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Subject : Proposal for a Directive of the European Parliament and of the Council on  
procedural safeguards for children suspected or accused in criminal proceedings  
- General approach

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1. On 28 November 2013, the Commission submitted to the European Parliament and to the Council a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings. The proposal is based on Article 82(2)(b) TFEU.
2. The Working Party on Substantive Criminal Law (DROIPEN) discussed the proposal during meetings on 20 January, 3 and 21 February, 6 and 19/20 March, 25 April and 5 May 2014.

3. During its deliberations, the Working Party took account of the views that had been expressed by the Fundamental Rights Agency (FRA) in the margins of the DROIPEN meeting on 21 February 2014 <sup>1</sup>, and of the opinion provided by the European Economic and Social Committee <sup>2</sup>.
4. On 4 March 2014, the JHA Council discussed some selected issues and provided guidance to the work in the preparatory bodies.<sup>3</sup>
5. The text as it results from the DROIPEN meeting on 5 May 2014 is set out in the Annex. The Presidency considers that this text is ripe for reaching a general approach, which will then constitute the basis for negotiations with the European Parliament in the context of the ordinary legislative procedure of Article 294 TFEU.
6. Coreper is invited to lift any outstanding reservations, if that is possible - see in particular footnotes 13 and 35 - and to decide submitting the text to the JHA Council on 6 June 2014 so as to allow it to reach such a general approach.

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<sup>1</sup> See doc. 7047/14.

<sup>2</sup> Opinion delivered on 25 March 2014.

<sup>3</sup> See doc. 6403/14.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on procedural safeguards for children suspected or accused in criminal proceedings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2)(b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Having consulted the Committee of the Regions<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Directive is to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings, to enable such children to exercise their right to a fair trial and to prevent re-offending by children and foster their social integration.
- (2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.

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<sup>4</sup> Opinion of 25 March 2014.

<sup>5</sup> See renunciation letter of 14 April 2014.

- (3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (4) **On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap').<sup>6</sup> Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.**
- (4a) **On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens (point 2.4).<sup>7</sup> The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.**

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<sup>6</sup> OJ C 295, 4.12.2009, p. 1.

<sup>7</sup> OJ C 115, 4.5.2010, p.1.

- (5) Three measures have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council <sup>8</sup>, Directive 2012/13/EU of the European Parliament and of the Council <sup>9</sup> and Directive 2013/48/EU of the European Parliament and the Council <sup>10</sup>.
- (6) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.
- (7) Children who are suspects or accused in criminal cases should be given special attention in order to preserve their potential for development and reintegration into society.
- (8) This Directive should apply to children meaning persons under the age of 18 from the time **when they are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence. In respect of children subject to European arrest warrant proceedings, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.**
- (9) [deleted]
- (10) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person is above the age of 18, Member States are encouraged to apply the procedural safeguards foreseen by this Directive until this person reaches the age of 21, **at least as regards offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to offences where criminal proceedings started against that person before the age of 18.**

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<sup>8</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p.1).

<sup>9</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p.1).

<sup>10</sup> Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

- (11) Member States should determine the age of children on the basis of the children's own statements, checks of their civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, on the basis of a medical examination.
- (11a) The application of this Directive should be excluded in respect of some minor offences. However, such exclusion should not be made where the suspect or accused person is deprived of liberty; in such situation, the Directive shall in any case fully apply, in accordance with its provisions.**
- (11b) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.**
- (11c) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.**

