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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings - Confirmation of the final compromise text with a view to agreement

On 27 October 2015, during the fifth trilogue, the Presidency and representatives of the European Parliament reached agreement "ad referendum" on the final compromise text of the draft Directive. This text, which subsequently has undergone minor linguistic refinements, is set out in the Annex.

The Commission entered a reserve in relation to the deletion of Article 5(2) on "presumptions".

The Commission also presented the following statement in relation to Article 6(5) for the minutes of the Council meeting at which the Directive will finally be adopted:

Declaration of the Commission

relating to Article 6, paragraph 5, on the right to remain silent
and the right not to incriminate oneself

"The Commission considers that Article 6, paragraph 5, of the Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings must be interpreted as merely confirming the possibility for Member States to decide that, in relation to minor offences, the conduct of proceedings, or certain stages thereof, may take place in writing and/or without questioning of the suspect or accused person by the police of other law enforcement or judicial authorities.

In contrast, this provision does not allow derogating from the rights enshrined in Article 6, and it may notably not be interpreted as obliging a suspect to make any statements in relation to the facts at issue or allowing a Member State to draw negative consequences from the exercise of the suspects' right to remain silent."

Coreper is invited

- to confirm the final compromise text as set out in the Annex; and
- to allow its President to send the habitual letter to the European Parliament, with a view to reaching an agreement in first reading.

Subsequently to legal-linguist revision of the text, Coreper will again be invited to confirm the text so as to allow the Council and the European Parliament to formally adopt the Directive.

FINAL COMPROMISE TEXT

**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 the trial in criminal proceedings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

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

¹ OJ C 226, 16.07.2014, p. 63.

² Position of the European Parliament of ... (not yet published in the Official Journal) and Council decision of ... (not yet published in the Official Journal).

- (1b) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.**
- (1c) According to the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions.**
- (1d) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of the mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.**
- (1) [transferred to recital 4a]**
- (2) [transferred to recital 5]**
- (3) Although the Member States are parties to the ECHR and to the ICCPR, 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.**

- (3a) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap')³. 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).**
- (3b) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens (point 2.4)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.**

³ OJ C 295, 4.12.2009, p. 1.

⁴ OJ C 115, 4.5.2010, p.1.

- (4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council⁵, Directive 2012/13/EU of the European Parliament and of the Council⁶, and Directive 2013/48/EU of the European Parliament and of the Council⁷.
- (4a) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.
- (5) By establishing minimum rules on the protection of procedural rights of suspects and 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 territories of the Member States.

⁵ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁶ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

⁷ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (6) This Directive should apply only to criminal proceedings, **as interpreted in the case-law of the Court of Justice of the European Union (Court of Justice), without prejudice to the case-law of the European Court of Human Rights.** Administrative proceedings, **including administrative proceedings that can lead** to sanctions, such as proceedings relating to competition, trade, financial services, **traffic offences**, or tax, **including tax surcharge**, and investigations by administrative authorities in relation to such proceedings, **as well as** civil proceedings, should not be covered by this Directive.
- (7) (deleted)
- (8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply **from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and therefore** even before **suspects or accused** persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence. **This Directive should apply at all stages of the criminal proceedings until the final determination of the question whether the suspect or accused person has committed the offence and that decision has become definitive. This means that legal actions and remedies which are only available once the decision concerned has already become definitive, including actions before the European Court of Human Rights, do not fall within the scope of application of this Directive.**
- (9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural 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 has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.

- (10) At the current stage of development of national legislation 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 with regard to legal persons. **For this reason, this Directive should not apply to legal persons; this should be without prejudice to the application of the right to be presumed innocent, as set out in particular in the ECHR and as interpreted in the case-law of the European Court of Human Rights and the Court of Justice, to such persons.**
- (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.
- (12) [deleted]
- (13) **The presumption of innocence would be violated if public statements by public authorities, or judicial decisions, other than those on guilt, referred to the suspect or accused person as being guilty, without those persons having previously been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that the person is guilty. This is without prejudice to acts of the prosecution, which aim at proving the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided the rights of the defence are respected. This is also without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicions or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature, the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to these elements.**

(13a) The term "Public statements made by public authorities" should be understood as any statement which is referable to a criminal offence, and which originates either from an authority involved in the criminal proceedings concerning that offence (such as judicial authorities, police and other law enforcement authorities) or from another public authority (such as Ministers and other public officials), it being understood that this is without prejudice to national law regarding immunity.

