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*Committee on Civil Liberties, Justice and Home Affairs*

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**2013/0408(COD)**

19.11.2014

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# **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on procedural safeguards for children suspected or accused in criminal  
proceedings  
(COM(2013)0822 – C7-0428/2013 – 2013/0408(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Caterina Chinnici

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings (COM(2013)0822 – C7-0428/2013 – 2013/0408(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0822),
  - having regard to Article 294(2) and Article 82(2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0428/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2014),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive

#### Recital 3

*Text proposed by the Commission*

(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.

*Amendment*

(3) Although ***the Charter of Fundamental Rights of the European Union applies, under certain conditions, to Member States and*** 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 ***these facts in themselves do*** not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

Or. it

## Amendment 2

### Proposal for a directive

#### Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) Given the case law of the Court of Justice of the European Union and the European Court of Human Rights, the criminal nature of proceedings cannot always be determined purely on the strength of their classification, and of the penalties which may be imposed, in national law. In order to achieve the aims of the Treaties and of this Directive and to ensure full respect for fundamental rights, including those set out in the Charter of Fundamental Rights and the ECHR, it is therefore appropriate, for the purposes of this Directive, to take into account not only the formal classification***

*of proceedings in national law, but also their effects on the lives and development of the children concerned. This Directive should be applied, in any event, where there is a possibility that proceedings will give rise to a criminal record.*

Or. it

#### *Justification*

*The recital is based on the precedent set by the Engel case, consistently followed by both the Strasbourg and the Luxembourg Court, and emphasises the need to ensure that Member States fully respect fundamental rights and to prevent violations giving rise to European court rulings.*

### **Amendment 3**

#### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) The safeguards provided for in this Directive should therefore be applied, with such adjustments as might be necessary, to all proceedings which might entail restrictive measures or, at any rate, significant consequences for children's lives and hence influence the development processes that shape their personalities, and in cases where, although no punishment is inflicted, proceedings could end with a decision giving to understand – if only implicitly – that the person concerned was responsible for the offence with which he or she had been charged. In all such cases, application of this Directive should not be ruled out by the fact that the proceedings did not result from actions termed criminal offences in national law, do not take place in a criminal court, or entail penalties formally classed as criminal in national law.*

*Justification*

*The recital is based on the precedent set by the Engel case, consistently followed by both the Strasbourg and the Luxembourg Court, and emphasises the need to ensure that Member States fully respect fundamental rights and to prevent violations giving rise to European court rulings. The reference to ‘such adjustments as might be necessary’ reflects the flexible approach that needs to be brought to bear when applying the directive to the cases concerned.*

**Amendment 4****Proposal for a directive****Recital 9***Text proposed by the Commission*

(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.**

*Amendment*

(9) This Directive should also apply in respect of offences which have been committed after **the suspect or accused person had reached** the age of 18 years, **where such offences** are jointly investigated and prosecuted as they are inextricably linked to offences **to which this Directive is applicable.**

*Justification*

*Given that there has to be a presumption of innocence, it does not seem proper to speak of offences committed ‘by the same suspect or accused person’. The change to the final part allows for the alterations to the scope of the directive.*

**Amendment 5****Proposal for a directive****Recital 10***Text proposed by the Commission*

(10) When, at the time a person becomes a suspect or accused person in criminal

*Amendment*

(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.

proceedings, that person is above the age of 18, Member States *should, especially if the offence was committed before the child in question had reached the age of 18,* apply the procedural safeguards *provided for* by this Directive *at least* until this person reaches the age of 21.

Or. it

#### *Justification*

*The reference to the cut-off age of 21, designed to allow for the fact that the transition to adulthood is generally a longer process in wealthy countries, appeared in point 11 of the earlier recommendation issued by the Council of Europe Committee of Ministers on 24 September 2003 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.*

### **Amendment 6**

#### **Proposal for a directive**

##### **Recital 11**

###### *Text proposed by the Commission*

(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.

###### *Amendment*

(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. ***Where a person's age is still in doubt, that person should, for all purposes, be presumed to be the age of a child.***

Or. it

### **Amendment 7**

#### **Proposal for a directive**

##### **Recital 14**

*Text proposed by the Commission*

(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>26</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>26</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).