- (11d) **In certain Member States children who have committed an act qualified as an offence are subject to proceedings which may not lead to the imposition of any criminal sanction, but which may lead to the imposition of restrictive measures, for instance protection measures, correction measures and education measures, with a view to promoting the proper conduct of the children, bringing about favourable changes in the children's personality and behaviour, and helping them to integrate in society. Such proceedings do not fall within the scope of this Directive.**
- (12) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU and Directive 2013/48/EU. Information with regard to minor offences should be provided under the same conditions as provided for by Article 2(2) of Directive 2012/13/EU. However, this Directive provides further complementary safeguards with regard to information to be provided to a holder of parental responsibility and **concerning assistance by a lawyer** in order to take into account the specific needs of children.
- (13) If a child is deprived of liberty, the Letter of Rights provided to the child pursuant to Article 4 of Directive 2012/13/EU should include clear information on the child's rights under this Directive.
- (14) The term "holder of parental responsibility" means any person having parental responsibility over a child as defined in Council Regulation (EC) 2201/2003<sup>11</sup>. Parental responsibility means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.

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<sup>11</sup> Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1).

- (15) **Since children are vulnerable and are not always able to fully understand and follow criminal proceedings**, Member States should inform a holder of parental responsibility about applicable procedural rights, either orally or in writing. **If there are two holders of parental responsibility, Member States should inform both holders, unless this is not practicable.** This information should be provided **as soon as possible** and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of defence of the child. **In certain circumstances, the information should be provided to another appropriate adult nominated by the child or to a person designated by the competent authority. In the circumstance that no holder of parental responsibility can be reached or his or her identity is unknown, the Member States should only make use of the possibility to inform a person other than a holder of parental responsibility when they have done concrete efforts to reach a holder of parental responsibility or to obtain his or her identity.**
- (16) **Children have the right of access to a lawyer in accordance with Directive 2013/48/EU. That Directive applies in its entirety, including, *inter alia*, the derogations for compelling reasons set out in Article 3(6) of that Directive. In no way, this Directive can limit the rights provided for in that Directive.**
- (17) **Children are vulnerable and are not always able to fully understand and follow criminal proceedings. Therefore, where children have the right of access to a lawyer in accordance with Directive 2013/48/EU, they should be assisted by a lawyer when they are questioned by the police or by other law enforcement or judicial authorities, including during the trial, or when they are deprived of liberty, unless the deprivation of liberty is supposed to last only for a short period of time, for example where the deprivation of liberty has as purpose to surrender the child to a holder of parental responsibility or to another appropriate adult designated by the competent authority, or to bring the child before a court in the event of an unexcused absence. When children should be assisted by a lawyer in accordance with this Directive, Member States should arrange a lawyer to assist the child concerned when such lawyer has not been arranged by the child itself or by a holder of parental responsibility.**



- (17a) For the purposes of this Directive, assistance by a lawyer means that the child is provided with legal support by the lawyer and that the child is represented by the lawyer during the criminal proceedings. When the child has to be assisted in accordance with this Directive during questioning, a lawyer has to be present. However, assistance by a lawyer does not mean that a lawyer has to be present during the criminal proceedings at moments other than during questioning; for instance, a lawyer does not have to be mandatory present during each investigative or evidence-gathering act. This does not prejudice the right of the child to have access to a lawyer during such acts, if he has the right of access to a lawyer in accordance with Directive 2013/48/EU.**
- (17b) Where the child has to be assisted by a lawyer during questioning in accordance with this Directive, but no lawyer is present, the competent authorities shall postpone the questioning of the child for a reasonable period of time, so that the authorities can either await the arrival of the lawyer when the child has arranged a lawyer himself, or can arrange a lawyer for the child when this has not yet been done.**
- (18) (deleted)
- (19) Children who are suspected or accused in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, formation and social integration, to determine if and to what extent they would need special measures during the criminal proceedings and to determine the extent of their criminal responsibility and the adequacy of a penalty or educative measure for them.

