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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

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Subject: Commission Staff Working Document  
Executive Summary of the Impact Assessment accompanying the

- Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings
- Commission Recommendation of 27.11.2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings

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Delegations will find attached Commission document SWD(2013) 481 final.

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Brussels, 27.11.2013  
SWD(2013) 481 final

**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the*

**Proposal for**

**Measures on special safeguards for children and vulnerable adults suspected or accused  
in criminal proceedings**

{ COM(2013) 822 final }

{ SWD(2013) 480 final }

{ SWD(2013) 492 final }

# COMMISSION STAFF WORKING DOCUMENT

## EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

*Accompanying the*

**Proposal for**

**Measures on special safeguards for children and vulnerable adults suspected or accused in criminal proceedings**

### **1. PROBLEM DEFINITION**

#### **1.1. The general problems**

##### **(1) Insufficient protection of fair trial rights of children and vulnerable adults on the basis of the current international and European legal framework**

Despite the existence of common principles and minimum standards stemming from the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (ECHR) and other international law instruments, the fair trial rights of vulnerable persons (i.e. children as persons below the age of 18 years old and vulnerable adults such as persons with mental impairments, physical or psychological weaknesses<sup>1</sup>) throughout the various stages of criminal proceedings are, at present, not sufficiently guaranteed within the EU and may therefore not prevent breaches of Article 6 of the ECHR.

##### **(2) No overarching protection of children and vulnerable adults by the measures already adopted according to the Stockholm Programme**

Moreover, the measures relating to procedural rights which have already been adopted in the EU following the Stockholm Programme<sup>2</sup> do not provide sufficient guarantees to ensure that vulnerable persons can effectively exercise their rights. Although they foresee certain safeguards for all suspects and accused persons they do not take account of the specific needs of suspected and accused vulnerable persons arising at the various stages of criminal proceedings (e.g. appropriate assessment mechanisms of their vulnerability, mandatory access to a lawyer, medical assistance, specific training for law enforcement authorities and judges etc.). In fact, the Stockholm Programme and the ensuing Commission Action Plan<sup>3</sup> explicitly foresee that a specific measure should be adopted to provide common minimum rules for vulnerable persons in addition to the other procedural rights measures. Without such an instrument the protection of suspects or accused persons in criminal proceedings would not be complete and the objectives of the Stockholm Programme and the Roadmap on Procedural Rights<sup>4</sup> could not be fully achieved.

##### **3) The insufficient protection of children and vulnerable adults affects mutual trust and hampers the smooth functioning of mutual recognition**

The lack of adequate protection of procedural safeguards for children and vulnerable adults may result in insufficient mutual trust between judicial authorities and thereby hamper judicial cooperation in criminal matters. As the principle of mutual recognition is the

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<sup>1</sup> Vulnerable adults are not defined in any international or European legal instrument.

<sup>2</sup> OJ C 115, 4.5.2010, p.1

<sup>3</sup> COM(2010) 171 final, 20.4.2010

<sup>4</sup> OJ C 295, 4.12.2009, p.1

cornerstone of the area of justice, it is necessary to enhance mutual trust for the effective functioning of the area of Freedom, Security and Justice. To establish this climate of mutual trust, the Member States have indicated in the Roadmap on Procedural Rights the measures that are considered necessary to achieve these minimum standards of mutual trust. Specific safeguards for vulnerable persons are comprised in the measures foreseen.

### **1.2. Affected group of people**

The number of children facing criminal justice is about 1.086.000 across the EU, i.e. 12% of the total of the European population facing criminal justice. For vulnerable adults, about 4 - to 8% of the total population facing criminal justice could face any kind of impairment that prevent them to fully participate in criminal proceedings.

### **1.3. Reaction from Member States and stakeholders**

Member States and stakeholders (e.g. bar associations, NGO's, family associations) clearly underlined the need for specific safeguards for vulnerable persons (in particular children). In this context, they highlighted the insufficient and patchy implementation of international standards and the absolute need to establish common minimum rules among EU Member States. All safeguards set out in the Impact Assessment were largely discussed and supported, in particular mandatory access to a lawyer was considered as a key measure. It was suggested to deal separately with children and vulnerable adults given, *inter alia*, the absence of a common definition of vulnerable adults.