(13b) The obligation not to refer to suspects or accused persons as guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings when this is strictly necessary for reasons relating to the criminal investigation (such as when video material is released, and the public is asked to help in identifying the alleged perpetrator of the criminal offence) or for the public interest (such as when information is provided, for safety reasons, to the inhabitants of a certain area affected by an alleged environmental crime that has been committed in that area, or when the prosecution or another competent authority provides objective information on the state of criminal proceedings in order to prevent public order disturbance). The use of such reasons should be confined to situations where this would be reasonable and proportionate, taking all interests into account. In any case, the manner and context in which the information is disseminated should not create the impression that the person is guilty before he or she has been proved guilty according to law.

(13b2) Member States should take appropriate measures to ensure that, when providing information to the media, public authorities do not refer to suspects or accused persons as being guilty before such persons have been proven guilty according to law. To that end, Member States should inform public authorities about the importance of having due regard to the principle of the presumption of innocence when providing or divulging information to the media. This should be without prejudice to national law protecting the freedom of press and other media.

- (13c) **The competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of measures of physical restraint, such as handcuffs, glass boxes, cages, and legs iron, unless the use of such measures is required for case-specific reasons, either relating to security, including to prevent suspects or accused persons from harming themselves or others or from damaging any property, or relating to preventing suspects or accused persons from absconding or from having contact with third persons, such as witnesses or victims. The possibility of applying measures of physical restraint does not imply that the competent authorities should take any formal decision on the use of such measures.**
- (13d) **Where practically possible, the competent authorities should also abstain from presenting suspects or accused persons in court or in public while wearing prison clothes, so as to avoid giving the impression that these persons are guilty.**
- (14) The burden of proof **in establishing the guilt of suspects or accused persons** is on the prosecution, and any doubt should benefit the accused. The presumption of innocence would 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, without prejudice to the independence of the judiciary when assessing the guilt of the suspect or accused person, **and without prejudice to the use of presumptions of facts or law** concerning the criminal liability of a person who is suspected or accused of having committed a criminal offence. Such presumptions should be confined within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence, and the means employed have to be reasonably proportionate to the legitimate aim sought to be achieved. The presumptions should be rebuttable; in any case, **they** may only be used provided the rights of the defence are respected.

- (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 which do not have an adversarial system may maintain their current system provided it complies with this Directive and with other relevant European and international law.**
- (15) (merged into 14)
- (15a) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination.
- (16) The right not to incriminate oneself is **also** an important aspect of the presumption of innocence. Suspects and 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.
- (17) (moved to 17b)
- (17a) The **right to remain silent and the** right not to incriminate oneself should apply **to** questions **relating to** the offence that someone is suspected or accused of having committed and not, for example, **to** questions relating to the personal identification of a suspect or accused person.
- (17b) **The right to remain silent and the right not to incriminate oneself imply that competent authorities should not compel suspects or accused persons to provide information if these persons do not wish to do so. In order to determine whether the right to remain silent or the right not to incriminate oneself has been violated, the interpretation by the European Court of Human Rights of the right to a fair trial under the ECHR should be taken into account.**

- (17c) **Member States should ensure that the exercise of the right to remain silent or the right not to incriminate oneself should not be used against a suspect or accused person and should not, in itself, be considered as evidence that the person concerned has committed the offence concerned. This should be without prejudice to national rules concerning the assessment of evidence by courts or judges, provided the rights of the defence are respected.**
- (18) The **exercise of the** right not to incriminate oneself should not **prevent gathering evidence** which may be **lawfully** obtained from the suspect or accused person through the use of **legal** compulsory powers **and** 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 or urine samples and bodily tissue for the purpose of DNA testing.
- (19) (moved to 15a)
- (19a) **The right to remain silent and the right not to incriminate oneself should not preclude Member States from deciding that, in minor offences,** such as minor road traffic offences, the conduct of proceedings, or certain stages thereof, might take place in writing and/or without questioning of the suspect or accused person by the police or other law enforcement or judicial authorities in relation to the offence concerned, provided this is in conformity with the right to a fair trial.
- (19b) **Member States should consider to ensure that, where suspects or accused persons are provided with information about rights pursuant to Article 3 of Directive 2012/13/EU, they are also provided with information concerning the right not to incriminate themselves, as it applies under national law in accordance with this Directive.**