- (20) In order to ensure the personal integrity of a child who is arrested or detained, the child should have access to a medical examination. **Such medical examination** should be carried out by a physician, **either, when specific health indications or the general mental or physical constitution of the child give reasons for such examination, on an initiative *ex officio* of the competent authorities, or following a request of the child or the holder of parental responsibility, or of the child’s lawyer. However, no follow-up has to be given to a request for a medical examination when this would go against the best interests of the child, e.g. when the child has indicated that it does not want to be medically examined, or where the strain placed on and disadvantages likely to be suffered by the child as a result of the medical examination are disproportionate to the reasons for such examination (e.g. when the duration of deprivation of liberty would have to be extended by a not insignificant amount of time in order to carry out the examination and there is no need for immediate treatment). Member States should lay down practical arrangements concerning medical examinations.**
- (21) In order to ensure sufficient protection of children who are not always able to understand the content of interviews to which they are subject, to avoid any challenge of the content of an interview and thereby undue repetition of questioning, questioning **by police or other law enforcement authorities** of children who are **deprived of liberty** should be audio-visually recorded **when it is proportionate to do so. This Directive does not require Member States to make recordings of questioning of children by a judge or a court. Also, an audio-visual recording is not required when questioning has as sole purpose to verify the identity of the child or to determine whether an investigation should be started.**
- (22) (deleted)
- (23) **In all circumstances, whether the questioning of children is audio-visually recorded or not,** questioning should be carried out in a manner that takes into account the age and level of maturity of the children concerned.
- (24) (deleted)

- (25) Children are in a particularly vulnerable position in relation to detention. Special efforts should be undertaken to avoid **detention of children at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence**, given the inherent risks for their physical, mental and social development. The competent authorities should consider alternative measures **instead of such detention** and impose such measures whenever this is in the best interests of the child. **Such alternative measures could include an obligation for the child not to be in certain places or an obligation for the child to reside in a specific place, restrictions of contact with specific persons, reporting obligations to the competent authorities, undergoing of therapeutic treatment or treatment for addiction subject to the child's consent, and participation in educational measures.**
- (25a) **Detention of children before the final determination by a court of the question whether the child concerned has committed the offence should be subject to a periodic review by a court, which could also be a single judge. The periodic review may be carried out either *ex officio* by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should lay down practical arrangements in this respect. These arrangements may provide that if a periodic review is already being carried out *ex officio* by the court, no follow-up has to be given to a request of the child or of the child's lawyer to carry out such review.**
- (26) When children are **detained at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence**, they should benefit from special protection measures. In particular they should be held separately from adults unless it is considered in the child's best interest not to do so, in accordance with Article 37(c) of the United Nations Convention of the Rights of the Child. When a detained child reaches the age of 18 years, there should be the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the case. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.

- (26a) Children may be detained with young adults unless these persons are not suited for joint accommodation with children. Member States should determine which persons are considered to be young adults in accordance with their national law and procedures. Member States are encouraged to determine that persons older than 24 years cannot qualify as young adults.**
- (27) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should take care that the proceedings are adapted to them. For that purpose, they should be specially trained in dealing with children.
- (27a) Children should be treated in a manner appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.**
- (28) Taking into account the differences between the legal traditions and systems between the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, *inter alia*, to facilitating the re-integration of children into society. To this end, Member States should make a balancing exercise by taking due account, on the one hand, of the best interests of children, which could for instance be achieved by setting as a principle that trials against children be organised in the absence of the public, by protecting the personal characteristics of the child that are taken into account and derive from the individual assessment foreseen in this Directive, by protecting the audio-visual recordings made during questioning and by avoiding that any inappropriate use of these recordings is made, or by protecting the images of the child and its family members and, on the other hand, of the general principle of a public hearing.**

**(29) Since children are vulnerable and are not always able to fully understand and follow criminal proceedings, they should have the right to be accompanied by a holder of parental responsibility or by another appropriate adult during court hearings in which they are involved. Where there are two holders of parental responsibility, the child should have the right to be accompanied by both holders, unless this is contrary to the best interests of the child. Where it is not possible for a holder of parental responsibility to accompany the child, or where no holder of parental responsibility is willing to do so, where it would be contrary to the best interests of the child to be accompanied by a holder of parental responsibility, or where the presence of a holder of parental responsibility could prejudice the criminal proceedings, including when the presence of a holder of parental responsibility could seriously endanger the life, liberty or physical integrity of a person, the child has the right to be accompanied by another appropriate adult.**

