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COMMISSION STAFF WORKING DOCUMENT

Implementation Plan

Accompanying the document

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**

{ COM(2013) 821 final }

{ SWD(2013) 478 final }

{ SWD(2013) 479 final }

Implementation Plan¹

1. Title of the document for the proposed act: *Implementation Plan 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*

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3. Deliverables and implementation challenges

As this Directive creates only a comparatively limited number of Member States' obligations (which, to some extent, mirror existing ECHR obligations or are obligations which already exist in a number of Member States), no major implementation challenges are expected.

Nevertheless, it should be noted that the very general character of the right to be presumed innocent often results in general provisions in national law (such as at Constitutional level) but not reflected in detailed legislation. One of the key elements resulting from the Impact Assessment is that even when appropriate protection of presumption of innocence exists in law, violations of the different aspects of the principle still occur in practice.

A number of Member States will therefore need to bring into force new legislation providing for detailed legal provisions on the right to be presumed innocent. In addition to this the implementation of the Directive should be accompanied by support actions in the Member States: (1) training of different actors in the criminal procedure (police, lawyers, prosecutors, judges), in particular in order to create a practice of not breaching the different aspects of presumption of innocence; (2) a monitoring system should be put in place in the Member States in order to produce more comprehensive data about the size and the scope of problems relating to the breach of presumption of innocence in each jurisdiction, which would subsequently allow evaluating the need of possible subsequent action at national or EU level.

| Implementation challenge | Support actions | Timing |
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| <i>Besides legislative changes, a change is needed in the practice regarding protection of presumption of innocence</i> | <i>(1) Training at national level of the different actors in the criminal procedure</i> | <i>During all the transposition period and beyond</i> |
| | <i>(2) Setting up a monitoring system at national level to gather data concerning breaches of presumption of innocence</i> | <i>To be prepared during the transposition period and to be operational at the latest on the deadline for transposition of the Directive</i> |

Moreover, the smooth implementation will be ensured by the following detailed implementation strategy, which aims at solving all possibly emerging challenges at the very beginning of the process. This approach has been followed for other Directives in the area of procedural rights in criminal proceedings (in particular in Directive 2012/29/EU establishing minimum standards on the rights and protection of victims of crime).

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

Implementation Strategy 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

The **purpose** of this document is to complement the document 'Implementation plan' by a detailed description of planned implementation strategy 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. This model of implementation strategy has been used for the implementation of other Directives adopted so far in the area of procedural rights in criminal proceedings.

| Action to be taken | Description | Timeframe |
|---|---|---|
| Adoption of the Directive Publication in the Official Journal | <u>Implementation deadline:</u> 18 months after OJ publication. | <u>OJ publication is the "starting point" in the implementation process (date "X")</u> |
| Preparation of an explanatory working paper by COM with factual interpretation of all Articles in the Directive, including a transposition checklist for MS | The explanatory working paper will contain detailed explanations and expectations linked to the content of every Article and the corresponding Recitals, taking into account the medium/high level options from the Impact Assessment and also taking into account the negotiation process. They will also address how the provisions of this Directive will link to the existing legal framework, notably the Charter (and ECHR) and the other Directives on procedural rights. | To be completed by X + 2 months |
| Letter to Member States | Content: <ul style="list-style-type: none"> • Invitation to experts' meeting • Asking Member States for information on their calendars for implementation; • Transmission of draft guidelines and a set of questions for which Commission will seek MS input at the meeting. | X + 2 months |
| Experts' meeting | In addition to Member States, Commission will invite EP Rapporteur and professional organisations (e.g., ECBA and CCBE) to this meeting. Objectives of the meeting: <ul style="list-style-type: none"> • Discussion of priorities in terms of implementation; | X + 4 months |

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| | <ul style="list-style-type: none"> • Asking Member States for information on their calendars for implementation (tour de table); • Receive input with a view to the fine-tuning of the Commissions implementation strategy; • Discussion of the draft explanatory documents. | |
| Implementation workshops | Regular workshops (frequency depending on available resources): COM will organise workshops with MS (inviting also NGOs, practitioners, academics) in Brussels and/or at a regional basis (based on legal traditions, specific issues in the Directive, and the factual level of current implementation of the Directive's provisions). | Starting from X + 6 months and regularly until 6 months before transposition deadline |
| Experts' meeting (half way through implementation) | Objectives of the meeting: <ul style="list-style-type: none"> • Receiving information on the state of implementation in the Member States; • Steer implementation process. | 1 year before transposition deadline |
| Bilateral meetings | To work directly with MS on their implementation of the Directive, COM should organise meetings with national relevant stakeholders responsible for national implementation (e.g. Ministry of Justice, Interior, Police, Prosecution Office of the Government, Ministry of Social affairs, National Parliaments). COM will also cooperate with stakeholders to help with the preparation of the explanatory working paper and with specific issues arising in the implementation work. It is envisaged that current contacts with main networks of practitioners, e.g. the European Judicial Network (EJN) and organisations such as ECBA and CCBE, will become more systematic and strategic and regular informal meetings will be organised. | Ad hoc, when and where necessary. |
| Final experts' meeting | A final experts' meeting with all MS will be organised 6 months before the transposition deadline to take stock of national implementation measures. This meeting will help COM to understand what types of measures have or will be taken by the MS and also to alert COM to focus on some MS or issues that may need particular attention during the last months of the implementation period. | 6 months before transposition deadline. |
| Accompanying soft law measures | COM supports a number of practical projects financed under JPEN. Identify upcoming needs and include as priorities in the calls for 2014, 2015 and 2016. | On-going |

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| | Actions will be continued under the new Justice Programme (MFF 2014 - 2020). | |
| Notification of transposition measures | An efficient and accessible system for receiving and examining MS notification of implementation measures needs to be put in place. | |