



EUROPEAN COMMISSION

PRESS RELEASE

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The Right to... - a Fair Trial! Commission wants more safeguards for citizens in criminal proceedings

The European Commission has today presented a package of proposals to further strengthen procedural safeguards for citizens in criminal proceedings. The aim is to guarantee fair trial rights for all citizens, wherever they are in the European Union. Today's proposals aim to guarantee the respect for the presumption of innocence and the right to be present at trial; make sure children have special safeguards when facing criminal proceedings; guarantee access of suspects and accused to provisional legal aid at the early stages of proceedings and especially for people subject to a European Arrest Warrant. The new proposals are another milestone down the road of procedural rights and complement a set of three other EU laws agreed since 2010: on the right to translation and interpretation ([IP/13/995](#)), the right to information ([IP/12/575](#)), and the right to access a lawyer ([IP/13/921](#)). These proposals promote the principle of equality of arms to provide all parties with the protection of a fair trial. Once adopted, the proposals will help to increase mutual trust in Member States' judicial systems and therefore ensure a smooth functioning of the European area of justice.

"Justice must not only be done, it must also be seen to be done. When I became the EU's first Justice Commissioner in 2010, I promised to re-orient our policies in the field of justice. Before 2010, Lady Justice was holding two swords and no scales. Since then the Commission has taken action to bring a new balance into justice policies by strengthening the rights and freedoms of our citizens. The European Commission is delivering: we are putting in place a series of procedural rights which will apply to all citizens, throughout the European Union. We are building a true European continent of justice", said Vice-President Viviane Reding the EU's Justice Commissioner. "Today's proposals will make sure that citizens have proper access to legal aid when they are most vulnerable, that child suspects have special safeguards, and that the core principle of 'innocent until proven guilty' is made effective across the EU. Citizens should expect a similar level of protection when they travel in the EU as they find at home."

Today's package includes five proposals:

1. **A Directive to strengthen the presumption of innocence and the right to be present at trial** in criminal proceedings: It will guarantee respect for the presumption of innocence of all citizens suspected or accused by police and judicial authorities by guaranteeing that (1) guilt cannot be inferred by any official decisions or statements before a final conviction; (2) the burden of proof is placed on the prosecution and any doubt benefits the suspect or accused person; (3) the right to remain silent is guaranteed and not used against suspects to secure conviction; and (4) the accused has the right to be present at the trial (see Annex for more details).

2. **A Directive on special safeguards for children** suspected or accused of a crime: It will make sure that children, who are vulnerable because of their age, have mandatory access to a lawyer at all stages. This means that children cannot waive their right to be assisted by a lawyer, as there is a high risk that they would not understand the consequence of their actions if they were able to waive their rights. Children are also set to benefit from other safeguards such as being promptly informed about their rights, being assisted by their parents (or other appropriate persons), not being questioned in public hearings, the right to receive medical examination and being kept separate from adults inmates if deprived of liberty.
3. **A Directive on the right to provisional legal aid** for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant: It will ensure that suspects have access to legal aid at the early stages of criminal proceedings (when accused citizens are particularly vulnerable, especially if deprived of liberty). It will also guarantee legal aid for people arrested under a European Arrest Warrant (see Annex for details).

These legislative proposals are complemented by [two Commission Recommendations](#) to Member States:

4. **A Recommendation on procedural safeguards for vulnerable people** suspected or accused in criminal proceedings: ensuring that vulnerable people (for example suffering from physical or mental disabilities) are detected and recognised, and that their special needs are taken into account in criminal proceedings. If citizens do not understand the proceedings or the consequences of actions such as confessing, this leads to "inequality of arms". The Recommendation proposes that vulnerable suspects benefit from special safeguards such as mandatory access to a lawyer, assistance by an appropriate third person and medical assistance.
5. **A Recommendation on the right to legal aid** for suspects or accused persons in criminal proceedings: providing common factors to take into account in the assessment of whether one has a right to legal aid, and ensure the quality and effectiveness of legal aid services and administration.

Background

There are over 9 million criminal proceedings in the European Union every year. On 9 March 2010, the European Commission made the first step in a series of measures to set common EU standards in all criminal proceedings. The Commission proposed rules that would oblige EU countries to provide full interpretation and translation services to suspects ([IP/10/249](#), [MEMO/10/70](#)). The proposal was adopted in a record time of nine months by the European Parliament and Member States in the Council ([IP/10/1305](#)). EU Member States have had three years to adopt these rules, rather than the usual two years, to give authorities time to put translated information in place ([IP/13/995](#)).

The [Directive on the right to interpretation and translation in criminal proceedings](#) guarantees the right of citizens to be interviewed, to take part in hearings and to receive legal advice in their own language during any part of a criminal proceeding, in all courts in the EU.

The law was followed by a second Directive on the right to information in criminal proceedings, adopted in 2012 (see [IP/12/575](#)), and then by a third Directive on the right to access to a lawyer and on the right to communicate, when deprived of liberty, with third persons and with consular authorities, adopted in 2013 ([IP/13/921](#)). With today's proposals the Commission is continuing with its [roadmap](#) in this area of criminal justice – as foreseen in the [Stockholm Programme](#).

