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NOTE

from :	incoming Italian Presidency
to :	CATS
No. Prop.	17621/13 DROIPEN 158 COPEN 235 CODEC 2929
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 - Orientation debate

Introduction

1. The Council on 30 November 2009 adopted a Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings ('Roadmap').¹
2. On 10 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme.

¹ OJ C 295, 4.12.2009, p. 1.

3. So far, three measures have been adopted on the basis of the Roadmap: Directive 2010/64/EU on the right to interpretation and translation,² Directive 2012/13/EU on the right to information,³ and Directive 2013/48/EU on the right of access to a lawyer.⁴
4. On 27 November 2013, the Commission submitted a package consisting of three legislative proposals in order to complete the roll-out of the Roadmap, as integrated in the Stockholm programme:
 - a proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings;⁵
 - a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings;⁶ and
 - a proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.⁷

The last two proposals are accompanied by Commission recommendations.⁸

5. Working under Greek Presidency, the JHA Council reached a general approach on the proposal for a Directive on procedural safeguards for children in June this year.⁹
6. The incoming Italian Presidency intends to assume the work on the remaining two proposals (presumption of innocence and legal aid). In order to prepare the work in the Working Party, the Presidency would like to have an orientation debate in CATS on the two proposals. This paper is concerned with the orientation paper regarding the proposal on the presumption of innocence.

² OJ L 280, 26.10.2010, p. 1.

³ OJ L 142, 1.6.2012, p. 1.

⁴ OJ L 294, 6.11.2013, p. 1.

⁵ 17621/13 + ADD 1 + ADD 2 + ADD 3.

⁶ 17633/13 + ADD 1 + ADD 2 + ADD 3.

⁷ 17635/13 + ADD 1 + ADD 2 + ADD 3.

⁸ 17642/13 + 17643/13.

⁹ 10065/14.

General remarks

7. The catalogue of measures laid down in the Roadmap is of a non-exhaustive nature (recital 12). Moreover, in the Stockholm programme, the European Council has invited the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, to promote better cooperation in this area (point 2.4).
8. The proposed Directive aims at establishing minimum rules concerning the principle of presumption of innocence and concerning other aspects related to this principle, which are common to most Member States but which are not applied in a uniform manner in the Member States. In order to facilitate the application of the principle of mutual recognition, it seems appropriate to set minimum rules that apply across the Union.

Question to CATS (nr. 1):

Member States are invited to confirm that it is advisable to lay down minimum rules to enhance the principle of presumption of innocence and other aspects related to this principle.

Scope

Temporal scope

9. The three Directives that have already been adopted, all have a similar kick-off point. Indeed, the Directives apply to suspects or accused persons in criminal proceedings "*from the time when they 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*".

10. This Directive, however, differs from the others since it provides general principles which "always" apply: for example, a suspect or accused person should be presumed innocent from the very start of the criminal proceedings, not only when he is *made aware* that is suspected or accused.
11. For this reason, it seems appropriate that this Directive applies *ab initio* to all suspects and accused persons, without it being necessary to set a particular kick-off point.

Objective scope

12. The three Directives that have already been adopted, all contain an exception for minor offences.¹⁰
13. For reasons of consistency and in order to enhance the practical application of the proposed Directive, it could be considered whether also this Directive should contain an exception for minor offences, on the same line as provided for in the other measures. This could be helpful, in particular, in relation to a rule on the burden of proof, the application of which may benefit from a flexible approach in relation to minor offences (for example traffic offences).
14. It must be specified that such an exception would only apply in the pre-trial phase, as it was also the case in the other measures. It must also be underlined that the exclusion of certain minor offences from the scope of this Directive would not mean that e.g. the principle of presumption of innocence does not apply to minor offences. It would only mean that this Directive does not deal with those offences.

¹⁰ For the "state of the art" see Article 2.4 in Directive 2013/48/EU on the right of access to a lawyer.

Question for CATS (nr. 2):

Temporal scope: Member States are invited to confirm that the principles set out in this Directive should apply *ab initio* (i.e. "from the very start of the criminal proceedings").

Objective scope: Member States are invited to consider whether the scope of this Directive should be brought in line with that of other measures adopted on the basis of the Roadmap, with particular reference to the possible exclusion of certain minor offences from the application of the Directive.

Right to be present at one's trial

15. The right to be present at one's trial is crucial to ensure the right to a fair trial – the accused must have the opportunity to give his version of the facts and to present evidence accordingly.
16. In its Article 8, the Commission has proposed minimum rules to ensure that persons are not judged in their absence, save in limited exceptions. The wording for this Article is clearly inspired by wording used in Framework Decision 2009/299/JHA on trials in absentia.¹¹
17. The question could be posed whether, in the light of Framework Decision 2009/299/JHA, it is useful to have a provision in the Directive concerning the right to be present at one's trial.

¹¹ OJ L 81, 27.3.2009, p. 24.

18. The Presidency considers that it would indeed be useful to include such provision in the Directive, it being understood that the drafting should be discussed at technical level in the Working Party. To this end, the Presidency observes that Framework Decision 2009/299/JHA does not set out common minimum rules, but only an "indirect harmonisation" by defining, as regards five Framework Decisions, certain grounds for refusal of mutual recognition of decisions. The proposed Directive, however, will lay down minimum rules which are to be applied by competent authorities in all criminal proceedings. These common minimum rules should avoid that there be different rules when the respect of the rule is assessed at national law level or for the purpose of mutual recognition.

Question for CATS (nr. 3):

Member States are invited to confirm that the Directive should contain a provision on the right to be present at one's trial (on the understanding that the detailed drafting of the text will be reserved to the Working Party).

Concluding remarks

19. On the basis of the guidance provided by CATS, the Working Party is invited to assume the work on the proposed Directive. When appropriate, the matter may be referred back to CATS.