**(29a) In the case the child has chosen an adult that is not acceptable to the court, the competent authority should designate another appropriate adult that is acceptable to the court. In the case the child has not designated another appropriate adult, the competent authority could designate an appropriate adult that is acceptable to the court. The appropriate adult can be the same adult that was provided with information that the child receives regarding his rights, or another appropriate adult, who can also be a person belonging to an authority or other institution responsible for the protection or welfare of children. Member States should lay down practical arrangements regarding the presence of accompanying persons during the court hearing. These arrangements could include provisions concerning a delay in the arrival of accompanying persons, and concerning the conditions under which an accompanying person can be temporarily excluded from the court hearing.**

- (30) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. **Member States should take appropriate measures to promote that children are present at their trial, including by summoning them in person and by sending a copy of the summons to a holder of parental responsibility or, where that would be contrary to the best interests of the child, to another appropriate adult designated by the competent authority. Member States should lay down practical arrangements regarding the presence of the child at their trial. These arrangements could include provisions concerning the conditions under which a child can be temporarily excluded from the trial.**
- (31) The rights provided for by this Directive should apply to children subject to European arrest warrant proceedings from the time they are arrested in the executing Member State.
- (31a) The surrender procedure is crucial for cooperation in criminal matters between the Member States. Observance of the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children should be able to exercise their rights under this Directive in European arrest warrant proceedings, those time-limits should be respected.**
- (32) An individual assessment, medical examination and audio-visual recording provided for by this Directive should be carried out free of charge for the child. The Member States will assume the relevant costs, unless they are covered in any other way, e.g. through a medical insurance. However, without prejudice to national rules concerning the bearing of costs of criminal proceedings **and without prejudice to national rules on legal aid**, Member States may provide case-by-case assessment on the fairness of reimbursement of those costs by the convicted child. To that end, the potential consequence on the child's general mental and physical development, including education and professional future, **should be taken into account.**

- (33) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of **relevant data, from available data**, with regard to the implementation of the rights set out in this Directive. **Such** relevant data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.
- (34) This Directive upholds the fundamental rights and principles as recognised by the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of defence. This Directive should be implemented in accordance with those rights and principles.
- (35) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice of the European Union and the European Court of Human Rights.

- (36) Since the objectives of this Directive, namely setting common minimum standards on procedural safeguards for children suspected or accused in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (37) In accordance with Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (39) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>12</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

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<sup>12</sup> OJ C 369, 17.12.2011, p. 14.



*Article 1*<sup>13</sup>

**Subject matter**

This Directive lays down minimum rules concerning certain rights of suspects or accused persons in criminal proceedings who are children and of children subject to a surrender procedure pursuant to Council Framework Decision 2002/584/JHA<sup>14</sup> (“European arrest warrant proceedings”).

*Article 2*

**Scope**

1. This Directive applies to children subject to criminal proceedings from the time when **they are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.**
2. This Directive applies to children subject to European arrest warrant proceedings (**requested persons**) from the time of their arrest in the executing Member State **in accordance with Article 17.**

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<sup>13</sup> CZ and NL have a Parliamentary reservation on the entire text.

<sup>14</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1).

3. **Member States may provide that this Directive, in particular Articles 4, 7, 8, 10 and 16 thereof, shall apply also to suspects or accused persons subject to criminal proceedings referred to in paragraph 1, and to persons subject to European arrest warrant proceedings referred to in paragraph 2, who were children when they became subject to these proceedings, but who subsequently have become of age.**<sup>15</sup>
4. This Directive also applies to children other than suspected or accused who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.
5. This Directive does not affect national rules determining the age of criminal responsibility.

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<sup>15</sup> COM has a reservation on this Article, which is acceptable to all delegations. For reasons of legal certainty, COM considers that the safeguards of the Directive should also apply to children that have become of age.