- (19c) Member States should consider to ensure that, where suspects or accused persons are provided with a Letter of Rights pursuant to Article 4 of Directive 2012/13/EU, such Letter also contains information concerning the right not to incriminate themselves, as it applies under national law in accordance with this Directive.**
- (20) (moved to 17a)
- (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.
- (21a) If, for reasons beyond their control, suspects or accused persons are unable to be present at the trial, they should have the possibility to request a new date for the trial within the time frame provided by national law.**
- (22) The right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person should **be able**, expressly or tacitly but unequivocally, **to** waive that right.
- (22a) Under certain circumstances, a decision on the guilt or innocence of the suspect or accused person can be handed down even if the person concerned is not present at the trial. This might be the case when the suspect or accused person has been informed in due time of the trial and of the consequences of a non-appearance, but the person nevertheless does not appear. The fact that the suspect or accused person has been informed of the trial should be understood to mean that this person has either been summoned in person or has by other means been provided with official information of the scheduled date and place of that trial in such a manner that the person was in a position to be aware of the scheduled trial. The fact that the suspect or accused person has been informed of the consequences of a non-appearance should be understood to mean notably that the person has been informed that a decision might be handed down if he or she does not appear for the trial.**

- (22b) **A trial, which can result in a decision on guilt or innocence, can also be held in the absence of the suspect or accused person, if the latter has been informed of the trial and has given a mandate to a lawyer, who was appointed either by the suspect or accused person, or by the State, to represent him or her at the trial, and the lawyer indeed represented the suspect or accused person at the trial.**
- (22c) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should, where appropriate, also be paid to **the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive information addressed to him or her.**
- (22d) **Where Member States have a system that provides for the possibility of holding trials in the absence of the suspect or accused person but the conditions for taking a decision in the absence of a suspect or accused person at the trial could not be met, because the suspect or accused person could not be located despite reasonable efforts having been made, for example because the person has fled or absconded, it should nevertheless be possible that a decision is taken in the absence of the suspect or accused person at the trial, and that such decision is enforced. In that case, Member States should ensure that when suspects or accused persons are informed of such a decision, in particular when they are apprehended, they should also be informed of the possibility to contest the decision and of the right to a new trial, or another legal remedy. Such information should be provided in writing; it may also be provided orally, on condition that the fact that the information has been provided is noted in accordance with the recording procedure under national law.**
- (23) (replaced by 22a and 22b)
- (24) (deleted)
- (25) (transferred to number 22c)

- (25a) Competent authorities in the Member States should be allowed to temporarily exclude a suspect or accused person from the trial when this is in the interest of securing the proper course of the criminal proceedings. This could, for example, be the case when a suspect or accused person disturbs the hearing and must be escorted out on order of the judge, or when it appears that the presence of a suspect or accused person prevents the proper hearing of a witness.**
- (25b) The right to be present at one's trial can only be exercised if one or more hearings are held. This means that the right to be present at one's trial cannot apply if no hearing is foreseen in accordance with national rules of procedure, it being understood that these rules should be in conformity with the standards of the Charter and of the ECHR, as interpreted in the relevant case-law, in particular with the right to fair trial. This is the case, for example, if the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or in which no hearing is foreseen.**
- (25c) Member States should ensure that in the implementation of this Directive, in particular the right to be present at one's trial and the right to a new trial, the particular needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013, vulnerable suspects or accused persons should be understood to be all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities.**
- (25d) Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of some of the rights foreseen in this Directive, specific procedural safeguards should be established.**

- (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, which is available in the event of a breach of any of the **rights** laid down in this Directive, should have, as far as possible, the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, **with a view to preserving the right to a fair trial and the right to defence.**
- (26a) **When assessing statements made by suspects or accused persons or evidence obtained in breach of their right to remain silent or their right not to incriminate themselves, courts and judges should respect the rights of the defence and the fairness of the proceedings. In that context, regard should be had for the case-law of the European Court of Human Rights, according to which the admission of statements obtained as a result of torture or of other ill-treatment in breach of Article 3 ECHR as evidence to establish the relevant facts in criminal proceedings would render the proceedings as a whole unfair. According to the UN Convention against Torture any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.**
- (27) In order to monitor and evaluate the effectiveness of this Directive, Member States **should send available data** with regard to the implementation of the rights set out in this Directive **to the Commission.** Such data could 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 or a breach of the right to be present at one's trial.

- (28) This Directive upholds the fundamental rights and principles recognised by the Charter and the ECHR, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. **Regard should be had in particular to Article 6 of the Treaty on European Union, according to which the Union recognizes the rights, freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.**
- (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 or the ECHR, as interpreted in the case-law of the Court of Justice and of the European Court of Human Rights.
- (30) Since the objectives of this Directive, namely setting common minimum rules for *certain aspects of the right to presumption of innocence and for the right to be present at trial in criminal proceedings*, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (31) In accordance with Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(32) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

Subject matter and Scope

Article 1

Subject matter

This Directive lays down minimum rules concerning:

- (a) **certain aspects of** the right to the presumption of innocence in criminal proceedings;
- (b) the right to be present at the trial in criminal proceedings.

