

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

CHAPTER 3

RIGHT TO BE PRESENT AT THE TRIAL

Article 8

Right to be present at the trial

1 Member States shall ensure that suspects and accused persons have the right to be present at their trial.

2 Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

- a the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
- b the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

3 A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.

4 Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.

5 This Article shall be without prejudice to national rules that provide that the judge or the competent court can exclude a suspect or accused person temporarily from the trial where necessary in the interests of securing the proper conduct of the criminal proceedings, provided that the rights of the defence are complied with.

6 This Article shall be without prejudice to national rules that provide for proceedings or certain stages thereof to be conducted in writing, provided that this complies with the right to a fair trial.

Article 9

Right to a new trial

Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the

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merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.