**5a.**<sup>16</sup> **Without prejudice to the right to a fair trial, in respect of minor offences:**

- (a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or**
- (b) where deprivation of liberty cannot be imposed as a sanction,**

**this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.**

**In any event, this Directive shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.**

**6. This Directive does not apply to proceedings in relation to children who have committed an act qualified as an offence, where these proceedings may not<sup>17</sup> lead to the imposition of any criminal sanction, but which may lead to the imposition of restrictive measures on children.<sup>18</sup>**

### *Article 3*

#### **Definition**

For the purposes of this Directive the term "child" means a person below the age of 18 years.

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<sup>16</sup> See recitals 11a, 11b and 11c. COM considers that the initially proposed "tailor-made" approach with regard to the exemption of minor offences would be preferable, and that proceedings before the public prosecutor should be covered as foreseen in its proposal.

<sup>17</sup> This paragraph is acceptable to a very large majority of delegations. COM, however, has a reservation, since it is of the opinion that the expression "may not" should be replaced by "cannot". According to COM, only the latter expression is able to set a clear distinction between criminal proceedings and other (non-criminal, disciplinary) proceedings.

<sup>18</sup> See also recital 11d.

*Article 4*<sup>19</sup>

**Information to be provided to children**

1. Member States shall ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU. They shall also be informed **promptly** about their **rights and entitlements on the following issues, where and when these rights and entitlements apply**:
  - (a) **the information to be given to a** holder of parental responsibility, as provided for in Article 5;
  - (b) **the right of access** to a lawyer, as provided for in Article 6;
  - (c) **the assistance by a lawyer, as provided for in Article 6a**;
  - (d) the individual assessment, as provided for in Article 7;
  - (e) **the access to** medical examination, as provided for in Article 8;
  - (f) the **limitation of detention and use of alternative measures**, as provided for in Article 10;
  - (g) the specific treatment in detention, as provided for in Article 12;
  - (h) the protection of privacy, as provided for in Article 14;
  - (i) **the right to be accompanied by an adult during the court hearings**, as provided for in Article 15;
  - (j) the right to appear in person at the trial, as provided for in Article 16;
  - (k) legal aid, as provided for in Article 18.
  
2. Member States shall ensure that, where children are **arrested or detained**, the Letter of Rights given to them pursuant to Directive 2012/13/EU includes their rights **and entitlements** under this Directive.

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<sup>19</sup> COM has a reservation on this Article, in particular on the words "and when" in the heading of the first paragraph.

## Article 5

### Information to be provided to a holder of parental responsibility

1. Member States shall ensure that a holder of parental responsibility <sup>20</sup> is provided **as soon as possible** with the information that the child receives in accordance with Article 4.
  
2. **Where providing the information referred to in paragraph 1 to a holder of parental responsibility**
  - (a) **would be contrary to the best interests of the child;**
  - (b) **could jeopardise the criminal proceedings; or**
  - (c) **is not possible, because no holder of parental responsibility can be reached or his/her identity is unknown,**

**the information shall be provided to another appropriate adult, nominated by the child and accepted as such by the competent authority, or to a person designated by the competent authority, who can also be an authority or other institution responsible for the protection or welfare of children.**

## Article 6 <sup>21</sup>

### Right of access to a lawyer

Member States shall ensure that children have the right of access to a lawyer throughout the criminal proceedings in accordance with Directive 2013/48/EU.

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<sup>20</sup> COM considers that both holders of parental responsibility should be informed. See however recital 15, where it is provided that "*If there are two holders of parental responsibility, Member States should inform both holders, unless this is not practicable.*"

<sup>21</sup> See also recital 16.

