



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 December 2013

17642/13

**DROIPEN 161
COPEN 238
CODEC 2932**

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 November 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	C(2013) 8178 final
Subject:	Commission Recommendation of 27.11.2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings

Delegations will find attached Commission document C(2013) 8178 final.

Encl.: C(2013) 8178 final



Brussels, 27.11.2013
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COMMISSION RECOMMENDATION

of 27.11.2013

on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings

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on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The aim of this Recommendation is to encourage Member States to strengthen the procedural rights of all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities ("vulnerable persons").
- (2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Recommendation should strengthen the trust of Member States in criminal justice systems of other Member States and can thus help improve the mutual recognition of decisions in criminal matters.
- (3) The Stockholm Programme¹ put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals setting out a step by step approach² to strengthening the rights of suspects or accused persons.
- (4) Three measures have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council³, Directive 2012/13/EU of the European Parliament and of the Council⁴ and Directive 2013/48/EU of the European Parliament and the Council⁵.
- (5) References in this Recommendation to suspects or accused persons who are deprived of liberty should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) of the ECHR, as interpreted by the case-law of the European Court of Human Rights.
- (6) It is essential that the vulnerability of a person suspected or accused in criminal proceedings is promptly identified and recognised. For that purpose, an initial assessment should be carried out by police officers, law enforcement or judicial

¹ OJ C 115, 4.5.2010, p.1

² OJ C 291, 4.12.2009, p.1

³ 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).

⁴ 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).

⁵ 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).

authorities. The competent authorities should also be able to ask an independent expert to examine the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged against the vulnerable person.

- (7) Suspects or accused persons or their lawyers should have the right to challenge, in accordance with national law, the assessment of their potential vulnerability in criminal proceedings, in particular if this would significantly impede or restrict the exercise of their fundamental rights. That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism, or a complaint procedure in which such failure or refusal may be challenged.
- (8) The term "legal representative" means a person who represents the interests and oversees the legal affairs of a vulnerable person. An example is notably a court appointed guardian of a vulnerable person.
- (9) The term "appropriate adult" means a relative or a person with a social relationship with the vulnerable person who is likely to interact with the authorities and to enable the vulnerable person to exercise his or her procedural rights.
- (10) Vulnerable persons need appropriate assistance and support during criminal proceedings. For that purpose the legal representative of a vulnerable suspect or accused person or an appropriate adult should be informed as soon as possible of the criminal proceedings against him, of the nature of the accusation, the procedural rights and the available remedies. The legal representative or an appropriate adult should be notified as soon as possible of the deprivation of liberty and be informed about the reasons for it, unless it is contrary to the person's best interests.
- (11) Persons who are recognised as particularly vulnerable are not able to follow and understand the criminal proceedings. In order to ensure that their fair trial rights are ensured, they should not be able to waive their right to a lawyer.
- (12) In order to ensure the personal integrity of a vulnerable person who is deprived of liberty, vulnerable persons should have access to medical examination assessing their general condition and compatibility of possible measures taken against them with their condition.
- (13) Vulnerable persons are not always able to understand the content of police interviews to which they are subject. In order to avoid any contestation of the content of an interview and thereby undue repetition of questioning, these interviews should be audio-visually recorded.
- (14) Subject to the specific circumstances of each case, the state of vulnerability should not constitute an obstacle for the suspected or accused person to have access to material evidence held by the competent authorities with regard to the criminal case in question in the exercise of their procedural rights and with a view to the right to effective remedies.
- (15) This Recommendation applies to vulnerable persons who are subject to surrender procedure pursuant to Council Framework Decision 2002/584/JHA⁶ (European arrest warrant proceedings). The competent authorities in the executing Member State should apply the specific procedural rights of this Recommendation to European Arrest warrant proceedings.