*Amendment*

(14) The term “holder of parental responsibility” means any person having parental responsibility over a child as defined in Council Regulation (EC) **No** 2201/2003<sup>26</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>26</sup> Council Regulation (EC) **No** 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).

Or. it

*Justification*

*(The rapporteur’s amendment to the beginning affects the Italian version only.)*

**Amendment 8**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(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

*Amendment*

(15) Children should have the right **also** to have the holder of parental responsibility informed about applicable procedural rights, orally **and** 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.

of those rights, another appropriate adult should be informed.

Or. it

## Amendment 9

### Proposal for a directive

#### Recital 16

##### *Text proposed by the Commission*

(16) Children should not be able to waive their right of access to a lawyer because they are not able to fully understand and follow criminal proceedings. Therefore, the presence *or* assistance of a lawyer should be mandatory for children.

##### *Amendment*

(16) Children should not be able to waive their right of access to a lawyer because they are not able to fully understand and follow criminal proceedings. Therefore, the presence *and* assistance of a lawyer should be mandatory for children.

Or. it

## Amendment 10

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

(17) In some Member States an authority other than a public prosecutor and a court having jurisdiction in criminal matters has competence for imposing penalties 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 the competent authorities to *ensure mandatory access to* a lawyer. Where the law of a Member State provides for the imposition of a penalty regarding minor offences by such an authority and there is

##### *Amendment*

(17) In some Member States an authority other than a public prosecutor and a court having jurisdiction in criminal matters has competence for imposing penalties 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 *might not be in the best interests of the child* to require the competent authorities to *make the assistance of* a lawyer *a right that cannot be waived*. Where the law of a Member State provides for the imposition of a

either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, mandatory **access to** a lawyer should therefore apply only to the proceedings before that court following such an appeal or referral. In some Member States proceedings involving children may be dealt with by public prosecutors who may impose penalties. In such proceedings children should have mandatory **access to** a lawyer.

penalty 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, mandatory **assistance by** a lawyer should therefore apply only to the proceedings before that court following such an appeal or referral. In some Member States proceedings involving children may be dealt with by public prosecutors who may impose penalties. In such proceedings children should have **the mandatory assistance of** a lawyer.

Or. it

## Amendment 11

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(18) 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. It **would be disproportionate** to require the competent authorities to **ensure mandatory access to** a lawyer in respect of such minor offences. **Where the law of a Member State provides that deprivation of liberty cannot be imposed as a penalty in respect of minor offences**, the right to mandatory access to a lawyer should **therefore apply only** to proceedings before a court having jurisdiction in criminal matters.

#### *Amendment*

(18) 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. It **might not be in the best interests of the child** to require the competent authorities to **make the assistance of** a lawyer **a right that cannot be waived** in respect of such minor offences. The right to mandatory **assistance by** a lawyer should apply **in every case** to proceedings before a court having jurisdiction in criminal matters.

Or. it

## Amendment 12

### Proposal for a directive Recital 19

*Text proposed by the Commission*

(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.***

*Amendment*

(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 ***ensure that every decision taken during, or resulting from, the proceedings is tailored to the greatest extent possible to their particular circumstances.***

Or. it

#### *Justification*

*The amendment proceeds from the premiss a child's guilt is established by the court after it has concluded the proceedings. Individual assessment, on the other hand, should serve to provide useful information to help determine the most appropriate measures to take at each stage. To avoid misunderstandings, and to spell out the general purpose of individual assessment more clearly, the recital should be amended as shown above. The enacting terms of the directive would, however, be a suitable place to enlarge upon some of the points mentioned in the original text of the recital.*

## Amendment 13

### Proposal for a directive Recital 20

*Text proposed by the Commission*

(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. The medical examination should be carried out by a physician.

*Amendment*

(20) In order to ensure the personal integrity of a child who is arrested or detained, ***assess his or her general physical and mental state, and determine whether he or she should be subjected to questioning, investigative or evidence-taking measures, or any special measures taken or envisaged concerning him or her, that child, together, where the***

*proceedings so require, with any other child under investigation or accused,* should have access to a medical examination. The medical examination should be carried out by a physician.

Or. it

## Amendment 14

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(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.

