91
Laura Ferrara

Proposal for a directive
Recital 14

Text proposed by the Commission

(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 the defence, without prejudice to any possible ex officio fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's ***guilt***.

Amendment

(14) The burden of proof is on the prosecution. ***Suspects have the right to instruct their lawyers to carry out investigations for the defence. The accused always has the right to present evidence for the defence, thereby ensuring that evidence is gathered in compliance with the adversarial principle to be respected by the parties. If no evidence emerges from the proceedings establishing the case beyond all reasonable doubt, the principle of 'in dubio pro reo' applies. This is*** without prejudice to any possible ex officio fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's ***criminal liability***.

Or. it

Amendment 92
Elissavet Vozemberg

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(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 that it complies with this Directive and with other relevant

Amendment 93

Laura Ferrara

Proposal for a directive

Recital 15

Text proposed by the Commission

Amendment

(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 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 force majeure.

deleted

Amendment 94

Jan Philipp Albrecht

Proposal for a directive

Recital 15

Text proposed by the Commission

Amendment

(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 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

deleted

example by means of new evidence on extenuating circumstances or on a case of force majeure.

Or. en

Amendment 95
Laura Ferrara

Proposal for a directive
Recital 16

Text proposed by the Commission

(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.

Amendment

(16) The right not to incriminate oneself and ***the right to remain silent are fundamental to the*** of the presumption of innocence. Suspect or accused persons should not ***in any way*** 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.

Or. it

Amendment 96
Jan Philipp Albrecht

Proposal for a directive
Recital 17

Text proposed by the Commission

(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

Amendment

deleted

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 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.

Or. en

Amendment 97
Birgit Sippel

Proposal for a directive
Recital 17

Text proposed by the Commission

(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 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.*

Amendment

(17) Any compulsion used to compel the suspect or accused person to provide information should be *prohibited*.

Or. en

Amendment 98
Laura Ferrara

Proposal for a directive
Recital 17

Text proposed by the Commission

(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 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.

Amendment

(17) No information obtained from suspects by coercion shall be admissible in proceedings as evidence of criminal liability.

Or. it

Amendment 99
Tomáš Zdechovský

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Any compulsion used to compel the suspect or accused person to provide information should be limited. To determine whether the compulsion did not

Amendment

(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 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.***

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.

Or. en

Justification

Clearer, more logical and comprehensive drafting (see Guideline 4, point 4 of the Joint Practical Guide for drafting EU legislation). Also the third sentence expresses an important principle which would merit its own recital.

Amendment 100
Tomáš Zdechovský

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The degree of 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.

Or. en

Justification

For justification, see above in respect of recital 17.

Amendment 101

Laura Ferrara

Proposal for a directive

Recital 18

Text proposed by the Commission

(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 the purpose of DNA testing.*

Amendment

(18) The *use of methods of obtaining evidence that encroach further on personal liberty, including biological sampling of blood, urine or other organic substances necessary for DNA testing, must be restricted solely to cases of proven necessity provided for by law. In the absence of consent given by the suspect or accused person, the sampling or examination may be carried out on the instructions of the court only with the express consent of the prosecution, also to be confirmed subsequently in writing.*

Or. it

Amendment 102

Caterina Chinnici

Proposal for a directive

Recital 18

Text proposed by the Commission

(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

Amendment

(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 *legitimately* obtained from the suspect or accused person through the *proper* use of lawful compulsory powers but which has an existence independent of

suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

Or. it

Justification

In addition to requirements regarding evidence obtained independently of the will of the suspect or accused person, any use of coercive powers for the purpose of gathering evidence, as for any other purpose, should be based on the law and in compliance with it.

Amendment 103 Jan Philipp Albrecht

Proposal for a directive Recital 18

Text proposed by the Commission

(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 the purpose of DNA testing.

Amendment

(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. **However, this should only apply to** material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, **and** breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

Or. en

Amendment 104 Filiz Hyusmenova

Proposal for a directive
Recital 18

Text proposed by the Commission

(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 the purpose of DNA testing.

Amendment

(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 ***in full compliance with fundamental rights***, which has an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

Or. en

Amendment 105
Laura Ferrara

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination.

Amendment

(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 cannot in any circumstances be used against the accused or suspected person and cannot be regarded as substantiation of the charges.***

Or. it

Amendment 106
Jan Philipp Albrecht

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Possible violations of the right to silence or not to incriminate oneself should be assessed by reference to all relevant factors including the use of physical compulsion, compliance with the notification obligations under Directive 2012/13/EU and the authorities' reference to possible pre-trial detention to discourage the exercise of the right to silence.

Or. en

Amendment 107
Caterina Chinnici

Proposal for a directive
Recital 20

Text proposed by the Commission

Amendment

(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 suspected or accused of having committed and not, for example, as regards questions relating to the personal identification of a suspect or accused person.

