

Re: 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 – COM (2013) 821 final.

DOCUMENT APPROVED BY THE COMMITTEE ON EU POLICIES OF ITALY'S CHAMBER OF DEPUTIES

The Committee on EU Policies,

having examined the 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 (COM(2013) 821) to check its compliance with the principle of subsidiarity;

taking cognisance of the impact assessment that accompanies the proposal, as well as of the report prepared by the Ministry of Justice and sent to the Houses of Parliament pursuant to article 6, paragraph 4 of Law 234/2012;

whereas:

- a) the proposal largely upholds the principles set out by the European Court of Human Rights under article 6 paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- b) article 48 of the Charter of Fundamental Rights of the European Union declares that everyone who has been charged shall be presumed innocent until proved guilty according to law;
- c) the proposal has a sound legal basis, namely, article 82, paragraph 2 of the Treaty on the Functioning of the European Union (TFEU), which states that to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules that shall take into account not only the mutual admissibility of evidence between Member States and the rights of victims of crime, but also the rights of individuals in criminal procedure;
- d) the proposal is compliant with the principle of subsidiarity in that minimum common rules for the presumption of innocence and the right to attend the trial clearly constitute pre-conditions for the mutual recognition of judgments and judicial decisions and for effective police and judicial cooperation in criminal matters with a cross-border dimension. These objectives cannot be achieved to a sufficient extent by Member States or through existing instruments of international law;
- e) Article 6 of the ECHR has not been able to guarantee a consistent level of protection by the signatory States, as demonstrated by the profound discrepancies in the national systems (highlighted by the European Court of Human Rights through its case law). These discrepancies have discouraged national judicial authorities from mutually recognising their respective decisions and from working together. In particular, between January 2007 and December 2012, the Court found 26 cases of violations of the right to be presumed innocent by 10 Member States of the European Union;
- f) to demonstrate the unequivocal need for action at a European level, however, the European Commission ought to have provided specific quantitative and qualitative indicators, such as the number of

requests for cooperation or the number of times mutual recognitions of judgments were accepted or rejected for reasons of procedural law;

g) as provided for in article 82, paragraph 2 TFEU, the proposal takes general account of the differences between the legal traditions and systems of Member States, and has therefore introduced a non-regression clause for Member States whose legislation provides a higher level of protection;

h) the provisions of the proposal, as noted in the report of the Ministry of Justice, are consistent with Italy's national interest in that they are designed to provide a system of common minimum standards on fair trial rights, as enshrined in Article 111 of the Constitution;

i) even so, during the general scrutiny by the relevant committee, and especially with reference to the aforementioned need to take account of the differences between the legal traditions and systems of Member States compliance of the provisions of article 8 relating to trials held *in absentia* with the legal basis of proposal should be carefully examined. The provisions assume that certain proof is available to demonstrate that the accused is aware of the time and place of the trial, but, as noted in the report of the Ministry of Justice, these provisions may render the following provisions in Italian legislation incompatible with EU law and, namely: art. 159 of the Code of Criminal Procedure relating to the summoning of defendants declared untraceable; the summoning of defendants by post, pursuant to Law 890 of 20 November 1982; article 160, paragraph 4 of the Code of Criminal Procedure relating to the summoning of defendants; and article 165 of the same relating to the summoning of fugitive defendants;

considering that this document must be submitted to the European Commission in the framework of the political dialogue, as well as to the European Parliament and the Council;

DEEMS THE PROPOSAL COMPLIANT

with the principle of subsidiarity as defined by article 5 of the Treaty on European Union.