*Amendment*

(21) *Bearing in mind that children are particularly vulnerable, questioning may be perceived to be traumatic, and it is essential that it take place in the presence of the lawyer and, where appropriate, the holder of parental responsibility or another appropriate adult and/or specialist professionals. Audio-visual recording of interviews is a vital safeguard serving both to guarantee that interviews will be conducted properly and* to ensure sufficient protection of children who are not always able to understand the content of interviews to which they are subject. *In order* to avoid any challenge of the content of an interview and thereby undue repetition of questioning, questioning of children should *therefore* be audio-visually recorded. This does not include questioning necessary to identify the child.

Or. it

## Amendment 15

### Proposal for a directive Recital 22

*Text proposed by the Commission*

(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.

*Amendment*

(22) However, it would be ***unreasonable*** to require the competent authorities to ensure audio-visual recording ***even when this was not in the best interests of the child.*** If a child is deprived of liberty before conviction, any questioning of the child should be audio-visually recorded.

Or. it

*Justification*

*Given that modern technology is making it ever easier and ever cheaper to make video recordings, and given the importance of the guarantees such recordings provide, an exception should be made only if this is in the best interests of the child.*

**Amendment 16**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(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. The competent authorities should consider alternative measures and impose such measures whenever this is in the best interests of the child. This may include the obligation to report to a competent authority, a restriction on contact with specific persons, a requirement to undergo therapeutic treatment or treatment for addiction and participation in educational measures.

*Amendment*

*(Does not affect English version.)*

*Justification*

*(Does not affect English version.)*

**Amendment 17**

**Proposal for a directive  
Recital 28**

*Text proposed by the Commission*

(28) Children should be judged in the absence of the public in order to protect their privacy and to facilitate their re-integration into society. In ***exceptional*** cases the court ***may decide that*** a hearing ***should be held publicly after it has taken due account of the best interests of the child.***

*Amendment*

(28) Children should be judged in the absence of the public in order to protect their privacy and to facilitate their re-integration into society. ***Only in special cases should the court be allowed, taking into account the best interests of the child, to hold a hearing in public. Member States should seek to protect the privacy of children in connection with criminal proceedings and their outcome, having regard also to breaches that might be committed through the media, including the Internet, and to facilitate the reintegration into society of children involved in criminal proceedings, to that end taking steps to prevent discrimination and marginalisation.***

**Amendment 18**

**Proposal for a directive  
Article 2 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. This Directive also applies to persons who at the time of becoming suspects or accused persons in criminal proceedings are aged over 18 but under 21, where the offences in question were committed***



*before those persons had reached the age of 18.*

Or. it

*Justification*

*The reference to the cut-off age of 21, designed to allow for the fact that the transition to adulthood is generally a longer process in wealthy countries, appeared in point 11 of the earlier recommendation issued by the Council of Europe Committee of Ministers on 24 September 2003 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.*

**Amendment 19**

**Proposal for a directive  
Article 3 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

For the purposes of this Directive:

- the term “child” means a person below the age of 18 years. *Where, even after checks, doubts remain about a person’s age, that person shall, for all purposes, be presumed to be the age of a child.*

Or. it

**Amendment 20**

**Proposal for a directive  
Article 3 – paragraph 1 – indent 1 a (new)**

*Text proposed by the Commission*

*Amendment*

- the term “holder of parental responsibility” means any person having parental responsibility over a child as defined in Article 2(7) of Council Regulation (EC) No 2201/2003.

## Amendment 21

### Proposal for a directive

#### Article 4 – paragraph – introductory part

*Text proposed by the Commission*

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 about the following rights within the same scope as Directive 2012/13/EU:***

*Amendment*

1. Member States shall ensure that children are informed promptly – ***in writing and orally, by procedures appropriate to their age, understanding, and intellectual ability*** – about ***the conduct of the proceedings and*** their rights in accordance with Directive 2012/13/EU, ***including*** the following rights:

Or. it

## Amendment 22

### Proposal for a directive

#### Article 4 – paragraph 1 – point 2

*Text proposed by the Commission*

(2) their right to a lawyer, as provided for in Article 6;

*Amendment*

(2) their right to ***be assisted by*** a lawyer, as provided for in Article 6;

Or. it

*Justification*

*In line with the changes made to Article 6.*

## Amendment 23

### Proposal for a directive

#### Article 4 – paragraph 1 – point 5

*Text proposed by the Commission*

(5) their right to liberty and the right to specific treatment in detention, as provided for in Articles 10 and 12;