Without minimum common standards to ensure fair proceedings, judicial authorities will be reluctant to send someone to face trial in another country. As a result, EU measures to fight crime – such as the European Arrest Warrant – may not be fully applied.

More information

Frequently Asked Questions:

[MEMO/13/1046](#)

Press pack: procedural rights:

http://ec.europa.eu/justice/newsroom/criminal/news/131127_en.htm

European Commission – fair trial rights:

http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

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Annex1: Legal situation in the Member States regarding presumption of innocence ('PoI')

	Absence of public references to guilt		Burden of proof and standard of proof			Right to remain silent, right not to cooperate and privilege against self-incrimination			In absentia decisions	
	How is this enshrined in law : Explicitly in constitution, criminal procedural code or case law - ○ Derived from the PoI ● ¹	Existence of specific remedies Yes - ○ No, but can be derived from general PoI - ●	The burden of proof always on the prosecution - ○ Reverse burdens of proof in certain circumstances - ●	Existence of specific remedies Yes - ○ No, but can be derived from general PoI - ●	Possibility to challenge the proof when reversed Yes - ○ No - ●	Right to remain silent is explicitly provided in law - ● Adverse inferences permitted - ◇	Right not to cooperate and privilege against self-incrimination in national law - ○ The right is qualified: - where the information requested from the suspect exists independently of his will - ◇ - In certain additional circumstances ◆ No specific right not to cooperate and no privilege against self-incrimination- ● Adverse inferences permitted - ■	Existence of specific remedies Yes evidence can be inadmissible- ○ Yes decision can be nullified - ◇ No - ●	Explicit right to be present at trial - ● Suspect / accused's presence at trial is without exceptions mandatory - ○ In absentia proceedings possible if: -Suspect / accused has voluntarily absconded - ◇ -In other circumstances - ◆	If in absentia proceedings possible, the suspect / accused person may subsequently: -a fresh determination of the merits of the case - ○ -appeal the decision - ●
AT	○	○	○	○	N/A	●	○ ◇	◇	● ◇	○
BE	○	●	●	●	○	● ◇	●	●	● ◇	●
BG	●	●	○	●	N/A	●	○ ◇	●	● ◇ ◆	●
CY	○	●	○	●	N/A	● ◇	○ ◇	●	● ○	N/A
CZ	○	●	○	●	N/A	●	○ ◇	○	● ◇	○
DE	○	●	○	●	N/A	●	○ ◇ ■	○ ◇	● ◆	○

Source: Impact Assessment for the Proposal for a Directive on certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.

No information was provided for Denmark, Italy or Slovakia.

¹ 'Derived from the PoI' refers to situations where there are no specific law on the issue but the right and / or the remedy can be derived from the general rules governing the presumption of innocence ('PoI').

DK										
EE	○	●	●	●	○	●	●	●	●◆◆	○
EL	●	●	●	●	○	●	●	◆	●	○
ES	●	●	●	●	○	●	○◆	●	●◆	○
FI	○	○	○	○	N/A	●◆	○◆	○	●◆	○
FR	○	●	●	○	○	●	○◆	◆	●◆◆	○
HU	○	●	●	●	○	●	○◆	○	●◆	●
HR	○	●	○	●	N/A	●	○◆	●	●◆	○
IE	●	●	●	●	○	●◆	○◆■	●	○	N/A
IT										
LT	○	○	○	●	N/A	●	○◆	●	●◆	○
LU	●	●	●	●	○	●	○◆	○	●◆	○
LV	●	●	●	●	○	●◆	○	●	●	●
MT	●	●	●	●	○	●	○◆	○	●◆	○
NL	●	●	○	●	N/A	●◆	●	●	◆	○
PL	●	○	●	●	○	●	○	●	●◆	○
PT	●	●	●	●	○	●	●	●	●◆	○
RO	●	●				●	○◆	○◆		
SE	●	○	●	●	○	●◆	○◆■	●	●◆◆	○
SI	●	●	○	●	N/A	●	○◆	○	●◆	○
SK										
UK - E& W			●	○	○	◆◆	○◆◆ ²	●	●◆	○
UK - SC	●	●	●	○	○	◆◆	○◆◆	●	●◆	○

² The defence is required to lodge a defence statement in solemn proceedings.

Annex 2: Moment at which the Right to Legal Aid arises in the different Member States

	When suspect is first questioned (not necessarily at police station) and before detention	Prior to questioning (generally at police station) , may be before arrest or charge	When suspect is arrested or detained at police station	Following first identification as suspect or after formal charge or accusation	On formal arrest or charging (e.g. in court), maybe after detention and questioning	At pre-trial questioning before the court
AT			x			
BE		x				
BG			x			
CY					x	
CZ		x				
DE					x	
DK				x		
EE					x	
EL					x	
ES					x	
FI					x	
FR			x			
HU		x				
HR						
IE			x			
IT					x	
LT		x				
LU		x				
LV				x		
MT		x				
NL						
PL					x	
PT					x	

RO					x	
SE		x				
SI						x
SK			x			
UK (England & Wales)	x					
UK (Scotland)	x					