



EUROPEAN COMMISSION

*Brussels, 15.05.2014
C(2014) 3147 final*

Dear President,

The Commission would like to thank the Camera dei Deputati for its Opinions concerning the Commission's proposals 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 final}, for a Directive on procedural safeguards for children suspected or accused in criminal proceedings {COM(2013) 822 final} and for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings {COM(2013) 824 final}.

The proposed Directives are of major importance to complete the procedural rights roadmap of the Commission. The presumption of innocence is still breached too often throughout the EU and there are points on which legal safeguards should be strengthened. The proposed Directive focuses on certain aspects of this fundamental principle which flow from European Court of Human Rights case law, where there is a need to set common minimum standards to ensure mutual trust between judicial authorities of the Member States of the European Union. It also addresses the right of the accused to be present at trial, an essential right of defence and part of the right to a fair trial, as interpreted by the European Court of Human Rights.

The Commission, after having thoroughly analysed the situation in Member States and consulted all relevant stakeholders, concluded that progress at EU level on protecting the presumption of innocence and rights to a fair trial was needed to foster mutual trust and to improve the mutual recognition of judicial decisions between Member States. This, it concluded, could only be achieved by means of an EU directive. Mutual recognition of decisions reached in other Member States depends on a climate of mutual trust. It is therefore necessary that throughout the European Union, when people suspected or accused of criminal offences are subject to intrusive measures in a Member State, the judicial authorities of that Member State fully respect the basic principles of the presumption of innocence. Insufficient protection of this right negatively affects mutual trust, which in turn undermines

*Ms Laura BOLDRINI
President of the
Camera dei Deputati
Piazza Montecitorio
IT — 00100 ROMA*

confidence in cross-border instruments. This is the logic underlying EU action with regard to procedural rights for suspects and accused persons, based on Article 82(2) of the TFEU.

Further information on the rationale for this proposal can also be found in the Commission's Communication¹ adopted on 27 November 2013 – 'Making progress on the European Union agenda on procedural safeguards for suspects or accused persons — strengthening the foundation of the European area of criminal justice'.

On the issue raised in the Opinion of the Camera dei Deputati, of specific quantitative and qualitative indications regarding the acceptance or refusal of requests for cooperation or mutual recognition of judgments for reasons relating to the presumption of innocence or the right to be present at trial, there is limited evidence of lack of cooperation between the Member States caused by a lack of respect for those or other procedural rights.

However, this does not mean that there are no problems of lack of cooperation, but simply that it is not easy to quantify the problem. Mutual trust is based upon perceptions held by practitioners, and any experience of lack of respect for rights of the defendant in the criminal justice system of any Member State undermines trust. The Commission received evidence that full respect for the presumption of innocence and the right to be present at trial is a concern for stakeholders and that it plays a vital role in building mutual trust across the EU.

For instance, as pointed out in the Impact Assessment annexed to the Commission's proposal, there are indications of unease among judicial practitioners about divergent standards among Member States. The Impact Assessment describes evidence of a lack of trust among stakeholders, particularly defence lawyers, who are at the forefront of identifying and challenging judicial mispractice and miscarriages of justice in national courts in all Member States.

Although difficult to quantify, the lack of mutual trust between judicial authorities and the need to improve this were the underlying reasons for each of the different measures proposed by the Commission in this field, in particular following the entry into force of the Treaty of Lisbon. Three procedural rights measures have already been adopted by the EU legislators:

- *Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings;*
- *Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings;*
- *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.*

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0820:FIN:EN:PDF>.

The right to be present at trial, on which the Camera dei Deputati also commented in its Opinion, is based on the right to a fair trial, one of the basic principles in a democratic society, and this right should be guaranteed throughout the Union. The right to be present at trial entails the right to be given sufficient information about the trial, so that attendance is possible. However, as laid down in Article 8 of the proposal and as explained in its recitals 22, 23 and 25, under certain conditions it should be possible for a trial to take place in the absence of the accused person. The procedural requirements to achieve the results specified in the proposal regarding the right to be present at trial are a matter for national legislation in the Member States. When assessing whether the way in which information was provided was sufficient to ensure that the defendant was aware of the trial, Member States must take into account the efforts made by the defendant in order to ensure that delivery of the necessary information was possible. The Commission acknowledges and fully respects the differences between the legal traditions and systems of the Member States.

Existing EU laws on procedural safeguards in criminal proceedings apply to all people suspected or accused of an offence, including children. However, these existing laws do not take sufficient account of the specific needs children may have, e.g., as regards understanding and following the proceedings, the increased risk of ill-treatment because of their vulnerability and the need to ensure that deprivation of liberty only takes place as a last resort. The proposed Directive would guarantee and promote children's rights, bearing in mind international guidelines and recommendations on child-friendly justice, and forms part of the EU Agenda for the Rights of the Child.

The right to legal aid is intrinsically linked to the right of access to a lawyer. For the right to access to a lawyer to be effective, and to further strengthen mutual trust in the European Union, legal aid needs to be available to those who most need it. The proposed Directive would ensure provisional legal aid when a suspect or accused is deprived of liberty, guaranteeing legal aid in those cases where the person is particularly vulnerable until the competent authority has made a final decision on the application for legal aid. People sought under a European arrest warrant also need to be given the right to provisional legal aid when deprived of liberty in the Member State executing the arrest warrant, without having to wait for legal advice until the application for legal aid has been dealt with.

The Commission appreciates that the Camera dei Deputati shares the Commission's concerns and the objectives of its above mentioned proposals.

The system of mutual recognition of judgments and judicial decisions in the EU can only operate satisfactorily if Member States trust each other's criminal justice systems. However, the protection of the procedural rights of suspects and accused persons still varies significantly between the Member States, which gives rise to barriers to the mutual trust needed. To remove those barriers, the European Union must ensure that all Member States uphold a common minimum level of procedural rights, and that these rights can be enforced through EU law.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the concerns raised by the Camera dei Deputati and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Johannes Hahn
Member of the Commission*