*Amendment*

(5) their right to liberty and the right to specific treatment ***when arrested or*** in detention, as provided for in Articles 10 and 12;

Or. it

*Justification*

*The addition is in line with the new paragraph to be inserted in Article 12 on the safeguards applying when children are arrested.*

**Amendment 24**

**Proposal for a directive**

**Article 4 – paragraph 1 – point 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) their right to effective remedies, as provided for in Article 19.***

Or. it

*Justification*

*The addition is linked to the insertion of a new article on effective remedies, worded in similar terms to other directives in the ‘road map’ package.*

**Amendment 25**

**Proposal for a directive**

**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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, is provided with the information that the child receives in accordance with

Member States shall ensure that the holder of parental responsibility ***for*** the child or, where that ***is impossible or*** would be contrary to the best interests of the child, another appropriate adult, ***to be specified by the child and approved by the***

Article 4.

*competent authority or – if the child has not specified any such person – a person designated by the competent authority and accepted by the child, is provided as quickly as possible with the information that the child receives in accordance with Article 4.*

Or. it

*Justification*

*Given that the ‘other’ appropriate adult might be called upon to play a key role when the holder of parental responsibility cannot be approached, the rapporteur has thought fit to specify how a person considered another appropriate adult should be selected for the purposes of the above article and the entire directive, which uses the same expression in several other places. In those cases too the general rule set out above will accordingly have to be applied.*

**Amendment 26**

**Proposal for a directive  
Article 6 – title**

*Text proposed by the Commission*

*Amendment*

Right to **a** mandatory **access to** a lawyer

Right to mandatory **assistance by** a lawyer

Or. it

*Justification*

*The wording proposed is intended to make it clearer that the lawyer must be able to buoy up and help the child in the proceedings, instead of merely being a source of ‘outside’ support.*

**Amendment 27**

**Proposal for a directive  
Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that children are assisted by a lawyer **throughout** the **criminal** proceedings **in accordance with**

1. Member States shall ensure that children are assisted by a lawyer **at every stage of** the proceedings. The right to **be assisted by**

**Directive 2013/48/EU.** The right to **access to** a lawyer cannot be waived.

a lawyer cannot be waived.

Or. it

*Justification*

*The wording proposed is intended to make it clearer that the lawyer must be able to buoy up and help the child over the entire course of the proceedings, instead of merely being a source of 'outside' support.*

**Amendment 28**

**Proposal for a directive  
Article 7 – paragraph 2**

*Text proposed by the Commission*

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 economic and social background.

*Amendment*

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 **family**, economic, and social background **and their living environment. More vulnerable children shall receive particular attention.**

Or. it

*Justification*

*'More vulnerable children' are also mentioned in the definitions set out in the guidelines of the Council of Europe Committee of Ministers on child-friendly justice.*

**Amendment 29**

**Proposal for a directive  
Article 7 – paragraph 3**

*Text proposed by the Commission*

3. The individual assessment shall take place at **an** appropriate stage of the proceedings and in any event before indictment.

*Amendment*

3. The individual assessment shall take place at **the earliest** appropriate stage of the proceedings and in any event before indictment **or the imposition of measures involving deprivation of liberty, except**

*where this is impossible.*

Or. it

*Justification*

*Given its importance for the proceedings as a whole, it should be clearly stated that individual assessment must take place at an early stage. If the assessment cannot precede deprivation of liberty, it must be carried out immediately afterwards.*

**Amendment 30**

**Proposal for a directive  
Article 7 – paragraph 4**

*Text proposed by the Commission*

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 previously come to the attention of competent authorities in the context of criminal proceedings.***

*Amendment*

4. The extent and detail of the individual assessment may vary depending on the circumstances of the case, ***taking into account the best interests of the child.***

***The assessment shall serve to establish and record such information about the individual characteristics and circumstances of the child as might be of use to the competent authority in order to:***

***(a) determine whether special measures concerning the child should be taken during the proceedings;***

***(b) assess the appropriateness and effectiveness of any precautionary measures;***

***(c) take decisions within its remit arising from the proceedings.***

Or. it

### *Justification*

*The additions are intended to spell out more clearly what should be the aims and substance of individual assessment, which should serve to establish and record every item of useful information enabling the child's best interests to be properly reflected and taken into account in all decisions that the competent authority might be called upon to take in the course of the proceedings.*