## **2. ANALYSIS OF SUBSIDIARITY**

There is a need for EU action based on the following three factors:

(1) *Enhancing mutual trust between judicial authorities*: the lack of adequate protection of children and vulnerable adults also results today in an insufficient trust between judicial authorities, which undermines judicial cooperation in criminal matters having a cross-border dimension. In the Stockholm Programme, the European Council invited the Commission to propose special safeguards for the protection of vulnerable persons (covering both, children and vulnerable adults).

(2) *Movement of persons*: children and vulnerable adults can be involved in criminal proceedings outside their own Member State. The needs of these suspects or accused persons need to be tackled at EU level.

(3) *The limits of international standards*: the ECHR already sets European-wide fair trial standards but its enforcement mechanisms cannot guarantee a sufficient and consistent level of compliance by its signatory States, including EU Member States<sup>5</sup>. Moreover, the lack of enforceability of International Conventions addressing children and disabled persons, which the Union has ratified, render a coherent EU wide application of such standards unlikely.

## **3. OBJECTIVES OF EU INITIATIVE**

<b>Objectives:</b>
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<sup>5</sup> Even recurring CPT reports issued to Member State governments calling on them to ensure that arrested suspects are provided at an early stage with access to legal advice have only led to a minority of Member States to adopt a system of notification by such means.

<b>General:</b>	<ul style="list-style-type: none"> <li>▪ An effective standard of protection of fundamental procedural rights for vulnerable persons suspected and accused in criminal proceedings will be guaranteed.</li> <li>▪ Mutual trust will be enhanced thus facilitating mutual recognition of judgments and judicial decisions in the EU and improving judicial cooperation in the EU.</li> </ul>
<b>Specific:</b>	<ul style="list-style-type: none"> <li>▪ <b>A:</b> The vulnerability of persons suspected and accused in criminal proceedings is adequately assessed at the very beginning and throughout the criminal proceedings.</li> <li>▪ <b>B:</b> Vulnerable suspected or accused persons are duly assisted in criminal proceedings and have access to a lawyer which is compulsory, and as right, which cannot be waived, in order to allow them to understand and effectively participate in the criminal proceedings.</li> <li>▪ <b>C:</b> Vulnerable persons, in particular children, have a set of adequate procedural safeguards taking into account their special needs at all stages of the criminal proceedings (e.g. police interrogations, hearings, detention).</li> </ul>
<b>Operational:</b>	<ul style="list-style-type: none"> <li>▪ <b>A.1:</b> Appropriate assessment mechanisms concerning the vulnerability of children and vulnerable adults are put in place from the very beginning of the criminal proceedings starting with their first contact with law enforcement or judicial authorities.</li> <li>▪ <b>B.1:</b> Children and vulnerable adults will be duly assisted by parents/legal representatives or an appropriate adult during the proceedings.</li> <li>▪ <b>B.2:</b> Children and vulnerable adults will benefit from mandatory access to a lawyer from the very beginning of the criminal proceedings in order to enable them to effectively participate in the proceedings.</li> <li>▪ <b>C.1:</b> Children and vulnerable adults will receive appropriate safeguards taking into account their specific needs at the various stages of criminal proceedings (e.g. audio-video recording during police interviews, protection of privacy rules, limitations of pre-trial detention).</li> </ul>

#### 4. POLICY OPTIONS

Four main policy options were considered in detail:

<b>Option 1 Status quo</b>	<b>Retention of the status quo.</b> This option would involve taking no action at EU level.
<b>Option 2 Low level of obligation</b>	<b>Non-legislative action (soft law)</b> that supports the protection of the rights of vulnerable persons suspected and accused in criminal proceedings through, for example, monitoring and evaluation of the treatment, training and good practices dissemination.