(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 ***- or could be in the light of their own utterances-*** suspected or accused of having committed and not, for example, as regards questions relating to the personal identification of a suspect or accused person.

Or. it

Justification

This addition, which corresponds to similar guarantees provided for in most of the Member States, is also necessary in the light of the principles deriving from the Charter of Fundamental Rights, the ECHR and the body of case law established by the courts in

Luxembourg and Strasbourg. It is also consistent with the approach taken in Directive 2013/48/EU regarding the right to the services of a defence lawyer.

Amendment 108
Birgit Sippel

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) 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 proceedings which are not formally criminal proceedings but which might lead to a criminal sanction being imposed.

Or. en

Amendment 109
Jan Philipp Albrecht

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Any evidence obtained in violation of the right not to 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. The use in criminal proceedings of statements or evidence obtained in violation of these rights automatically renders the proceedings as a whole unfair.

Or. en

Amendment 110
Janusz Wojciechowski

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) In Member States in which an offender can act as a witness for the state and be granted impunity in exchange for testifying against accomplices, that system may be distorted and used to make false accusations. Efforts should therefore be made to ensure that the evidence of a state's witness is not relied upon uncritically, but that corroborating evidence is obtained. The testimony of a state's witness should be a trail leading to other evidence, not the sole evidence in the case.

Or. pl

Amendment 111
Birgit Sippel

Proposal for a directive
Recital 21

Text proposed by the Commission

Amendment

(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, ***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.*** The right of an accused person to be present at the trial is based on that right and should be guaranteed throughout the Union.

Or. en

Amendment 112
Caterina Chinnici

Proposal for a directive
Recital 22

Text proposed by the Commission

(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.

Amendment

(22) However, under certain conditions the accused person may, expressly or tacitly but unequivocally, waive ***the right to be present at the trial***.

Or. it

Justification

This amendment seeks to rephrase the same basic concept to bring it more closely into line with the legal traditions of certain Member States, under which 'absolute' and 'unwaivable' are not synonymous, a distinction being made between (waiver of) a right and (waiver of) exercise thereof (albeit provisionally). Here it appears more appropriate to refer simply to the possibility of waiving the exercise of the right.

Amendment 113
Jan Philipp Albrecht

Proposal for a directive
Recital 22

Text proposed by the Commission

(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.

Amendment

(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 ***and*** unequivocally, waive that right.

Or. en

Amendment 114
Dennis de Jong
on behalf of the GUE/NGL Group

Proposal for a directive
Recital 23

Text proposed by the Commission

Amendment

(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. *deleted*

Or. en

Justification

Recital 21a proposed by the Rapporteur, which I support, makes recital 23 redundant.

Amendment 115
Birgit Sippel

Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(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 have the right to a re-trial.

Or. en

Justification

The directive should provide for the right to demand a re-trial for cases in which people are not able to be present at short notice, because of reasons they cannot control, such as diseases or seriously blocked transportation.

Amendment 116
Birgit Sippel

Proposal for a directive
Recital 26

Text proposed by the Commission

(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.

Amendment

(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, ***including a right to appeal***. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should have 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.

Or. en

Amendment 117
Jan Philipp Albrecht

Proposal for a directive
Recital 26

Text proposed by the Commission

(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.

Amendment

(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 ***both consist of an appropriate mechanism of compensation for damages and have*** 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.

Or. en

Amendment 118
Timothy Kirkhope, Helga Stevens

Proposal for a directive
Recital 27

Text proposed by the Commission

Amendment

(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 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.

deleted

Or. en

Amendment 119
Therese Comodini Cachia

Proposal for a directive
Recital 27

Text proposed by the Commission

Amendment

(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 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.

deleted

Amendment 120
Kinga Gál, Pál Csáky

Proposal for a directive
Recital 27

Text proposed by the Commission

(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 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.

Amendment

(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 should include data recorded by law enforcement and judicial authorities as regards the remedy applied where there has been a breach of any of the aspects of the right to presumption of innocence covered by this Directive and a breach of the right to be present at one's trial.

Amendment 121
Kinga Gál, Pál Csáky

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27 a) 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.

Amendment 122
Therese Comodini Cachia

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(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. In relation to children the additional procedural safeguards set out in the Directive (EU) .../... of the European Parliament and of the Council [on procedural safeguards for children suspected or accused in criminal proceedings]^{34a} should apply.

^{34a} Directive (EU) .../... of the European Parliament and of the Council of ...[on procedural safeguards for children suspected or accused in criminal proceedings].

Or. en

Amendment 123
Dennis de Jong
on behalf of the GUE/NGL Group

Proposal for a directive
Recital 29

Text proposed by the Commission

Amendment

(29) As this Directive establishes minimum rules, Member States may extend the rights set out in this Directive in order to provide a higher level of protection. ***Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum***

(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 level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union

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.

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.

Or. en

Amendment 124
Jan Philipp Albrecht

Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

Amendment

(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 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.