### **Amendment 31**

#### **Proposal for a directive Article 7 – paragraph 5**

*Text proposed by the Commission*

5. Individual assessments shall be carried out with the close involvement of the child.

*Amendment*

5. Individual assessments shall be carried out with the close involvement of the child.  
***They shall be carried out by qualified personnel, following a multidisciplinary approach and, where deemed advisable, with the involvement of the holder of parental responsibility or another appropriate adult and/or specialist professionals.***

Or. it

### *Justification*

*The purpose of the additional details is to clarify how, depending on the particular circumstances, individual assessment could be carried out in order to achieve the aims specified in the preceding paragraph.*

### **Amendment 32**

#### **Proposal for a directive Article 7 – paragraph 7**

*Text proposed by the Commission*

7. Member States may derogate from the obligation ***in paragraph 1 when it is not proportionate*** to carry out an individual assessment ***taking into account the circumstances of the case and whether or not the child has previously come to the***

*Amendment*

7. Member States may derogate from the obligation to carry out an individual assessment ***or to provide in so doing for the close involvement of the child if the derogation is warranted by the circumstances of the case or is in the best***

*attention of Member State authorities in the context of criminal proceedings.*

*interests of the child.*

Or. it

*Justification*

*Given the purpose and importance of individual assessment, exceptions should not be permitted unless they are required for practical reasons or consistent with the best interests of the child.*

**Amendment 33**

**Proposal for a directive  
Article 8 – paragraph 1**

*Text proposed by the Commission*

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 with the aim *to determine* the capacity of the child to face questioning or other investigative or evidence gathering acts or any measures taken or envisaged against the child.

*Amendment*

1. Member States shall ensure, *when a child has been deprived of liberty or when the proceedings so require*, that the child has access *without delay* to a medical examination with a view, in particular, to assessing the general mental and physical condition of the child with the aim *of determining* the capacity of the child to face questioning or other investigative or evidence gathering acts or any measures taken or envisaged against the child.

Or. it

**Amendment 34**

**Proposal for a directive  
Article 8 – paragraph 3**

*Text proposed by the Commission*

3. The conclusion of the medical examination shall be recorded in writing.

*Amendment*

3. The conclusion of the medical examination shall be recorded in writing *and all steps necessary to protect the physical and mental health of the child shall be taken without delay.*



### Amendment 35

#### Proposal for a directive Article 9 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that any questioning of children by police or other law enforcement or judicial authority carried out **prior to the indictment** is audio-visually recorded, unless **it** is not **proportionate taking into account the complexity of the case, the seriousness of the alleged offence and the potential penalty that can be incurred.**

*Amendment*

1. Member States shall ensure that any questioning of children by police or other law enforcement or judicial authority carried out is audio-visually recorded, unless **this** is not **in the best interests of the child.**

Or. it

*Justification*

*Given that modern technology is making it ever easier and ever cheaper to make video recordings, and given the importance of the guarantees such recordings provide, an exception should be made only if this is in the best interests of the child.*

### Amendment 36

#### Proposal for a directive Article 11 – paragraph 2 – point d

*Text proposed by the Commission*

(d) **undergoing of** therapeutic **treatment** or **treatment for** addiction,

*Amendment*

(d) **participation in** therapeutic or addiction **treatment programmes,**

Or. it

### Amendment 37

#### Proposal for a directive Article 11 – paragraph 2 – point e

*Text proposed by the Commission*

*Amendment*

(e) participation in educational measures.

*(Does not affect English version.)*

Or. it

*Justification*

*(Does not affect English version.)*

### **Amendment 38**

**Proposal for a directive**

**Article 12 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. Member States shall ensure that arrests of children are carried out on the basis of procedures, and with safeguards, appropriate to the child's age and degree of maturity and that, once detained, the child may be visited immediately by the holder of parental responsibility or another appropriate adult as referred to in Article 5.***

Or. it

*Justification*

*Arrest and questioning can be one of the most traumatic times for children involved in criminal proceedings. There therefore needs to be a core set of basic safeguards, in keeping with the Council of Europe guidelines on child-friendly justice.*

### **Amendment 39**

**Proposal for a directive**

**Article 12 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that children are detained separately from adults, ***unless it is considered in the child's best interest***