<b>Option 3</b> <b>Medium level of obligation</b>	<b>Option 3</b> sets <b>minimum rules applying the ECtHR <i>acquis</i> and pertinent aspects of relevant international provisions</b> on procedural safeguards for the protection of vulnerable persons suspected and accused in criminal proceedings.
<b>Option 4</b> <b>High level of obligation</b>	<b>Option 4</b> is the <b>most ambitious and prescriptive option</b> which <b>goes beyond Option 3 with regard to certain safeguards</b> . These additional safeguards would include an in-depth assessment of vulnerability, enhanced medical examination (for vulnerable adults), audio-video recording of police interviews, specially trained judges, access to educational or recreational activities in detention.
Options 3 and 4 could take the form of either a Directive or a Recommendation. Elements of both options may be combined. It is intended to take separate actions in the form of a <b>Directive for children</b> and a <b>Recommendation for vulnerable adults</b> .	

## 5. ASSESSMENT OF IMPACTS

### 5.1. Effectiveness in achieving policy objectives

- Option 1- the inadequate level of protection of vulnerable suspects or accused persons would remain the same.
- Option 2 – low incentive to Member States to address the problems, given the absence of prescriptive action.
- Option 3 – medium impact as this option will contribute to the achievement of the general objectives of the measure(s) covering special safeguards for children and vulnerable adults.
- Option 4 – imposes more ambitious rules and a "higher" level of obligation on Member States than Option 3 on certain safeguards such as the assessment of vulnerability, medical examination (for vulnerable adults), police interviews, court hearings and detention. It will significantly improve mutual trust and cooperation.

### 5.2. Impact on Fundamental Rights

- Option 1: no improvement of insufficient level of protection of fair trial rights for vulnerable persons.
- Option 2: limited impact as it will depend to a large extent on how Member States would implement the non-binding guidelines.
- Option 3: will have a positive impact on fundamental rights: more specifically, the obligation of Member States to ensure adequate information and assistance by parents/legal representatives or an appropriate adult will contribute to the right to a fair trial; mandatory access to a lawyer will have a significant impact on the rights of defence of vulnerable persons. Moreover, certain safeguards with regard to police interviews, court hearings and detention would enhance the fair trial rights.
- Option 4 will have the highest impact on fundamental rights of all four options: the in-depth assessment of vulnerable persons would allow to address their specific needs; medical assistance would ensure the personal integrity of vulnerable persons; several specific safeguards are foreseen with regard to police interviews (e.g. audio-video recording), detention (limitation, proportionality) and court hearings (e.g. specialised training for judges, protection of privacy rules).

### 5.3. Impact on domestic justice systems

- Option 1: divergences between Member States' systems would remain or even increase.
- Option 2: the overall impact will be limited since the non-binding nature of this policy option may not yield significant results.
- Option 3 and 4 will have positive impacts on Member States judicial systems as they would increase legal certainty by introducing commonly agreed minimum standards as regards the protection of vulnerable suspects and accused persons in all EU Member States. All Member States would be obliged to introduce changes to their national criminal procedural laws. These options will also significantly enhance judicial cooperation as variations between Member States in the way certain rights are conveyed to vulnerable suspects and accused persons will decrease.

### 5.4. Financial and economic impact

- Option 1: There are no immediate financial burdens associated with this option.
- Option 2: The financial burden resulting from this option will depend on the level of Member States' implementation. The total maximum financial costs are estimated to be approximately **€20.2 million** (training of judges and police officers and potential costs for a study, workshops etc.).
- Option 3: Total costs are expected to be in the **medium range** of the four options. Total costs amount to **€100.1 million (children)** and to **min. €40.3 million to max. €72.8 (vulnerable adults)**.
- Option 4: Total costs are expected to be the highest of the four options. Total costs amount to **€164.2 million** [*€182.8 million, training incl.*] **(children)** and to **min. €134.4 to 228.9 million** [*€153 million to max. 247.5 million, training incl.*] **(vulnerable adults)**.