Or. en

Amendment 125
Kati Piri

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) certain aspects of the right to the presumption of innocence in criminal proceedings;

Amendment

(a) certain aspects of the right to the presumption of innocence **and the right to remain silent** in criminal proceedings;

Or. nl

Amendment 126
Birgit Sippel

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons **and legal persons** suspected or accused in criminal proceedings **at all stages of the proceedings, from the time they become suspects or accused persons** until the final conclusion of those proceedings, **which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.**

Or. en

Amendment 127
Kinga Gál, Pál Csáky

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings **from the moment a person becomes suspect or accused** until the final conclusion of those proceedings.

Amendment 128

Laura Ferrara

Proposal for a directive

Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused **in** criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons suspected or accused **at every stage of the** criminal proceedings **against them** until the final conclusion of those proceedings **with a sentence being handed down.**

Or. it

Amendment 129

Jan Philipp Albrecht

Proposal for a directive

Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural **and legal** persons, **regardless of their nationality, place of residence or place of registration or incorporation,** suspected or accused in criminal proceedings **and similar administrative proceedings leading to comparable sanctions of a punitive and deterrent nature** until the final conclusion of those proceedings.

Or. en

Amendment 130

Kazimierz Michał Ujazdowski

Proposal for a directive

Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings, ***from the time they become suspects or accused persons*** until the final conclusion of those proceedings.

Or. pl

Justification

This amendment aims to define precisely the period when the Directive applies by specifying the start and end of its application.

Amendment 131

Therese Comodini Cachia

Proposal for a directive

Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until ***the final conclusion of those proceedings***.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings until final ***judgment finding innocence or guilt has been pronounced***.

Or. en

Amendment 132

Heinz K. Becker

Proposal for a directive

Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In cases in which the law of a Member State provides that an authority other than a court having jurisdiction in criminal matters may impose penalties in relation to relatively minor offences and

there is a right of appeal against the imposition of such penalties with a court having jurisdiction in criminal matters, Articles 5 to 9 of this Directive shall apply only in so far as the matter is referred to a court having jurisdiction in criminal matters following the lodging of an appeal.

Or. de

Amendment 133

Laura Ferrara

Proposal for a directive

Article 3

Text proposed by the Commission

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

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven *criminally liable under the legislation in force*.

Or. it

Amendment 134

Caterina Chinnici

Proposal for a directive

Article 3

Text proposed by the Commission

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

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty according to law, *with a final decision*.

Or. it

Justification

In the interests of consistency with Article 4 ('Member States shall ensure that, before a final conviction...'), it should be made clear that the presumption of innocence ceases only with the DEFINITIVE determination of guilt. However, this is without prejudice to other legal aspects - such as the (continued) fulfilment of certain requirements or conditions - on conviction at first instance or relating to other measures taken by the judicial authorities.

Amendment 135 **Jan Philipp Albrecht**

Proposal for a directive **Article 3**

Text proposed by the Commission

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

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty **by a final judgment, delivered** according to law, **in a public trial at which they have had all the guarantees necessary for their defence.**

Or. en

Amendment 136 **Nathalie Griesbeck**

Proposal for a directive **Article 4 – title**

Text proposed by the Commission

Public references to guilt before **conviction**

Amendment

Public references to guilt before **proven guilty**

Or. en

Justification

Describing someone as convicted is a statement of fact which in principle can be rebutted by showing that no such conviction had taken place in the past. On the other hand, describing someone as "guilty" is a statement of both fact and law which can only be verified in the

future when the final judgment will be handed down.

Amendment 137
Jan Philipp Albrecht

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ensure that, before a final conviction **or after a final acquittal**, public statements, official decisions **(including on pre-trial detention) and other acts by public authorities or public officials** do not refer to the suspects or accused persons as if they were convicted. ***In particular, any statements should not be of such a nature as to serve to encourage the public to believe the person is guilty and to prejudge assessment of the facts by the competent judiciary authority.***

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement, such as a retrial and compensation.

Or. en

Amendment 138
Birgit Sippel

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States **must take the necessary measures to** 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. ***Statements must, in particular, not be of such a nature as to***

potentially encourage the public to believe suspects or accused persons guilty and/or to prejudice the assessment of facts by the competent judiciary authority.

Or. en

Amendment 139
Laura Ferrara

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ***adopt the necessary measures to*** 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.

Or. it

Amendment 140
Nathalie Griesbeck

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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***.

Amendment

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 ***guilty***.

Or. en

Justification

Describing someone as convicted is a statement of fact which in principle can be rebutted by

showing that no such conviction had taken place in the past. On the other hand, describing someone as "guilty" is a statement of both fact and law which can only be verified in the future when the final judgment will be handed down.

Amendment 141
Caterina Chinnici

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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*.

Amendment

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 *their guilt has been established beyond doubt*.

