



## State of play regarding the transposition of Directive (EU) 2016/343 on presumption of innocence and Directive (EU) 2016/800 on procedural safeguards for children

Procedural Rights in the context of Evidence-Gathering

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## Directive (EU) 2016/343 on certain aspects of the Presumption of Innocence

- Reference in the **2009 Stockholm Programme** (section 2.4)
- **Fourth Directive** adopted to strengthen the procedural rights of suspects and accused persons in criminal proceedings
- Adopted on **9 March 2016** - Transposition period ended on **1 April 2018**

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## Main elements of the Directive (1)

- Scope of the Directive
- Content of the Directive
  - ✓ No public references to guilt before proved guilty (public statements made by public authorities and judicial decisions)
  - ✓ Presentation of suspects and accused persons: measures of physical restraint

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## Main elements of the Directive (2)

- Content of the Directive
  - ✓ Burden of proof and *in dubio pro reo*
  - ✓ Right to remain silent and right not to incriminate oneself
  - ✓ Right to be present at the trial and right to a new trial
  - ✓ Remedies

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## State of play regarding transposition

- **Notifications** to the Commission: complete transposition notified by all Member States.
- **Infringement proceedings** for non-communication: 11 Member States in 2018, 4 still open for partial communication (reasoned opinions), 3 Letters of Formal Notice sent in February 2021.
- **Completeness and conformity check** together with external contractor.

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## Preliminary conclusions

Implementation report adopted by COM on 31 March  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0144&from=fr>  
See also report published by FRA in parallel

The Directive is **not yet fully implemented** in all Member States.

The Directive is not only about the principle of presumption of innocence but about the rights deriving from the principle.

Issues arise with regard to the scope of the rights; public references to guilt; presentation of suspects and accused; right not to incriminate oneself; right to be present at the trial (*in absentia* judgments).

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## Directive (EU) 2016/800 on procedural safeguards for children

- **Part of "Procedural rights package"**
- Adopted on **11 May 2016** - Transposition period ended on **11 June 2019**
- Based on **international standards** (UN CRC and the Guidelines of the Council of Europe on child-friendly justice)
- **Binding EU-wide (minimum) rules** on procedural rights for children

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## Main elements of the Directive (1)

- **Scope** of the Directive
- **Effective participation of a child:**
  - ✓ Right to information: information of child and parent(s) or appropriate adult
  - ✓ Access to a lawyer/Assistance by a lawyer: mandatory assistance for children in detention or when a decision on detention is taken and in serious and complex cases
  - ✓ Legal Aid: to ensure the effective exercise of the assistance by a lawyer
  - ✓ Individual Assessment: specific needs of children to be taken into account

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## Main elements of the Directive (2)

- **Safeguards related to deprivation of liberty:**
  - ✓ Deprivation of liberty as a measure of last resort
  - ✓ Alternative measures to detention where possible
  - ✓ Specific safeguards in case of deprivation of liberty
  - ✓ Right to medical examination

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## Main elements of the Directive (3)

- **Other Safeguards**
  - ✓ Audio-visual recording of questioning by police
  - ✓ Protection of privacy
  - ✓ Presence at court hearings
  - ✓ Training of professionals

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## State of play regarding transposition

- **Notifications** by Member States to the Commission: not all Member States have yet notified complete transposition
- **Infringement proceedings** for non-communication: 7 Member States in 2019, 2 Reasoned opinions in 2020
- **Completeness and conformity check** together with external contractor

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## Preliminary conclusions

The Directive is **not yet fully implemented** in all Member States.

Several Member States have undertaken important changes to their juvenile justice systems as part of transposition efforts. Some Member States are still working on incorporating the directive into national law.

Compliance check ongoing but issues arise with regard to the scope, prompt and adequate information, assistance by a lawyer, deprivation of liberty, ...

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**Thank you!**

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