## 6. COMPARISON OF OPTIONS/PREFERRED OPTION

### (1) Children

The assessment has led to the selection of a preferred option for children in the form of a **Directive** which **combines elements from Option 3 and Option 4**.

Such a Directive will provide **minimum safeguards for children suspected and accused in criminal proceedings in the EU**. It will be **legally binding** upon Member States and, once implemented, it will enhance the level of protection in the EU.

The combination of elements from Option 3 and Option 4 takes into account subsidiarity and proportionality concerns and has a clear EU added value by reinforcing minimum standards based on the ECtHR acquis and international standards with regard to the procedural safeguards for children suspected or accused in criminal proceedings.

The **total costs amount to €136.2 million** [*€154.8 million, training incl.*]<sup>6</sup>. All Member States would be affected but to a varying degree. The total costs per Member State:

**AT** 3,564; **BE** 802; **BU** 714, **CY**: 94; **CZ**: 996; **DE**: 35,982; **DK**: 413; **EE**: 170; **EL**: 1,042; **ES**: 2,175; **FI**: 3,545; **FR**: 17,950; **HU**: 667; **IE**: 1,309; **IT**: 4,978; **LT**: 346; **LV**: 134; **LU**: 172; **MT**: 22; **NL**: 3,225; **PL**: 2,548; **PT**: 495; **RO**: 1,130; **SE**: 7,330; **SK**: 337; **SI**: 112; **UK**: 45,907<sup>7</sup>

### (2) Adults

<sup>6</sup> Training costs included

<sup>7</sup> Training costs not included

The difficulty to determine an overarching definition and therefore the scope of application of the intended initiative and the existence of fewer relevant international standards and provisions for vulnerable adults ruled out taking legally-binding action in relation to safeguards for vulnerable adults.

The assessment has led to the selection of a preferred option for vulnerable adults in the form of a **Recommendation** which **combines elements from Option 3 and Option 4**.

The combination of elements from Option 3 and Option 4 takes into account subsidiarity and proportionality concerns and has a clear EU added value by reinforcing minimum standards based on the *ECtHR acquis* and international standards with regard to the procedural safeguards for vulnerable adults suspected or accused in criminal proceedings.

The total costs range **from €70.9 to 133.6 million** [*€89.5 to 152.2 million, training incl.*]<sup>8</sup>. All Member States would be affected but to a varying degree. The total costs per Member State (min-max.):

**AT** 847-1,397; **BE** 1,159-2,289; **BU** 762-1,554; **CY**: 82-149; **CZ**: 1,056-1,940; **DE**: 8,363-15,367; **DK**: 4,455-8,818; **EE**: 136-251; **EL**: 1,152-2,114; **ES**: 4,606-8,464; **FI**: 435-780; **FR**: 6,384-11,709; **HU**: 1,021-1,878; **IE**: 839-1,424; **IT**: 6,005-10,998; **LT**: 346-634; **LV**: 233-425; **LU**: 49-91; **MT**: 41-77; **NL**: 1,342-2,415; **PL**: 3,197-5,762; **PT**: 1,080-1,983; **RO**: 2,190-4,023; **SE**: 769-1,387; **SK**: 551-1,009; **SI**: 205-376; **UK**: 23,430-45,869<sup>9</sup>

[These costs are calculated on the basis of the assumption that all Member States will implement the Recommendation.]

These costs do not take into account **possible cost savings** resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, aborted prosecutions due to breach of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and reduction of custodial measures. In the long term, the financial impact should gradually reduce as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

## 7. MONITORING AND EVALUATION

The timeframe for transposition of the proposed Directive on children will be two years from its entry into force. As regards the proposed Recommendation for vulnerable adults, the Commission would assess its implementation three to four years from the publication at the latest.

Moreover, the Commission envisages carrying out a specific empirical study with emphasis on data collection 3-5 years into the application of each instrument of the Roadmap on Procedural Rights. In order to gain in-depth quantitative and qualitative insights into the effectiveness of the proposals, specific indicators for children and vulnerable adults will be used.

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<sup>8</sup> Training costs included

<sup>9</sup> Training costs not included