Or. it

Justification

The amendment seeks to clarify and strengthen the guarantee provided, since merely to state that suspects or accused persons must not be presented 'as if they were convicted' might be insufficient (or in certain cases even incongruous if a sentence, albeit not definitive, has already been handed down).

Amendment 142
Kazimierz Michał Ujazdowski

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

(Does not affect English version.)

Or. pl

Justification

(Does not affect English version.)

Amendment 143
Therese Comodini Cachia

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ensure that, before a final conviction, ***persons holding a public office, be it judicial, administrative or political, refrain from referring*** to the suspects or accused persons as if they were convicted ***or act in a manner that reflects guilt on the suspects or accused persons.***

Or. en

Amendment 144
Ramon Tremosa i Balcells

Proposal for a directive
Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Member States shall ensure that their interior or justice ministries do not leak internal investigations to the media, undermining the right of the accused person.

Or. en

Amendment 145
Birgit Sippel

Proposal for a directive
Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall furthermore ensure that suspects or accused persons are not presented in court or in public in a manner suggesting their guilt before the final conviction.

Or. en

Amendment 146
Birgit Sippel

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement ***and shall conduct independent investigations on the breach.***

Or. en

Amendment 147
Laura Ferrara

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.

Member States shall ensure that appropriate measures are ***laid down and taken, including the imposition of penalties,*** in the event of a breach of that requirement, ***and that the suspect or accused person whose right to the presumption of innocence has been***

violated has access to an effective remedy.

Member States shall ensure that the presumption of innocence is not violated by the press, by taking the appropriate measures, including the imposition of penalties, in cases in which the press presents a suspect or accused person as if they had already been convicted.

Or. it

Amendment 148

Therese Comodini Cachia

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.

Amendment

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement, ***including the liquidation of compensation and a retrial.***

Or. en

Amendment 149

Jan Philipp Albrecht

Proposal for a directive

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Presentation of suspects or accused persons

1. Member States shall ensure that suspects or accused persons are not presented in court or to the media in ways that suggest their guilt, including in particular in prison clothing, handcuffs

or the use of enclosures.

2. Paragraph 1 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.

Or. en

Amendment 150
Laura Ferrara

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

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 ex officio fact finding powers of the trial court.

Amendment

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 ex officio fact finding powers of the trial court. ***Member States shall also ensure that suspects or accused persons have the benefit of any doubt.***

Member States shall ensure that suspects or accused persons always have the opportunity to submit evidence for the defence or to conduct investigations for the defence through their lawyer.

Or. it

Amendment 151
Jan Philipp Albrecht

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the

Amendment

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 ex officio fact finding powers of the trial court.

burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court ***and to the right of the defence to present evidence in accordance with the applicable national rules.***

Or. en

Amendment 152
Elissavet Vozemberg

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

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 ***ex officio fact finding powers of the trial*** court.

Amendment

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 or exculpatory evidence.***

Or. en

Justification

The burden of proof is on the prosecution and any doubt should benefit the accused. However, some Member States do not have the adversarial system in criminal proceedings and the competent court seeks both inculpatory and exculpatory evidence. Namely, these Member States do not adopt the "Burden of Proof" in their criminal law system.

Amendment 153
Kinga Gál, Pál Csáky

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

Or. en

**Amendment 154
Jan Philipp Albrecht**

**Proposal for a directive
Article 5 – paragraph 2**

Text proposed by the Commission

Amendment

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.

deleted

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

Or. en

**Amendment 155
Laura Ferrara**

**Proposal for a directive
Article 5 – paragraph 2**

Text proposed by the Commission

Amendment

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.

deleted

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

Or. it

Amendment 156

Therese Comodini Cachia

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

Or. en

Amendment 157

Timothy Kirkhope, Helga Stevens

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

2. Member States **may provide** that any presumption which shifts the burden of proof to the **suspect** or accused persons, is **both reasonable and proportionate in light of the particular circumstances** and is rebuttable.

Or. en

Amendment 158
Eleftherios Synadinos

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall ensure that, where the trial court **maintains** reasonable doubt as to the guilt of a suspect or accused person, **even if it** makes an assessment as to the guilt of that person, the person concerned shall be acquitted.

Or. el

Amendment 159
Jan Philipp Albrecht

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. **Any doubt shall benefit natural persons suspected or accused in criminal proceedings.** 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.

Or. en

Amendment 160
Heinz K. Becker

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

(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. ***deleted***

Or. de

Justification

The Directive should not contain any provisions on the assessment of evidence, as this would be contrary to the entrenched and traditional principle obtaining in some Member States of the free assessment of evidence by the courts.

Amendment 161
Janusz Wojciechowski

Proposal for a directive
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States in which an offender can act as a state's witness shall ensure that when establishing the guilt of suspects or accused persons the testimony of any such state's witness does not constitute the sole prosecution evidence and that it is supported by other evidence.