*Article 6a*<sup>22</sup>

Assistance by a lawyer

1. **Member States shall ensure that children, who have the right of access to a lawyer in accordance with Article 6, are assisted by a lawyer in the following situations:**
  - (a) **when they are questioned by the police, or by other law enforcement or judicial authorities, including during the trial, unless this is not proportionate taking account of the following elements:**
    - i) **the complexity of the case;**
    - ii) **the seriousness of the alleged offence;**
    - iii) **the maximum penalty that can reasonably be expected to be imposed.**
  - (b) **when they are deprived of liberty, unless the deprivation of liberty is supposed to last only for a short period of time.**
  
2. **Where the child has to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child for a reasonable period of time. However, in exceptional circumstances and only during the pre-trial stage, the competent authorities may immediately proceed with the questioning when, in the light of the particular circumstances of the case, this is justified on the basis of one of the following compelling reasons:**
  - (a) **where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;**
  - (b) **where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.**

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<sup>22</sup> See recital 17. COM has a reservation on this Article, as it considers that the current wording considerably weakens the safeguard that was initially proposed.

*Article 7*

**Individual assessment**

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.
2. For that purpose children shall be individually assessed. The assessment shall take particular account of the personality and maturity of the child and their **familial** and social background.
3. The individual assessment shall take place at the **earliest** appropriate stage of the proceedings and, **at the latest, in due time for it to be taken into account by the court when sentencing.**
4. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the seriousness of the alleged offence and the penalty which will be imposed if the child is found guilty of the alleged offence, whether or not the child has **in the past** come to the attention of competent authorities in the context of criminal proceedings.
5. Individual assessments shall be carried out with the close involvement of the child.
6. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.

7. Member States may derogate from the obligation in paragraphs 1 **and 2** when it is not proportionate to carry out an individual assessment taking into account the circumstances of the case, **including the lack of seriousness of the alleged offence**, and whether or not the child has **in the past** come to the attention of Member State authorities in the context of criminal proceedings.

*Article 8*<sup>23</sup>

**Access to medical examination**

1. In case of deprivation of liberty of a child, Member States shall ensure that the child has access to a medical examination with a view, in particular, to assessing the general mental and physical condition of the child.
  
2. **The medical examination shall be carried out either *ex officio* by the competent authorities, when specific health indications or the general mental or physical constitution of the child give reasons for such a medical examination, or following a request by any of the following persons:**
  - (a) the child,
  - (b) a holder of parental responsibility or another appropriate adult referred to in Article 5;
  - (c) the child's lawyer.

**A request for a medical examination may be refused if it is obvious that such request has been made with the sole purpose of delaying the criminal proceedings. In the cases of (b) and (c), the request can also be rejected if the examination would go against the best interests of the child.**

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<sup>23</sup> See also recital 20.



3. The conclusion of the medical examination shall be recorded in writing.
4. Member States shall ensure that the medical examination is repeated where the circumstances so require.

*Article 9*

**Questioning of children**<sup>24</sup>

1. Member States shall ensure that questioning of children by police or other law enforcement authorities carried out prior to the **submission of the merits of the accusation before a court may be** audio-visually recorded.
2. When children are deprived of liberty, Member States shall ensure that questioning as referred to in paragraph 1 **shall be** audio-visually recorded when this is **proportionate, taking account of the following elements:**
  - (a) **the complexity of the case;**
  - (b) **the seriousness of the alleged offence;**
  - (c) **the maximum penalty that can be imposed or that can reasonably be expected to be imposed.**
- 2a. **However, as an exception to paragraph 2, Member States may decide not to proceed to an audio-visual recording when the questioning takes place in the presence of a lawyer.**

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<sup>24</sup> See also recital 21. COM has a reservation on this Article, as the wording of this Article would be too vague. COM expressed also misgivings on paragraph 2a, observing that the recording of interviews and the presence of a lawyer are different safeguards, which do not have the same purpose.

