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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  
- Revised text following the DROIPEN Working Party and the Friends of the Presidency meeting on 6 March 2014

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On 6 March 2014, the DROIPEN Working Party and the Friends of the Presidency examined the text of the entire proposal, except Article 12, which will be examined once the opinion of the Council Legal Service on the interpretation of the words "*criminal procedure*" in Article 82(2)(b) TFEU is available. <sup>1</sup> During the examination, the delegations also provided provisional feed-back on Presidency suggestions following the orientation debate in the Council.

On the basis of the input by the Member States during the meeting, the Presidency suggests making some further changes, see the underlined text in the Annex.

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<sup>1</sup> The Presidency was informed by the Council Legal Service that the opinion will become available as soon as possible after the meeting on 19 and 20 March 2014.

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>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas: <sup>4</sup>

- (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>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> The recitals have not yet been all discussed.

- (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>5</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.<sup>6</sup>**
- (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>5</sup> OJ C 295, 4.12.2009, p. 1.

<sup>6</sup> Recitals 4 and 4a contain standard language coming from Measures A, B and C.

<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 at the time when they become suspected or accused of having committed an offence, regardless of their age during the criminal proceedings until the final judgment.
- (9) This Directive should also apply in respect of offences which have been committed after the age of 18 years by the same suspect or accused person and which are jointly investigated and prosecuted as they are inextricably linked to offences where criminal proceedings started against that person before the age of 18.
- (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.

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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) 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 favorable changes in the children's personality and behavior, 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 the holder of parental responsibility and mandatory access to 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) Children should have the right to have the holder of parental responsibility informed about applicable procedural rights, either orally or in writing. This information should be provided promptly 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. Where it would be contrary to the best interests of the child to inform the holder of parental responsibility of those rights, another appropriate adult should be informed.

**(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 exclusion for minor offences set out in Article 2(4) of that Directive and the derogations for compelling reasons set out in Article 3(6) of that Directive.**

**(17) Since children are vulnerable and are not always able to fully understand and follow criminal proceedings, they should in addition be granted the right to be assisted by a lawyer in certain situations. In these situations, Member States should arrange or appoint a lawyer when the children have not arranged for a lawyer themselves, or when the holder of parental responsibility has not arranged a lawyer for the child concerned.**

(former recital 17 and 18 have been 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 on an initiative *ex officio* of the competent authorities, for instance if there are indications that such examination is necessary to verify the ability of the child to be questioned, or following a request of the child, the holder of the parental responsibility, or the child’s lawyer, unless it is obvious that such request has been made with the sole purpose of delaying the criminal proceedings. 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 of children should be audio-visually recorded. This does not include questioning necessary to identify the child.
- (22) However, it would be disproportionate to require the competent authorities to ensure audio-visual recording in all circumstances. Due account should be taken of the complexity of the case, the seriousness of the alleged offence and the potential penalty that can be incurred. If a child is deprived of liberty before conviction, any questioning of the child should be audio-visually recorded.<sup>12</sup>
- (23) Such audio-visual records should be accessible only to the judicial authorities and the parties to the proceedings. Moreover, the questioning of children should be carried out in a manner that takes into account their age and level of maturity.
- (24) When deciding the issue of legal aid, Member States should aim at having rules which guarantee the effective exercise of the right to access to a lawyer for children.

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<sup>12</sup> Recital to be revised in the light of the final text of Article 9.

- (25) Children are in a particularly vulnerable position in relation to detention. Special efforts should be undertaken to avoid deprivation of liberty of children given the inherent risks for their physical, mental and social development. **Except in cases where only a very short period of deprivation of liberty is envisaged,** the competent authorities should consider alternative measures **instead of deprivation of liberty** 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.**
- (26) When deprivation of liberty is imposed on children, 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.<sup>13</sup> 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) **Deprivation of liberty of children before their conviction should be subject to a periodic review by a court, which could also be a single judge. The periodic review may be carried out *ex officio* by the court, or at the request of the child, the holder of parental responsibility of the child, or the child's lawyer. 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, the holder of parental responsibility or the child's lawyer to carry out such review.**

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<sup>13</sup> Text to be aligned with the final text of Article 12(1).



- (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 both 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, and of the general principle of a public hearing.**
- (29) In order to ensure appropriate assistance and support of children, the holder of parental responsibility or another appropriate adult should have access to the court hearings involving the suspected or accused child.
- (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.
- (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 fully their rights under this Directive in European arrest warrant proceedings, those time-limits should be respected.**
- (32) Any 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 other way, e.g. through a medical insurance.**
- (33) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of data by the Member States with regard to the implementation of the rights set out in this Directive. 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 3 of Protocol No 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, those Member States have notified their wish to participate in the adoption and application of this Directive] OR [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]<sup>14</sup>;

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<sup>14</sup> The final wording of this recital in the Directive will depend on the position of the United Kingdom and Ireland taken in accordance with the provisions of Protocol No 21.

