

# Commission Implementation Report on Presumption of Innocence Directive



## News

**Thomas Wahl**

In a [report dated 31 March 2021](#), the European Commission points out that key provisions of Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings have been inadequately implemented in a number of EU Member States. The Commission is conducting seven infringement proceedings against EU Member States for not having fully implemented the provisions of this Union law. It also draws attention to the fact that some Member States have not taken specific transposition measures, as they believed that their legislation was already broadly in line with the requirements of the Directive - however, this does not mean that national law fully complies with the Directive. Major deficiencies relate to the prohibition of public references to guilt and to the right not to incriminate oneself.

With regard to public references to guilt (Art. 4 of Directive 2016/343), the Commission criticises that several Member States have limited its scope, since their national provisions do not cover all public authorities or all stages of criminal proceedings. In other Member States, the article's practical implementation appears to be the problem. In yet other cases, clear conditions limiting the dissemination of information are lacking.

Regarding the right to remain silent (Art. 7 of Directive 2016/343), the limited scope of national measures is also a compliance issue. Two Member States do not explicitly guarantee the right not to incriminate oneself in national law, and the case law of their supreme courts does not remedy the gap either. In several Member States, which have not specifically transposed Art. 7(5) of Directive 2016/343 (prohibiting the drawing of negative inferences from exercising the right to remain silent), compliance is detrimentally affected because general provisions are not sufficient or not broad enough in scope.

The Commission stressed that its report was only able to assess mainly the national legislative transposition measures, which were notified to it by the Member States. In this context, the Commission is disappointed that only one Member State (Austria) fulfilled its obligation to send data by April 2020 on how the Directive has been additionally implemented in practice (Art. 11 of the Directive). Hence, the Commission report also draws on publicly available information from the EU Agency for Fundamental Rights, which published its report on the practical implementation of the Directive in parallel on 31 March 2021 (→ [related link](#)). In addition, the Commission took into consideration Commission-funded studies by external stakeholders.

The report is addressed to the European Parliament and the Council, which will further comment on the findings on the implementation of Directive 2016/343.

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