1. Member States shall ensure that children are detained separately from adults ***and may, when they reach*** the age of 18 years,

*not to do so. When a detained child reaches the age of 18 years, Member States shall provide the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the detained person.*

*continue to be detained separately unless it is considered to be in their best interests not to do so.*

Or. it

#### **Amendment 40**

##### **Proposal for a directive Article 12 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) ensure and preserve the health and physical development of the child,

*Amendment*

(a) ensure and preserve the health and physical **and mental** development of the child,

Or. it

#### **Amendment 41**

##### **Proposal for a directive Article 12 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) protect the dignity and identity of the child,**

Or. it

#### **Amendment 42**

##### **Proposal for a directive Article 12 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall ensure that effective means of complaint and remedies are available to detained children, their lawyers and holders of parental responsibility or other appropriate adults. Member States shall also ensure that independent inspections are carried out on a periodic basis to check the state of detention facilities and the treatment of inmates, and shall take appropriate action on the findings.***

Or. it

*Justification*

*With a view to ensuring that the state of the facilities in which persons involved in criminal proceedings are held and the manner in which they are treated are appropriate and in keeping with their fundamental rights, Member States should ensure that they have effective means of complaint and redress and that independent bodies carry out periodic inspections of detention facilities.*

### **Amendment 43**

#### **Proposal for a directive Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the holder of parental responsibility or another appropriate adult as referred to in Article 5 have access to the court hearings involving the child.

***Except in cases where this would not be in the best interests of the child,*** Member States shall ensure that the holder of parental responsibility or another appropriate adult as referred to in Article 5 have access to the court hearings involving the child ***and can, where appropriate, be present during other stages in the proceedings at which the child is present.***

Or. it

### *Justification*

*In view of how important it is for a child to have the holder of parental responsibility or another appropriate adult close by during the proceedings, States should, in the best interests of the child, allow them to be present, except where there are good reasons for them not to be. The presence of the holder of parental responsibility is viewed as not merely a right, but a duty, under point 10 of the Council of Europe Committee of Ministers recommendation of 24 September 2003.*

#### **Amendment 44**

##### **Proposal for a directive Article 16 – title**

*Text proposed by the Commission*

*Amendment*

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

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

Or. it

### *Justification*

*This change is intended to emphasise the need for the child to take a full and informed part in the proceedings, rather than merely being present.*

#### **Amendment 45**

##### **Proposal for a directive Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that children ***are present at*** the trial.

1. Member States shall ensure that children ***can participate in*** the trial ***and shall take all necessary steps to enable them to participate fully, including by giving them the opportunity to be heard and to express their views.***

Or. it

*Justification*

*This change is intended to emphasise the need for the child to take a full and informed part in the proceedings, rather than merely being present. The right of children to be heard – either directly or through a representative – in any proceedings affecting them, in accordance with the procedures laid down by national law, is provided for in Article 12 of the Convention of the Rights of the Child adopted by the UN General Assembly on 20 November 1989, in the recommendation of the Council of Europe Committee of Ministers and in Article 24 of the EU Charter of Fundamental Rights.*

**Amendment 46**

**Proposal for a directive  
Article 18 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to **access to** a lawyer as referred to in Article 6.

*Amendment*

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to **be assisted by** a lawyer as referred to in Article 6.

Or. it

*Justification*

*In line with the change made to Article 6.*

**Amendment 47**

**Proposal for a directive  
Article 18 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 18a**

**Remedies**

***Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.***

*Justification*

*For the sake of consistency and effectiveness, this provision, which appears in Article 12 of Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in 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 while deprived of liberty, should be included in this directive as well.*

## EXPLANATORY STATEMENT

The proposal for a directive on procedural safeguards for children suspected or accused in criminal proceedings comes under the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council on 30 November 2009<sup>1</sup>, together with a number of other measures that have already been adopted<sup>2</sup> or are currently under discussion<sup>3</sup>.

The Stockholm Programme put a strong focus on strengthening of the rights of individuals in criminal proceedings. Laying down common minimum standards guaranteeing sufficiently uniform enjoyment of the right to a fair trial at all stages in proceedings by persons under the age of 18 is in keeping with the objective of facilitating mutual recognition of sentences and judicial decisions in criminal matters and ensuring the smooth operation of the European area of justice.