- (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>15</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>15</sup> OJ C 369, 17.12.2011, p. 14.

*Article 1*

**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>16</sup> (“European arrest warrant proceedings”).

*Article 2*<sup>17</sup>

**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.**
  
- [1a. **As an exception to paragraph 1, Article 12 also applies during the phase of the execution of a sentence.**]<sup>18</sup>

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<sup>16</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).

<sup>17</sup> Various delegations asked to insert an exception for minor cases in this Article. The Commission explained however that since this is a horizontal Directive covering several rights, some of which are already contained in existing Directives, it would be better to have tailor-made exclusions for minor offences. As for Articles 4 and 6 (new), the words "in accordance with Directive 2012/13/EU" mean that the exclusion for minor offences as contained in that Directive also applies in the context of the present Directive. Article 7 has its own exclusion for minor offences in paragraph 7 (and see also paragraph 4). Article 8 only applies in case of deprivation of liberty. Article 9 has its own exclusion for minor offences in paragraph 1b.

<sup>18</sup> This provision will be discussed after receipt of the written legal opinion to the Council Legal Service on the question of "scope" (interpretation of the notion of "criminal procedure" in Article 82(2)(b) TFEU).

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.**
  
3. **Articles 7, 8, 10 and 16 of** this Directive, **as well as Article 4 in so far as it refers to these Articles,** 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 committed the alleged criminal offence and who are subject to criminal proceedings that started when they were children, but who subsequently have become of age. Member States may decide that other provisions of this Directive shall also continue to apply in the same situation.**<sup>19</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.
  
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 lead to the imposition of any criminal sanction, but which may lead to the imposition of restrictive measures on children.**<sup>20</sup>

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<sup>19</sup> This new provision is currently being scrutinised by Member States.

<sup>20</sup> See also recital 11a.

*Article 3*

**Definition**

For the purposes of this Directive the term "child" means a person below the age of 18 years, **who is suspected or accused in criminal proceedings or, in the context of Article 17, who is subject to European arrest warrant proceedings.**<sup>21</sup>

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<sup>21</sup> Presidency suggestion to clarify the meaning of "child" in the context of this Directive.

## Article 4

### Right to information of children

1. Member States shall ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU.<sup>22</sup> They shall also be informed **promptly** about the following rights within the same scope as Directive 2012/13/EU, **where and when**<sup>23</sup> **these rights apply:**
  - (1) their right to have the holders of parental responsibility informed, as provided for in Article 5;
  - (2) their right to a lawyer, as provided for in Article 6;
  - (3) their right to an individual assessment, as provided for in Article 7;
  - (4) their right to a medical examination, as provided for in Article 8;
  - (5) their right to liberty, as provided for in Article 10;
  - (6) [their right to specific treatment in detention, as provided for in Article 12;]<sup>24</sup>
  - (7) their right to protection of privacy, as provided for in Article 14;
  - (8) their right that the holders of parental responsibility have access to the court hearings, as provided for in Article 15;
  - (9) their right to appear in person at the trial, as provided for in Article 16;
  - (10) their right to legal aid, as provided for in Article 18.<sup>25</sup>
  
2. Member States shall ensure that, where children are **arrested or detained**,<sup>26</sup> the Letter of Rights given to them pursuant to Directive 2012/13/EU includes their rights under this Directive.

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<sup>22</sup> Please note that the exclusion of minor offences set out in Directive 2012/13/EU also applies in the context of this Directive.

<sup>23</sup> The addition of the words "and when" is meant to ensure that the child receives each element of information when this is most appropriate ; the child should not be overwhelmed with information at the beginning of the proceedings. At the same time, the addition allows to take away the distinction between situations when the child is at large and deprived of liberty. COM has a scrutiny reservation on this change.

<sup>24</sup> This point depends on the outcome of the request for a written legal opinion to the Council Legal Service on the question of "scope".

<sup>25</sup> See new text in Article 18.

<sup>26</sup> Same language as in Article 4(1) of Directive 2012/13/EU (right to information).



*Article 5*

**Right of the child to have the holder of parental responsibility informed**

1. Member States shall ensure that the holder of parental responsibility of the child or, where that would be contrary to the best interests of the child, another appropriate adult, **designated by the competent authority**, is provided **as soon as possible**<sup>27</sup> with the information that the child receives in accordance with Article 4.
  
2. When the child is deprived of liberty, Member States may temporarily derogate from the application of the paragraph 1 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 there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.**
  
- 3. Where Member States temporarily derogate from the application of the right set out in paragraph 2, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.**<sup>28</sup>

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<sup>27</sup> Same language as in Article 5(2) of Directive 2013/48/EU (right of access to a lawyer).

