



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2013)

Opinion

Title **DG JUST - Impact Assessment on a proposal for measures on the strengthening of the presumption of innocence in criminal proceedings**

(Resubmitted draft version of 31 July 2013) *

(A) Context

The principle of the presumption of innocence is a fundamental principle of criminal law, a key element of a fair trial, enshrined in a number of international instruments, in particular in Article 6 of the European Convention on Human Rights (ECHR), in the Charter of Fundamental Rights of the European Union (the "Charter") and in the Universal Declaration of Human Rights. Following the entry into force of the Lisbon Treaty, the European Union (EU) has been given new competences to legislate on matters related to criminal procedural law (Article 82 of TFEU). The implementation of the Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings by the Commission has contributed to reinforcing the principle of presumption of innocence in criminal proceedings but does not cover all its aspects. Despite the existence of common principles, there still exist different rules and practices leading to shortcomings with regard to the way in which procedural rights in criminal proceedings are applied by the Member States (MS) and in particular the presumption of innocence. The proposed measure aims at requiring the relevant authorities in the Member States to give the suspect or accused person enough procedural safeguards to exercise the right to be presumed innocent in accordance with the above mentioned instruments, in order to achieve a higher level of mutual trust between the judicial authorities in the EU.

(B) Overall opinion: POSITIVE

While the report has been improved along the lines of the recommendations in the Board's first opinion it requires further work in a number of respects. First, it should still better explain the need for action in relation to mutual trust and should further strengthen the baseline scenario, by explaining more clearly the extent to which other relevant legal instruments linked to this proposal may address the underlying problems. The report should more clearly explain the rationale for action in relation to only some aspects of the presumption of innocence principle. It should distinguish more clearly between circumstances where there are gaps in Member States' legal frameworks or when the problems derive from deficiencies in practical application.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

Second, the report should better assess the effectiveness of the options by presenting clearly the difference they are expected to make in terms of mutual recognition and cross-border police or judicial cooperation and further describe how compliance with the proposed legal provisions will be promoted in Member States. Moreover, it should explain the assumptions underlying expected costs and benefits to national authorities of putting in place the specific remedies foreseen by this initiative. Finally, although the presentation of stakeholders' views has been improved, it should better indicate which category of stakeholders supports an initiative in the area or not (and why). The report should discuss clear evaluation arrangements, setting out the main criteria/indicators on which success will be assessed in line with set objectives.

(C) Main recommendations for improvements

(1) Further strengthen the problem definition and the value added of EU action.

Although the presentation of the problems has been improved, the report should still better explain the need for action in relation to mutual trust given the assumption under the European Arrest Warrant, and other mutual cooperation instruments, that a request to expeditiously transfer suspects and accused persons from the executing Member State should be granted and mutually recognised. It should also further strengthen the baseline scenario by better explaining the extent to which other relevant legal instruments linked to this proposal (for example the initiative on legal aid) may address the underlying problems. While the report now includes a problem tree, the explanation provided as to the need for EU level intervention requires further clarification. In particular, the underlying drivers, problems and objectives should be better reflected and the coherence between the different sections should be improved. For example, it should explain more clearly how the legislative options correspond to the objectives and how they tackle the insufficient protection of fundamental rights and the insufficient levels of mutual trust. It should more clearly explain the rationale for EU action in relation to only some aspects of the presumption of innocence principle and should distinguish more clearly between circumstances where there are gaps in Member States' legal frameworks or when the problems derive from deficiencies in practical application.

(2) Better assess impacts and compliance issues. The report should describe the content of the options more clearly and include a summary of the content of the preferred option. It should then better assess the effectiveness of the options, presenting clearly the difference they are expected to make in terms of mutual recognition and cross-border police or judicial cooperation. It should further describe how compliance by the national authorities will be promoted, given that part of the problem at present is the poor implementation of the ECHR principles in practice and the related jurisprudence. Even though the report presents better the estimates of compliance costs of putting in place specific remedies, breaking them down by Member State, it should however briefly explain the rationale for the assumptions underlying expected costs and benefits and provide more precise references to the external study.

(3) Better present stakeholders' views and propose clear evaluation arrangements.

Although the presentation of stakeholders' views has been improved, the report should better identify which categories of stakeholders support or do not support an initiative in this area and whether or not they agree with the identified problems and the proposed policy options. The report should strengthen the section on future evaluation, setting out the main criteria/progress indicators on which the success of the initiative will be evaluated in line with the set objectives.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should present more clearly the extent of differences between Member States' presumption of innocence procedures by summarizing information from the external study. An overview of the existing systems for the protection of the presumption of innocence at national and international levels should be added in the annexes (minimum standards in procedural rights and available remedies).

(E) IAB scrutiny process

Reference number	2013/JUST/024
External expertise used	No
Date of IAB meeting	Written procedure An earlier version of this report was submitted to the IAB in June 2013, for which the Board issued an opinion on 5 July 2013