⁶ 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)

- (16) References in this Recommendation to appropriate measures to ensure effective access to justice for persons with disabilities should be understood in light of the objectives defined in the 2006 United Nations Convention on the rights of persons with disabilities and in particular in Article 13 thereof.
- (17) In order to ensure that professionals in contact with vulnerable persons are aware of the specific needs of these persons, they should receive adequate training.
- (18) This Recommendation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to promote the right to liberty, the right to a fair trial and the rights of defence.
- (19) Member States should inform the Commission on the follow up on this Recommendation within [36 months] of its notification. Based on this information, the Commission should monitor and assess the measures taken by Member States,

RECOMMENDS:

SECTION 1

SUBJECT-MATTER AND SCOPE

1. This Recommendation calls upon Member States to strengthen certain procedural rights of vulnerable suspects or accused persons in criminal proceedings and of vulnerable persons who are subject to European arrest warrant proceedings.
2. The specific procedural rights of vulnerable persons should apply from the time they are suspected of having committed an offence. Such rights should apply until the conclusion of the proceedings.
3. Vulnerable persons should be associated in accordance with their best interests to the exercise of procedural rights taking into account their ability to understand and effectively participate in the proceedings.

SECTION 2

IDENTIFICATION OF VULNERABLE PERSONS

4. Vulnerable persons should be promptly identified and recognised as such. Member States should ensure that all competent authorities may have recourse to a medical examination by an independent expert to identify vulnerable persons, and to determine the degree of their vulnerability and their specific needs. This expert may give a reasoned opinion on the appropriateness of the measures taken or envisaged against the vulnerable person.

SECTION 3

RIGHTS OF VULNERABLE PERSONS

Non-discrimination

5. Vulnerable persons should not be subject to any discrimination under national law in the exercise of the procedural rights referred to in this Recommendation.
6. The procedural rights granted to vulnerable persons should be respected throughout the criminal proceedings taking into account the nature and degree of their vulnerability.

Presumption of vulnerability

7. Member States should foresee a presumption of vulnerability in particular for persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering them to understand and effectively participate in the proceedings.

Right to information

8. Persons with disabilities should receive upon request information concerning their procedural rights in a format accessible to them.
9. Vulnerable persons and, if necessary, their legal representative or an appropriate adult should be informed of the specific procedural rights referred to in this Recommendation, in particular those relating to the right to information, the right to medical assistance, the right to a lawyer, the respect of privacy and, where appropriate, the rights related to pre-trial detention.
10. The legal representative or an appropriate adult who is nominated by the vulnerable person or by the competent authorities to assist that person should be present at the police station and during court hearings.

Right of access to a lawyer

11. If a vulnerable person is unable to understand and follow the proceedings, the right to access to a lawyer in accordance with Directive 2013/48/EU should not be waived.

Right to medical assistance

12. Vulnerable persons should have access to systematic and regular medical assistance throughout criminal proceedings if they are deprived of liberty.

Recording of questioning

13. Any questioning of vulnerable persons during the pre-trial investigation phase should be audio-visually recorded.

Deprivation of liberty

14. Member States should take all steps to ensure that deprivation of liberty of vulnerable persons before their conviction is a measure of last resort, proportionate and taking place under conditions suited to the needs of the vulnerable person. Appropriate measures should be taken to ensure that vulnerable persons have access to reasonable accommodations taking into account their particular needs when they are deprived of liberty.

Privacy

15. Competent authorities should take appropriate measures to protect the privacy, personal integrity and personal data of vulnerable persons, including medical data, throughout the criminal proceedings.

European Arrest Warrant proceedings

16. The executing Member State should ensure that a vulnerable person who is subject to European Arrest Warrant proceedings has the specific procedural rights referred to in this Recommendation upon arrest.

Training

17. Police officers, law enforcement and judicial authorities competent in criminal proceedings conducted against vulnerable persons should receive specific training.

SECTION 4

MONITORING

18. Member States should inform the Commission on the measures taken to give effect to this Recommendation, by [*36 months after notification*].

SECTION 5

FINAL PROVISIONS

19. This Recommendation is addressed to the Member States.

Done at Brussels, 27.11.2013

For the Commission
Viviane REDING
Vice-President