Amendment 162
Janusz Wojciechowski

Proposal for a directive
Article 5 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Member States shall ensure that in cases involving serious offences attracting severe penalties, the accused and the most important witnesses are heard at least once by an independent court or an investigating judge.

Amendment 163
Laura Ferrara

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

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 or accused persons have the right not to incriminate themselves in any criminal proceeding.

Amendment 164
Timothy Kirkhope

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

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.**

Amendment

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves.

Or. en

Amendment 165
Tomáš Zdechovský

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. "Law enforcement or judicial authorities" refer to public authorities which, according to national law, exercise powers in the realm of criminal proceedings.

Or. en

Justification

For justification, see above in respect of recital 12.

Amendment 166
Birgit Sippel

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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 giving testimony in court as well as at the moment of the arrest.

Or. en

Amendment 167

Laura Ferrara

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which has an existence independent of the will of the suspects or accused persons.

Or. it

Amendment 168

Caterina Chinnici

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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.*

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which *has an existence independent of the will of the suspects or accused persons and* may *legitimately* be obtained from *them* through the *correct* use of compulsory powers *provided for by law.*

Or. it

Justification

In addition to the requirement of the existence of evidence independent of the will of the suspects or accused persons, it is desirable to stipulate that any use of compulsory powers to obtain evidence, or indeed for any other purpose, must be based on the law and take place in accordance with it.

Amendment 169 **Eleftherios Synadinos**

Proposal for a directive **Article 6 – paragraph 2**

Text proposed by the Commission

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.

Amendment

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 **proven** use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons.

Or. el

Amendment 170 **Jan Philipp Albrecht**

Proposal for a directive **Article 6 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of **the following** material, **provided that the latter is** obtained from the suspects or accused persons through the use of lawful compulsory powers **and** has an existence independent of the will of the suspects or accused persons:

a) material acquired pursuant to a warrant;

b) material in respect of which there is a legal obligation of retention and production upon request;

c) breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

Or. en

Amendment 171

Laura Ferrara

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Exercise of the right not to incriminate oneself shall not be used against a suspect or accused person at *any* stage of the proceedings and shall not be considered as a corroboration of facts.

Or. it

Amendment 172

Dennis de Jong

on behalf of the GUE/NGL Group

Proposal for a directive

Article 6 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Member States may nevertheless allow for the cooperative behaviour of the suspect or accused person to be taken into account as a mitigating factor when deciding the concrete penalty to impose.

Amendment

Or. en

Justification

The amendment seeks on the one hand to respect the independence of the judiciary and on the other hand to clarify that the cooperative behaviour may only be used as mitigating factor.

Amendment 173 **Caterina Chinnici**

Proposal for a directive **Article 6 – paragraph 3**

Text proposed by the Commission

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.

Amendment

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 ***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.***

Or. it

Justification

As experience shows that precautionary measures, particularly restrictions on personal liberty, before a definitive conviction can in practice also be used to put pressure on the suspect or accused person, it is necessary to indicate clearly that a refusal to incriminate oneself or to cooperate cannot in itself be taken as a reason to adopt or maintain any restrictive measures.

Amendment 174 **Timothy Kirkhope**

Proposal for a directive **Article 6 – paragraph 3**

Text proposed by the Commission

3. Exercise of the right not to incriminate oneself ***or of the right not to cooperate*** shall not be used against a suspect or

Amendment

3. Exercise of the right not to incriminate oneself shall not be used against a suspect or accused person at a later stage of the

accused person at a later stage of the proceedings and shall not be considered as a corroboration of facts.

proceedings and shall not be considered as a corroboration of facts.

Or. en

Amendment 175
Janusz Wojciechowski

Proposal for a directive
Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Evidence based on the explanations of an accused person who has pleaded guilty should not be treated as decisive proof of guilt if it is not supported by other evidence, in particular in proceedings where the accused pleaded guilty during the investigation and then withdrew that plea in court.

Or. pl

Amendment 176
Birgit Sippel

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

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. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Justification

For reasons of integrity, the shadow rapporteur believes that the paragraph declaring the

non-admissibility of any evidence obtained in breach of Article 6 should be laid down directly within Article 6.

Amendment 177

Laura Ferrara

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

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.

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible ***at any stage*** of the proceedings.

Or. it

Amendment 178

Jan Philipp Albrecht

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

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.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 179

Heinz K. Becker

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

(4) Any evidence obtained in breach of

Amendment

deleted

this Article shall not be admissible, unless the use of such evidence would not prejudice the overall fairness of the proceedings.

Or. de

Justification

The Directive should not contain any provisions on the assessment of evidence, as this would be contrary to the entrenched and traditional principle obtaining in some Member States of the free assessment of evidence by the courts.

Amendment 180
Therese Comodini Cachia

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

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.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 181
Heinz K. Becker

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(4a) In cases of minor offences and with due regard for the principle of a fair trial, Member States may provide that there exists a right to remain silent without prejudice to the possibility of legal proceedings or parts thereof being conducted in writing or without the

suspect or accused being questioned by the police, law enforcement or other judicial authorities with regard to such minor offences.