<sup>28</sup> Paragraphs 2 and 3 reiterate Articles 5(3) and 5(4) of Directive 2013/48/EU respectively. COM has a scrutiny reservation on this provision.

**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. (...)

**Article 6a**<sup>31</sup>

**Right to be assisted by a lawyer**

**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:**

- 1) when they are deprived of liberty;**
  
- 2) when they are questioned by law enforcement or judicial authorities, or when the competent authorities proceed to any investigating or evidence gathering act mentioned in Article 3(3) under c) of Directive 2013/48/EU, except when this is not proportionate for any of the following reasons :**
  - a) the lack of complexity of the case;**
  - b) the lack of seriousness of the alleged offence;**
  - c) the maximum penalty that can be imposed.**<sup>32</sup>

**Where the child has the right 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 or postpone carrying out the investigating or evidence gathering act concerned.**

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<sup>29</sup> See recital 16.

<sup>30</sup> In order to clarify the text and avoid a potentially difficult debate about the interpretation of Directive 2013/48/EU, the Presidency suggests splitting Article 6 into two Articles, 6 and 6a. Article 6 now simply confirms that children, like other suspects and accused persons, have the right of access to a lawyer in accordance with Directive 2013/48/EU. Article 6a states that children, who are vulnerable, have in addition the right to be assisted by a lawyer.

<sup>31</sup> See recital 17.

<sup>32</sup> These points could be further explained in recital 17.

*Article 7*

**Right to an individual assessment**

**(provisionally agreed)**<sup>33</sup>

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.

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<sup>33</sup> COM has a scrutiny reservation on this Article.

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>34</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 may be carried out *ex officio* by the competent authorities or following a request of any of the following persons:**
  - (a) the child,
  - (b) the holder of the parental responsibility or the appropriate adult referred to in Article 5;  
the child's lawyer.
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.

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<sup>34</sup> See also recital 20.

## Article 9

### Questioning of children

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.
  - 1a. **In any event**, the questioning of children **as referred to in paragraph 1** shall be audio-visually recorded where the child is deprived of liberty.
  - 1b. **Member States may derogate from paragraph 1a if making an audio-visual recording is not proportionate for any of the following reasons :**
    - a) **the lack of complexity of the case;**
    - b) the lack of seriousness of the alleged offence;**
    - c) the maximum penalty that can be imposed;**
    - d) **when an unforeseeable technical problem makes it impossible to proceed to audio-visual recording, and it is imperative to question the child because of an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person.**
2. [deleted]
3. **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*

**Right to liberty and alternative measures**

1. Member States shall ensure that **deprivation of liberty of children 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.
2. Member States shall ensure that any deprivation of liberty as referred to in paragraph 1 is subject to a periodic review by a court. Such review **may be carried out *ex officio* by the court, or at the request of the child, the holder of parental responsibility or the child's lawyer.** <sup>35</sup>
3. Member States shall ensure that, **wherever possible**, the competent authorities have recourse to alternative measures **instead of deprivation of liberty.** <sup>36</sup>

*Article 11*

**Alternative measures**

[deleted / moved to Article 10 and recitals]

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<sup>35</sup> See also recital 26a.

<sup>36</sup> It is clarified in recital 25 that short-term deprivation of liberty is not envisaged by this Article.

Article 12

**Right to specific treatment in case of deprivation of liberty**<sup>37</sup>

- [1. Member States shall ensure that children are detained separately from adults, unless it is considered in the child's best interest not to do so. 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.
2. Member States shall, during the period of deprivation of liberty<sup>38</sup>, 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 ~~including the maintenance of family ties,~~
  - (d) foster the ~~development of the child and its~~ **child's** future integration into society.]

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<sup>37</sup> The scope and consequent drafting of this Article will be examined after examination of the written legal opinion of the Council Legal Service on the issue of "criminal procedure" in Article 82(2)(b) TFEU.

<sup>38</sup> Accompanying recital (suggestion):

*"When a child is deprived of liberty, Member States should take appropriate measures in order to promote the well-being of the child. Such measures could concern the health and physical development of the child, the education and training of a child, the child's family life and the future integration into society of child. The measures should be taken if and when appropriate, taking into account notably the expected period of deprivation of liberty of the child. When a child is deprived of liberty during only a short period of time, Member States should normally be obliged to take none or less measures than when a child is deprived of liberty during a long period of time."*

*Article 13*

**Timely and diligent treatment of cases**

**(provisionally agreed)**

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.
2. [ <sup>39</sup> ]

*Article 14*

**Right to protection of privacy**

1. Member States shall ensure that **the privacy of children during criminal proceedings is protected.** <sup>40</sup>
2. (...) Member States shall ensure that the competent authorities do not publicly disseminate information, **including names and images,** that could lead to the identification of the child **or its family members,** unless this is strictly necessary for conducting the criminal proceedings efficiently.
3. Member States shall ensure that the records referred to in Article 9(1) **and 9(1a)** are not publicly disseminated.