- 3. When it is proportionate to make an audio-visual recording in accordance with paragraph 2 but an unforeseeable technical problem renders it impossible to make such recording, the police or other law enforcement authorities may question the child without an audio-visual recording if questioning of the child is imperative**
- a) because of an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; or**
  - b) to prevent substantial jeopardy to criminal proceedings.**
- 4. This Article is without prejudice to the possibility to ask questions for the purpose of personal identification of the child without such audio-visual recording.**

*Article 10*<sup>25</sup>

**Limitation of detention and use of alternative measures**

1. Member States shall ensure that **detention of a child at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence**, shall only be a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, **and of the particular circumstances of the case.**
2. Member States shall ensure that any **detention** as referred to in paragraph 1 is subject to a periodic review by a court. Such review **shall be carried out either *ex officio* by the court, or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court.**
3. Member States shall ensure that, **wherever possible**, the competent authorities shall have recourse to alternative measures **instead of detention as referred to in paragraph 1.**

*Article 11*

**Alternative measures**

[deleted / moved to Article 10 and recitals]

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<sup>25</sup> See also recitals 25 and 25a.

*Article 12*

**Specific treatment in case of detention**<sup>26 27</sup>

1. Member States shall ensure that children **who are detained at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence, are held** separately from adults, unless it is considered in the child's best interest not to do so.
  - 1a. When a detained child reaches the age of 18 years, Member States shall **endeavour to** provide the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the detained person.
  - 1b. **Without prejudice to paragraph 1, children may be detained with young adults unless these persons are not suited for joint accommodation with children.**

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<sup>26</sup> See also recitals 26 and 26a.

<sup>27</sup> In accordance with Article 2(1), this Article, like the rest of the Directive, shall only apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal. This Article will therefore only concern (pre-trial/provisional) detention. COM considers that this Article should also apply to the execution phase. Contrary to a very large majority of delegations, COM is of the opinion that Article 82(2)(b) TFEU provides a sufficient legal basis in that respect. Further, COM opposes the introduction of paragraph 1b, as it is of the opinion that - in accordance with international standards - children should be held separately from adults, unless it is considered in the child's best interest not to do so. COM is also concerned that no age limit has been fixed for young adults in the operative part of the text (but see recital 26a).

2. When children are **detained in accordance with paragraph 1**, Member States shall take all appropriate measures to:

- (a) ensure and preserve the health and physical development of the child,
- (b) ensure the right to education and training of the child,
- (c) ensure effective and regular exercise of the right to family life,
- (d) foster the **child's** future integration into society.

**The measures taken shall be proportionate and appropriate to the period of detention.**

*Article 13*

**Timely and diligent treatment of cases**

1. Member States shall **take appropriate measures to** ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

*Article 14*  
**Protection of privacy**<sup>28</sup>

1. Member States shall ensure that **the privacy of children during criminal proceedings is protected.**
  
2. **To that end, the Member States shall take appropriate measures, such as protecting the personal characteristics of the child that are taken into account and derive from the individual assessment referred to in Article 7, protecting the records referred to in Article 9(1) and 9(2) and avoiding that any inappropriate use of these records is made, and protecting the images of the child and its family members.**
  
3. **This Article shall not prevent the competent authorities from publicly disseminating information that can lead to the identification of a child when this is strictly necessary in the interest of the criminal proceedings.**

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<sup>28</sup> See also recital 28.

*Article 15*<sup>29</sup>

**Right of the child to be accompanied by an adult during the court hearings**

- 1. Member States shall ensure that children have the right to be accompanied by a holder of parental responsibility during court hearings in which they are involved.**
  
- 2. In the situations where**
  - (a) it is not possible for a holder of parental responsibility to accompany the child during a court hearing in which the child is involved;**
  - (b) no holder of parental responsibility is willing to accompany the child;**
  - (c) it would be contrary to the best interests of the child to be accompanied by a holder of parental responsibility; or**
  - (d) the presence of a holder of parental responsibility could prejudice the criminal proceedings,**

**the child has the right to be accompanied by another appropriate adult acceptable to the court.**

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<sup>29</sup> See recitals 29 and 29a.