Or. de

Justification

In administrative proceedings, such as in the case of parking fines, it should continue to be possible for Member States to initiate administrative proceedings (for example, challenging a parking fine) only if the person accused of such minor offences takes action (and thus waives his right to remain silent).

Amendment 182

Birgit Sippel

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***This shall be done prior to any questioning by public authorities, prior to the suspect or accused person giving testimony in court as well as at the moment of the arrest.***

Or. en

Amendment 183

Kinga Gál, Pál Csáky

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall promptly inform

Amendment

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.

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. ***The suspect or the accused person should also be informed of this right immediately prior to the commencement of any interview.***

Or. en

Amendment 184
Caterina Chinnici

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 ***legal*** consequences of renouncing or invoking it. ***This information must, however, be provided before any questioning begins.***

Or. it

Justification

The clarifications are intended to reinforce the guarantee provided. The first is intended to avert the risk of abuse or improper pressure (for example if the authorities were to hold out the prospect of favourable treatment, outside the legal framework, in the event of a decision to waive the right to silence, or to ‘threaten’ adverse consequences if the right were invoked). The second is intended to ensure that suspects or accused persons are fully aware of their rights when they will have to, or be able to, invoke them.

Amendment 185
Caterina Chinnici

Proposal for a directive
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The right to silence shall immediately be recognised and communicated to any person who, without having previously been a suspect or accused person, makes statements to the police or to other law enforcement or judicial authorities from which indications of his or her guilt emerge. If such a person were to have been heard, from the outset, as a suspect or accused person, his or her statements cannot be used.

Or. it

Justification

This addition, in accordance with similar guarantees laid down by most Member States, seems necessary, inter alia, in the light of principles which can be derived from the Charter of Fundamental Rights, the European Convention on Human Rights and the case-law of the Luxembourg and Strasbourg courts, and is moreover consistent with the approach adopted in Directive 2013/48/EU on the right of access to a lawyer.

Amendment 186
Jussi Halla-aho

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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 and shall not be considered as ***evidence that the person concerned has committed the offence which he is suspected or accused of having committed.***

Or. en

Justification

The provision 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 defence are respected. In situations which clearly call for an explanation from the accused, the ECHR allows the accused's silence to be taken into account when assessing the persuasiveness of the evidence adduced by the prosecution. For example in ECtHR case John Murray v. UK (18731/91, paragraph 47) the defendant was arrested in a house in which a person was illegally imprisoned and the defendant failed to provide any explanation for his presence at the scene of the crime (see also Averill v. UK, 36408/97).

Amendment 187

Laura Ferrara

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at **any** stage in the proceedings and shall not be considered as a corroboration of facts, **nor may it in any way be assessed for the purpose of ascertaining criminal responsibility.**

Or. it

Amendment 188

Caterina Chinnici

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 **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.

Or. it

Justification

As experience shows that precautionary measures, particularly restrictions on personal liberty, before a definitive conviction can in practice also be used to put pressure on the suspect or accused person, it is necessary to indicate clearly that the exercise of the right to remain silent cannot in itself be taken as a reason to adopt or maintain any restrictive measures.

Amendment 189

Timothy Kirkhope, Helga Stevens

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

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.*

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person *as a corroboration of facts in a later stage of proceedings.*

Or. en

Amendment 190

Birgit Sippel

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

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.*

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Justification

For reasons of integrity, the shadow rapporteur believes that the paragraph declaring the non-admissibility of any evidence obtained in breach of Article 7 should be laid down directly within Article 7.

Amendment 191

Laura Ferrara

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

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.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. it

Amendment 192

Jan Philipp Albrecht

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

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.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 193

Therese Comodini Cachia

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

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.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 194
Jan Philipp Albrecht

Proposal for a directive
Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to facilitate the effective protection of the right to remain silent, Member States shall ensure that questioning of suspects and accused persons is audio-visually recorded.

Or. en

Amendment 195
Laura Ferrara

Proposal for a directive
Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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:

2. Member States may provide for a possibility under which the trial court may decide on ***criminal responsibility*** in the absence of the accused person, provided that the accused person:

Or. it

Amendment 196
Gérard Deprez

Proposal for a directive
Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

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 ***if the offence which gave rise to the proceedings is punishable by a fine or – where that offence is punishable by a term of imprisonment*** – provided that the suspect or accused person:

Or. fr

Amendment 197
Jan Philipp Albrecht

Proposal for a directive
Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

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, ***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***, provided that the suspect or accused person:

Or. en

Amendment 198
Eleftherios Synadinos

Proposal for a directive
Article 8 – paragraph 2 – point a – introductory part

Text proposed by the Commission

Amendment

a) in due time:

a) in due time, ***which may not in any case be fixed at less than 10 days:***

Or. el

Amendment 199

Jussi Halla-aho

Proposal for a directive

Article 8 – paragraph 2 – point a – point i

Text proposed by the Commission

Amendment

(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;

