



## EUROPEAN COMMISSION

*Brussels, 15.05.2014*

*C(2014) 3151 final*

*Dear President,*

*The Commission would like to thank the Tweede Kamer for its Reasoned Opinion concerning the Commission's Proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings {COM (2013) 822 final}.*

*The Commission welcomes the statement of the Tweede Kamer that it attaches great importance to the careful treatment of children involved in criminal proceedings. It recognises that the Dutch legal system provides for a broad set of rules relating to children suspected or accused in criminal proceedings.*

*However, the Commission wishes to underline that the main objective of the proposed Directive is to guarantee an effective minimum standard of protection for children suspected or accused in criminal proceedings throughout the EU. A lack of common standards reduces confidence in the judicial systems of the Member States, which in turn hampers the effective judicial co-operation between Member States and consequently the strengthening of the European area of freedom, security and justice. Given the current diversity of existing national legislation in the Member States with regard to procedural safeguards for children, it is unlikely that Member States acting individually would be able to establish common standards of rights with regard to children on an EU scale.*

*The Commission wishes to emphasise that children can be increasingly involved in criminal proceedings outside their own Member State, including children residing in the Netherlands as in any other Member State. An increasing number of children travel within the EU, participate in sport or social activities in other Member States or go abroad for educational and training programmes. Moreover, more and more EU citizens, including Dutch citizens, reside permanently outside their home country, have a second residence in another EU Member State or work abroad for a certain period of time, bringing along their families and children. Therefore, these children may get involved in criminal proceedings while travelling or living abroad. Situations occur where they are prosecuted during a stay, journey or after returning home and subject to pre-trial detention following the issuance of a European Arrest Warrant. In addition to the complexity of criminal proceedings and the differences with regard to the legal culture, languages and other elements, the vulnerability of children is increased when they are separated from their natural surroundings. This cross-border*

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*dimension constitutes another factor for the need to tackle procedural safeguards of these suspects or accused persons at EU level. The European Union must ensure that there is a level playing field on procedural rights in criminal proceedings.*

*In addition, the Commission would like to emphasise that although there exists a certain number of relevant international standards (e.g. UN Convention of the Rights of the Child), their provisions are very general and relate only to a limited extent to criminal proceedings. Moreover, most international standards are not binding upon Member States but foresee recommendations or guidelines<sup>1</sup>.*

*In the European legal framework, the Charter and the Convention for the Protection of Human Rights and Fundamental Freedoms provide specific safeguards<sup>2</sup> and fair trial rights in criminal proceedings,<sup>3</sup> applicable for all suspects and accused persons. In the case-law of the European Court of Human Rights, these articles have also been interpreted in relation to children. However, in many cases the application of the Convention and the related jurisprudence is developed in an ad hoc way and results in diverging interpretations in the Member States. Therefore, the standards and rights that children have in criminal proceedings remain legally uncertain and difficult to access.*

*Furthermore, the measures relating to procedural rights which have already been adopted in the EU do not foresee a general protection of children. Although the Directive 2010/64/EU on the right to interpretation and translation, the Directive 2012/13/EU on the right to information and the Directive 2013/48/EU on the right of access to a lawyer and to communicate upon arrest provide some provisions dedicated to vulnerable persons and children, they do not provide for an overall protection of children during the entire criminal proceedings.*

*Lastly, mutual recognition and judicial cooperation in criminal matters presupposes that there is mutual trust in the legal systems of other Member States. If judicial authorities doubt the compliance with fair trial rights by another jurisdiction and believe that a suspect or accused person might not get, or has not gotten sufficient protection, requests for judicial cooperation from that jurisdiction can be denied or systematically challenged, in the latter case leading to delays in the judicial cooperation. This means, for instance, that a child is not to be surrendered under the European Arrest Warrant, that a court might refuse to collect evidence requested by judicial authorities in another Member State and that a transfer of a sentence is denied as the receiving Member State has doubts as to the fairness of the trial underlying the conviction. Fostering mutual trust by laying down common minimum standards will help the system work more smoothly, and avoid delays and refusals.*

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<sup>1</sup> Guidelines of the Council of Europe on child-friendly justice, UN Beijing Rules

<sup>2</sup> Article 3 foresees the prohibition of inhuman or degrading treatment. This corresponds to Article 4 of the Charter (the Charter applies where a link with EU law could be established).

<sup>3</sup> Article 6 the right to a fair trial, corresponds to Article 47 of the Charter.

*The Commission hopes that these clarifications address the concerns raised by the Tweede Kamer and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Johannes Hahn  
Member of the Commission*