*Article 16* <sup>30</sup>

**Right of children to appear in person at the trial aiming at assessing the question of their guilt**

1. Member States shall ensure that children **have the right to be present at the trial aiming at assessing the question of their guilt. Member States shall take appropriate measures to promote that children are present at their trial.**
2. **Member States shall determine in their national law the conditions under which children, who were not present at their trial, have the right to a new trial or another legal remedy at which they can be present and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.**

*Article 17* <sup>31</sup>

**European Arrest Warrant proceedings**

Member States shall ensure that the rights **and entitlements** referred to in Articles 4, 5, 6a, 8, 12(1), 13 and 14 shall apply *mutatis mutandis* in respect of a requested child upon his arrest pursuant to European arrest warrant proceedings in the executing Member State.

*Article 18*

**Right to legal aid**

**This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR.**

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<sup>30</sup> See recital 30. COM has a reservation on this Article, in particular on the addition of the term "*other legal remedy*" in paragraph 2.

<sup>31</sup> See recital 31a. COM has a reservation on this Article.



### **Training**

1. Member States shall ensure that law enforcement authorities and staff **of detention facilities** who deal with cases involving children receive **adequate training to a level appropriate to their contact with children** with regard to children's legal rights, appropriate interviewing techniques, child psychology, communication in a language adapted to the child and pedagogical skills.
  - 1a. **Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available the training referred to in paragraph 1.**
2. **With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of children.**
3. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

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<sup>32</sup> COM has a reservation on this Article as it considers that the needs of juvenile justice systems are not adequately addressed by the current wording of this Article.

Article 20<sup>33</sup>

**Data collection**

Member States shall by [*two years after the date mentioned in Article 23.1*] and every three years thereafter, send to the Commission **available** data showing how the rights set out in this Directive have been implemented.

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<sup>33</sup> See also recital 33.

**Costs**

1. Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, **unless these costs are covered in any other way.**
  
2. <sup>35</sup> **Without prejudice to the right of access to justice, Member States may provide that a court may order to reimburse the costs mentioned in paragraph 1 if the following two conditions are complied with:**
  - (a) **the child has been convicted; and**
  - (b) **the reimbursement of the costs will not jeopardise the child's further development.**

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<sup>34</sup> See also recital 32.

<sup>35</sup> COM, supported by BE, BG, FR and LU, opposes this new paragraph, considering that a reimbursement measure would not be in line with the objective of the Directive which is to ensure and enhance procedural safeguards for children. According to COM, Articles 7-9 are specific protection measures justified by the particular vulnerability of a child. Applying a differentiated regime according to the ruling of the judge would be disproportionate to the aim of the protection measures. Moreover, it could also have a chilling effect on a child's access to justice as it could prevent a child, parent or lawyer from exercising their rights. In general, according to standard ECHR case-law, to be compatible with Article 6(1) ECHR a restriction on the right to access to justice should pursue a legitimate aim and there should be a proper balance between the interests of the State to recover court fees and the interest of the defendant. COM also referred to point 35 of the Council of Europe guidelines on child-friendly justice ("Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel should be removed.") Finally, a reimbursement clause could undermine the objective of the directive. Given that Articles 7-9 give Member States a certain discretion, the issue of cost could become de facto part of the proportionality test Member States may apply. The question whether maybe the costs could or could not eventually be recovered would become part of the equation. COM also referred to Article 4 of Directive 2010/64/EU (right to interpretation and translation), according to which "Member States shall meet the costs of interpretation and translation (...), *irrespective of the outcome of the proceedings.*" According to COM, the same reasoning should apply in this situation.

*Article 22*

**Non-regression clause**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.

*Article 23*

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 months after its publication<sup>36</sup>]. They shall immediately inform the Commission thereof
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

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<sup>36</sup> COM has a reservation on the period of 36 months.

*Article 24*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 25*

**Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at [Brussels],

*For the European Parliament*

*The President*

*For the Council*

*The President*