(i) either was summoned in person and thereby informed of the trial, or by other means actually received official information of that trial in such a manner that it was unequivocally established that he or she was aware of the trial;

Or. en

Justification

The Directive should provide for summary and written proceedings. The accused should have a right to be present at one's trial but he or she should also be allowed to waive his or her right to an oral hearing. Compelling defendants to court does not improve their rights. (See ECtHR case law, i.a. Håkansson & Stureson v. Sweden, 11855/85, paragraph 66; Poitrimol v. France, paragraph 31; Sejdic v. Italy, 56581/00, paragraph 86.) In written proceedings (i.e. without an oral hearing) there is no scheduled date or place unless the defendant requests the court to initiate oral proceedings. Therefore, the defendant cannot be informed of the scheduled date and place, and references to them should be deleted.

Amendment 200

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – point a – point i

Text proposed by the Commission

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;

Amendment

i) either was summoned in person and thereby informed, **by means of a summons**, of the scheduled date and place of **any hearing connected with** the trial, or by other means actually received official information of the scheduled date and place of **any hearing connected with** that trial in such a manner that it was unequivocally established that he or she was aware **that a trial was ongoing against him or her**;

Or. it

Amendment 201
Eleftherios Synadinos

Proposal for a directive
Article 8 – paragraph 2 – point a – point i

Text proposed by the Commission

(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**;

Amendment

(i) **had received a legal summons** in person and thereby informed of the scheduled date and place of the trial;

Or. el

Amendment 202
Jan Philipp Albrecht

Proposal for a directive
Article 8 – paragraph 2 – point a – point i

Text proposed by the Commission

(i) **either** was summoned in person and

Amendment

(i) was summoned in person and thereby

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;***

clearly and unequivocally 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 ***and of the consequences of an unexcused non-appearance;***

Or. en

Amendment 203
Jan Philipp Albrecht

Proposal for a directive
Article 8 – paragraph 2 – point a – point ii

Text proposed by the Commission

Amendment

(ii) was informed that a decision may be handed down if he or she does not appear for the trial; or

deleted

Or. en

Amendment 204
Birgit Sippel

Proposal for a directive
Article 8 – paragraph 2 – point a – point ii

Text proposed by the Commission

Amendment

(ii) was informed that a decision may be handed down if he or she does not appear for the trial; or

(ii) was informed of the consequences of an unjustified non-appearance and that a decision may be handed down if he or she does not appear for the trial; or

Or. en

Amendment 205
Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – point a – point ii

Text proposed by the Commission

ii) was informed that a decision may be handed down if he or she does not appear for the trial; *or*

Amendment

ii) was informed that a decision may be handed down if he or she does not appear for the trial; *and*

Or. it

Amendment 206

Jussi Halla-aho

Proposal for a directive

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(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 defended by that counsellor at the trial.

Amendment

(b) being aware of the 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 defended by that counsellor at the trial.

Or. en

Justification

The Directive should provide for summary and written proceedings. The accused should have a right to be present at one's trial but he or she should also be allowed to waive his or her right to an oral hearing. Compelling defendants to court does not improve their rights. (See ECtHR case law, i.a. Håkansson & Stureson v. Sweden, 11855/85, paragraph 66; Poitrimol v. France, paragraph 31; Sejdivic v. Italy, 56581/00, paragraph 86.) In written proceedings (i.e. without an oral hearing) there is no scheduled date or place unless the defendant requests the court to initiate oral proceedings. Therefore, the defendant cannot be informed of the scheduled date and place, and references to them should be deleted.

Amendment 207

Laura Ferrara

Proposal for a directive
Article 8 – paragraph 2 – point b

Text proposed by the Commission

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 defended by that counsellor at the trial.

Amendment

b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned, to defend him or her at the trial, and was indeed defended by that counsellor at the trial, ***or, where the accused person had not appointed a legal counsellor of his or her own choice, was appointed by the court, to ensure that at all events he or she was defended at the trial.***

Or. it

Amendment 208
Jan Philipp Albrecht

Proposal for a directive
Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Suspects or accused persons shall always have the right to request a new trial or a new date for a trial if, for reasons beyond their control, they were unable to be present.

Or. en

Amendment 209
Jan Philipp Albrecht

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. If the conditions of paragraph 2 have

deleted

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 examination of new evidence, and which may lead to the original decision to be reversed, the person:

(a) expressly states that he or she does not contest the decision;

or

(b) does not request a retrial or appeal within a reasonable time frame.

Or. en

Amendment 210

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

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 examination of new evidence, and which may lead to the original decision to be reversed, the person:

Amendment

3. A Member State can proceed to execution of a decision ***on the criminal responsibility of the accused person*** 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 examination of new evidence, and which may lead to the original decision to be reversed, the person:

Or. it

Amendment 211
Kazimierz Michał Ujazdowski

Proposal for a directive
Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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 examination of new evidence, and which may lead to the original decision to be reversed, the person:

(Does not affect English version.)

