



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
(draft version of 6 June 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: NEGATIVE

The report needs to be significantly improved in a number of respects. First, the report should clearly identify what the core issues are, explaining the extent to which the problems derive from inadequacies/gaps in the current rules/framework for ensuring protection of the presumption of innocence principle, from poor implementation of the rules and/or inadequate enforcement. It should better substantiate the claim that there is insufficient protection of fundamental rights and a lack of trust between Member States as a result of lack of respect of the principle of presumption of innocence by providing more conclusive and concrete evidence of the nature and the extent of the problems actually observed. Second, the report should better explain the EU value added given that this principle is already enshrined in the laws of the Member States and assess the proportionality of this initiative. Third, it

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

should better assess expected impacts on the domestic justice systems and better present the estimates of costs, including those related to reporting obligations and collection of relevant data by Member States and the benefits of less appeals and detentions. Fourth, the report should propose clear monitoring and evaluation arrangements showing how the effectiveness of this initiative will be measured. Finally, stakeholders' views, including of Member States and experts, should be better integrated in the text, particularly in the problem definition, options and impacts sections.

Given the nature of these concerns, the IAB requests DG JUST to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Better present the problems and the context of the initiative. The report should better describe the policy context of this initiative, explaining what the links are between the related measures to strengthen the procedural rights in criminal proceedings, how each of them contributes to addressing the identified general problems and specifying where this initiative fits in that context. Moreover, it should clarify how the scope was defined and in particular how the three key requirements defined by the jurisprudence of the European Court of Human Rights on the presumption of innocence are related to the other fair trial rights included in the scope. The report should clearly identify what the core issues are and their causalities, explaining the extent to which the problems derive from inadequacies/gaps in the current rules/framework for ensuring protection of the presumption of innocence principle, from poor implementation of the rules at the level of the Member States and/or insufficient enforcement. The report should better substantiate the claim that there is insufficient protection of fundamental rights and a lack of trust between Member States as a result of lack of respect of the principle of presumption of innocence by providing more conclusive and concrete evidence of the nature and the extent of the problems actually observed. It should be more specific on what insufficient levels of mutual trust is, clearly identifying the causes. Moreover, it should clarify why existing measures or those in the pipeline on presumption of innocence have not proved sufficient to address the general problems and while doing so, also assess their impacts (and costs) as a part of the baseline scenario.

(2) Better explain the EU added value and assess the proportionality. The report should show why more effective implementation of the current ECHR rules in practice and of the related jurisprudence by Member States would not be enough and, regarding the remedies in case of breach, why existing remedies such as the existing possibility to appeal are not sufficient. The report should clarify if the proposals go beyond existing requirements and if so, say why such measures are proportionate. It should better explain what difference EU measures would make given that the principle of presumption of innocence is already enshrined in Member States legal systems.

(3) Better assess impacts and examine compliance issues. The report should better assess the effectiveness of the options, given that part of the problem at present is the poor implementation of the ECHR principles in practice and the related jurisprudence. It should describe in more detail what will be the expected impact on domestic justice systems. It should clarify and estimate impacts on the workload of judicial authorities for Member States that do not have specific remedies and how this is compatible with the measures aimed at achieving cost-savings by national authorities. The report should better present the

estimates of costs, briefly explaining in the report and in the executive summary what they represent (e.g. cost of retrial), how they have been calculated and specifying for each option whether the costs are one off or per annum. It should also better present costs related to reporting obligations for Member States and the costs of collecting relevant data. Moreover it should present the benefits of fewer appeals and less detentions. The report should further describe how compliance will be promoted in Member States given that practical implementation is currently described as one of the reasons why the ECHR is not effective despite being legally binding. It should include a summary of the expected impacts across individual Member States.

(4) Better present stakeholders' views and propose clear monitoring and evaluation arrangements. The report should better explain what aspects of the initiative stakeholders were consulted on and provide an overview of the main consultation results. It should identify which (category 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. Stakeholders' views, including of Member States and experts, should be better integrated in the text, particularly in the problem definition, options and impacts sections. The monitoring arrangements should clearly identify how regularly the data is to be collected, who will be responsible for this in the Member States and should consider the underlying costs. The report should strengthen the section on future evaluation, setting out the main criteria 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 explanation 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). Moreover, a problem tree would help the reader understand the structure of the problem(s). A glossary defining legal terms should be added.

(E) IAB scrutiny process

Reference number	2013/JUST/024
External expertise used	No
Date of IAB meeting	3 July 2013