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<sup>39</sup> Text moved to recital 27a.

<sup>40</sup> See also recital 28.



*Article 15*

**Right of access to court hearings of a holder of parental responsibility**

Member States shall ensure that **at least one** holder of parental responsibility or, **where that would be contrary to the best interests of the child,** another appropriate adult as referred to in Article 5 have access to the court hearings involving the child.

*Article 16*<sup>41</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 favour that children are present at their trial.**

**2. Member States may provide for a possibility under which the trial court may decide on the guilt in the absence of the child, provided that the child:**

**(a) in due time:**

**(i) either was summoned in person and thereby informed of the scheduled date and place of the trial, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the child was aware of the scheduled trial;**

**and**

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<sup>41</sup> The new text in this Article and in Article 16a is inspired by the text set out in Articles 8 and 9 of the proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings (17621/13 + ADD 1 + ADD 2 + ADD 3). COM has a scrutiny reserve.

**(ii) was informed that a decision may be handed down if the child does not appear for the trial; or**

**(b) being aware of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that lawyer at the trial.**

**3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision intended in that paragraph if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the child has the right to participate 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, the child:**

**(a) expressly states that he or she does not contest the decision;**

**or**

**(b) does not request a retrial or appeal within a reasonable time frame.**

#### **Article 16a**

#### **Right to a retrial**

**Member States shall ensure that where a children was not present at the trial referred to in Article 16(1) and the conditions laid down in Article 16(2) and (3) are not met, the child has the right to a new trial at which he or she has the right to 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>42</sup> <sup>43</sup>

**European Arrest Warrant proceedings**

1. Member States shall ensure that a requested child has the rights referred to in Articles 4, 5, 6, 8, 10, 11, 12, 14 and 15 (...<sup>44</sup>) in the executing Member State upon arrest pursuant to European arrest warrant proceedings.
2. Without prejudice to Article 12 of the Framework Decision 2002/584/JHA, the executing authorities shall take all measures to limit the duration of the deprivation of liberty of children subject to European arrest warrant proceedings.

*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.** <sup>45</sup>

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<sup>42</sup> See also recital 31a.

<sup>43</sup> This Article is subject to further scrutiny by Member States. It was suggested to invite the COPEN group to have a look at this Article. One delegation felt that the Article should be deleted altogether. COM observed, however, that all other measures also contain provisions on the European Arrest Warrant.

<sup>44</sup> The reference to Article 18 (legal aid) is deemed not to be relevant anymore in view of the redrafting of that Article.

<sup>45</sup> This text is the same as that in Article 11 of Directive 2013/48/EU (right of access to a lawyer). The more substantive rules on legal aid will be set out in the context of the proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings (17635/13 + ADD 1 + ADD 2 + ADD 3)

## Article 19

### Training

1. Member States shall ensure that law enforcement authorities and staff **of detention facilities** who deal with cases involving children receive particular training with regard to children's legal rights, appropriate interviewing techniques, child psychology, communication in a language adapted to the child and pedagogical skills.<sup>46</sup>
- 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 particular 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.**<sup>47</sup>
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.<sup>48</sup>

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<sup>46</sup> Paragraph 1 has been split in two provisions. "Member States shall *ensure* ..." is now employed in relation to law enforcement authorities and staff of detention facilities, "Member States shall *request* ..." is used in relation to judges and prosecutors. Compare Article 25 of Directive 2012/29/EU (Victims Directive).

<sup>47</sup> Compare Article 25(3) of Directive 2012/29/EU (Victims Directive).

<sup>48</sup> Compare Article 25(4) of Directive 2012/29/EU (Victims Directive).

*Article 20*

**Data collection**

**(provisionally agreed)** <sup>49</sup>

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.

*Article 21*

**Costs**

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.** <sup>50 51</sup>

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<sup>49</sup> See also recital 33.

<sup>50</sup> See also recital 32.

<sup>51</sup> Some Member States are of the opinion that it should be possible to recover the costs made for the individual assessment, medical examination and audio-visual recording in the situation where the child is convicted and the child or his/her parents have sufficient means to pay (partly) for the costs. The Commission opposed, referring 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 the Commission, the same reasoning should apply in this situation.

*Article 22*

**Non-regression clause**

**(provisionally agreed)**

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**

**(provisionally agreed)**<sup>52</sup>

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24/~~36~~ months after its publication]. 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>52</sup> COM has a reservation on the period of 36 months.

*Article 24*  
**Entry into force**  
**(provisionally agreed)**

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*