Or. pl

Amendment 212
Kazimierz Michał Ujazdowski

Proposal for a directive
Article 8 – paragraph 3 – point a

Text proposed by the Commission

Amendment

a) expressly states that he or she does not contest the decision;

deleted

Or. pl

Amendment 213
Kazimierz Michał Ujazdowski

Proposal for a directive
Article 8 – paragraph 3 – point b

Text proposed by the Commission

Amendment

b) does not request a retrial or appeal within a reasonable time frame.

b) does not request a retrial or appeal within a reasonable time frame ***under the provisions of national laws.***

Or. pl

Justification

Dotychczasowe brzmienie przepisu dopuszczało wstrzymanie wykonania orzeczenia w przypadku nastąpienia jednej z dwóch okoliczności: 1) wyraźnego zakwestionowania orzeczenia lub 2) wniesienia apelacji lub wystąpienia o ponowne rozpatrzenie sprawy. Nie jest jednak jasne, na czym miałyby polegać zakwestionowanie orzeczenia, jeśli nie na skorzystaniu z uprawnień procesowych w postaci prawa do odwołania się od orzeczenia, a więc skorzystania z możliwości, o których mowa w drugiej przesłance. Należy więc stwierdzić, że zakwestionowanie orzeczenia musi nastąpić w odpowiedniej formie prawnej. Propozycja poprawki odpowiada na tę potrzebę.

Amendment 214

Heinz K. Becker

Proposal for a directive

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) Member States may provide that the competent court may exclude the suspect or accused from the proceedings after a warning, temporarily or for the entire duration of the proceedings, if this occurs in the interests of ensuring the smooth conduct or the orderliness of the criminal proceedings in so far as the rights of the defence are not thereby violated.

Or. de

Justification

It must be possible, in exceptional cases, for a court to exclude from the proceedings a suspect or accused who disrupts proceedings by unseemly behaviour and persists with such acts despite a warning by the court temporarily, or where necessary, for the entire duration of the proceedings.

Amendment 215
Heinz K. Becker

Proposal for a directive
Article 8 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

(3b) The provisions of this Article shall not apply if, in accordance with the provisions of national procedural law, legal proceedings or parts thereof are conducted in writing, providing this occurs with due respect for the principle of a fair trial.

Or. de

Justification

In some Member States, administrative proceedings (e.g. for speeding fines) may be conducted in writing. In such cases, the mandatory presence of the suspect or accused would not only be excessive, but in most cases also unfeasible.

Amendment 216
Laura Ferrara

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure the right to a review of the decision establishing the criminal responsibility of the accused person in the event of new evidence coming to light by virtue of which the decision would have been more favourable to the person concerned, or in the event of its being demonstrated that the conviction was due to judicial error.

Or. it

Amendment 217
Caterina Chinnici

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 – **with the opportunity to secure new evidence and, if appropriate, to call the previous evidence into question through cross-examination** – and which may lead to the original decision to be reversed.

Or. it

Justification

The opportunity not only to secure new evidence but also to reopen deliberations on evidence (for example witness statements) obtained previously without the participation of the accused person is an essential condition to ensure that the principles of due process are respected.

Amendment 218
Jan Philipp Albrecht

Proposal for a directive
Article 9

Text proposed by the Commission

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

Amendment

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.

concerned has the right to a new trial ***meeting at least all the requirements of Article 6 of the ECHR and any Directives adopted under Article 82(2)(b) TFEU***, at which they have the right to be present and which allows a fresh determination of the merits of the case, including ***confrontation or evidence which served as the basis for the initial determination, cross-examination of witnesses and*** examination of new evidence, and which may lead to the original decision to be reversed.

Or. en

Amendment 219

Laura Ferrara

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall adopt measures to provide equitable compensation for damages in the event of the right to the presumption of innocence being violated.

Or. it

Amendment 220

Jan Philipp Albrecht

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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 shall ***both consist of an appropriate mechanism of compensation for damages and*** 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.

Or. en

Amendment 221
Jan Philipp Albrecht

Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Evidence collected in administrative proceedings, where such collection would have infringed the terms of this Directive had the proceedings been criminal, shall not be admissible as evidence in criminal proceedings covered by this Directive.

Or. en

Amendment 222
Timothy Kirkhope, Helga Stevens

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights under in this Directive have been implemented.

deleted

Or. en

Amendment 223
Jan Philipp Albrecht

Proposal for a directive
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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 public authorities in this respect shall remain unaffected.

Or. en

Amendment 224

Kinga Gál, Pál Csáky

Proposal for a directive

Article 11

Text proposed by the Commission

Amendment

Article 11

deleted

Data collection

Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights under in this Directive have been implemented.

Or. en