Article 2

Scope

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

CHAPTER 2

Right to the presumption of innocence

Article 3

Presumption of innocence

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

Article 4

*Public references to guilt before **proven guilty***

1. Member States **shall** take the necessary measures to ensure that, **before suspects or accused persons have been proven guilty according to law**, public statements made by public authorities, as well as **judicial decisions, other than those on guilt, do not refer to suspects or accused persons as being guilty. This is without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicions or on incriminating evidence.**
2. Member States shall ensure that appropriate measures are **available** in the event of a breach of the **obligation set out in paragraph 1 not to refer to persons as being guilty, in accordance in particular with Article 10.**
3. **The obligation set out in paragraph 1 not to refer to persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings when this is strictly necessary for reasons relating to the criminal investigation or for the public interest.**

Article 4a

Presentation of suspects and accused persons

- 1. Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.**
- 2. Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or relating to preventing suspects or accused persons from absconding or from having contact with third persons.**

Article 5
Burden of proof

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects and accused persons is on the prosecution. **This is without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national rules.**
- 1a. **Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including when the trial court makes an assessment of the question whether the person concerned should be acquitted.**
2. (deleted)

Article 6

Right to remain silent and right not to incriminate oneself

1. **Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the offence that they are suspected or accused of having committed.**
 - 1a. Member States shall ensure that suspects **and** accused persons have the right not to incriminate themselves.
 - 1b.**
 - 1c.**
 - 1d.**
2. **The exercise of the right not to incriminate oneself shall not prevent gathering evidence** which may be **lawfully** obtained through the use of **legal** compulsory powers **and** which has an existence independent of the will of the suspects or accused persons.
 - 2a. [...]
 - 2b. Member States may allow judicial authorities to take into account the cooperative behaviour of suspects and accused persons when sentencing.**
3. The exercise of the **right to remain silent and of the** right not to incriminate oneself shall not be used against a suspect or accused person and shall not be considered **as evidence that the person concerned has committed the offence which he or she is suspected or accused of having committed.**

4. (deleted)

5. **This Article shall not preclude Member States from deciding** that, in minor offences, the conduct of proceedings, or certain stages thereof, may take place in writing and/or without questioning of the suspect or accused person by the police or other law enforcement or judicial authorities in relation to the offence concerned, provided this is in conformity with the right to a fair trial.

Article 7 - Right to remain silent

[merged into Article 6]

CHAPTER 3

Right to be present at one's trial

Article 8

Right to be present at one's trial

1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

2. **Member States may provide that a trial, which can result in a decision on guilt or innocence of the suspect or accused person, can be held in the absence of the latter, provided that:**
 - a) **the suspect or accused person has been informed in due time of the trial and of the consequences of a non-appearance; or**

 - b) **the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person, or by the State.**

- 2a. **A decision which has been taken in accordance with paragraph 2 can be enforced against the person concerned.**

3. **Where Member States have a system that provides for the possibility of holding trials in the absence of the suspect or accused person, but it is not possible to comply with the conditions laid down in paragraph 2, because the suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken, and that such a decision can be enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they shall also be informed of the possibility to contest the decision and of the right to a new trial, or another legal remedy, in accordance with Article 9.**
4. **This Article is without prejudice to national rules according to which Member States may provide that the judge or the competent court can temporarily exclude a suspect or accused person from the trial when this is necessary in the interest of securing the proper course of the criminal proceedings, provided that the rights of the defence are respected.**
5. **This Article is without prejudice to national rules according to which proceedings, or certain stages thereof, are conducted in writing, provided this is in conformity with the right to a fair trial.**

Article 9

Right to a new trial

Member States shall ensure that where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, the persons concerned have the right to a new trial, or other legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed. In that regard, Member States shall ensure that the persons concerned have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise their rights of defence.

CHAPTER 4
General and final provisions

Article 10

Remedies

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

2. **Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to remain silent or their right not to incriminate themselves, the rights of the defence and the fairness of the proceedings are respected.**

Article 11

Data collection

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

Article 11a

Report

The Commission shall, by [3 years after the deadline for transposition], submit a report to the European Parliament and to the Council on the implementation of this Directive.

Article 12
Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

Article 13
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after publication of this Directive]. They shall **immediately inform the Commission thereof**.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 15
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at,,,,,

For the European Parliament
The President

For the Council
The President