The proposal for a directive also forms part of the EU Agenda for the Rights of the Child<sup>4</sup> and seeks to promote children's rights with reference to other instruments as well, including the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice<sup>5</sup>, given that those instruments do not have the binding force of EU legislation, as a result of which the safeguards they provide are not fully and uniformly applied in the Member States.

According to the Commission's estimates, more than 1 million children are involved in criminal proceedings in the EU each year (12% of the overall number). Furthermore, there are major disparities in the way in which children involved in criminal proceedings are treated in the various Member States. EU research shows that, at present, children's rights are not being sufficiently protected at the various stages in criminal proceedings in the EU; countless judgments against Member States have been handed down by the European Court of Human Rights.

Despite the large number of international legal instruments in this area, there is no definition of what constitutes a 'fair trial' for children, and courts are therefore obliged to hand down judgments on the basis of an incomplete and fragmentary body of law.

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<sup>1</sup> Council Resolution of 30 November 2009 on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings.

<sup>2</sup> The measures already adopted include: Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings; Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in 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 while deprived of liberty; the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings; and the Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings.

<sup>3</sup> These include the proposal for a directive on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings, submitted on 27 November 2013 and 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, also submitted on 27 November 2013.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 15 February 2011.

<sup>5</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Council of Europe Committee of Ministers on 17 November 2010.



Currently, only six Member States (Belgium, Czech Republic, Greece, Italy, Luxembourg and Slovakia) have dedicated juvenile prosecution services, and nine Member States do not even have juvenile courts. Special training for judges and lawyers who come into contact with children in their work is compulsory in only 12 Member States. In some Member States, there is no legal obligation for children to be assisted by a lawyer; in others, it is available only in the courts, but not in police stations; in others still, the decision is up to the relevant court. As a result, a substantial number of children in the EU do not enjoy the basic right to be assisted by a lawyer.

It is against this background that the Commission has submitted the proposal before us, which seeks to lay down a limited but properly structured catalogue of rights for children suspected or accused in criminal proceedings (or subject to European arrest warrant proceedings) based on a set of minimum, interconnected standards geared to meeting the specific needs of children at all stages in proceedings.

The rapporteur endorses the aims of the proposal and the general approach taken, as well as all the main provisions, the most important of which are: the mandatory right to be assisted by a lawyer, in close connection with the right to free legal aid; the right to an individual assessment; the rules on questioning; the provision for the child to take part in the proceedings; compulsory special training for judges, law enforcement authorities and prison staff, lawyers and others who come into contact with children in their work; the provisions on detention, under which children should be held on remand only where there is no alternative, and in such cases, it must be ensured that the children are held separately from adults, except where it is in their best interests not to do so.

The rapporteur is tabling a number of amendments, which seek almost exclusively to enhance, extend, strengthen or clarify the various rights set out in the Commission proposal.

The only additions to this catalogue of rights are a new article on remedies for infringement of the rights set out in the proposal and a new paragraph at the start of Article 12 (on the right to specific treatment in case of deprivation of liberty), the purpose of which is to establish a number of basic safeguards, including the right of a child to be visited by the holder of parental responsibility or another appropriate adult, in connection with the arrest of children, which is not covered by the Commission proposal.

The proposed extensions to rights include the general extension of the scope of the directive to cover young people between the ages of 18 and 21, where the offence in question was committed before the age of 18.

There are several other proposals to extend or strengthen specific rights. The rapporteur also takes the general view that derogations should be allowed only on the basis of case-by-case assessments of the best interests of the child, and not on that of criteria that would be still vaguer (or, conversely, excessively rigid) and, above all, would bear little relation to the problems that the safeguards are intended to address, and has amended the proposal accordingly.

The amendments seeking to clarify the provisions proposed by the Commission include those to Article 5, which sets out how the 'other appropriate adult' who is to act in place of the holder of parental rights is to be designated, and Article 7, where the main aims of the individual assessment are set out in greater detail.

At all times, particular care has been taken to ensure that the establishment of special

safeguards taking account the age and vulnerability of children suspected or accused in criminal proceedings will not give rise to distortions that will prevent criminal proceedings from playing their proper role, which is to determine, objectively and impartially, whether a given person can be held criminally responsible for a given offence.