



EUROPEAN COMMISSION

*Brussels, 14.05.2014
C(2014) 3115 final*

*Mr Stephan WEIL
President of the Bundesrat
Leipziger Straße 3 – 4
D – 10117 BERLIN*

Dear President,

The Commission would like to thank the Bundesrat for its 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 existing EU Directives on procedural safeguards in criminal proceedings apply to all suspects or accused persons, including children. They do not, however, take sufficient account of the specific needs children may have in criminal proceedings, e.g. difficulties to understand and follow the proceedings, the risk of ill-treatment due to their vulnerability, or the need not to have children waiving the right to access to a lawyer.

The proposed Directive guarantees and promotes the rights of the child, bearing in mind international guidelines and recommendations on child-friendly justice, and forms a central part of the EU Agenda for the Right of the Child. The Commission particularly appreciates¹ that the Bundesrat shares the objective of the proposal.

The considerations the Bundesrat has set out with regard to certain provisions of the proposal have also formed part of the discussions in the Council where the Commission had the opportunity to present its views in detail. The Commission would like to underline that in particular mandatory assistance by a lawyer is considered as the core element of the Commission proposal, as children are not able to fully understand and follow criminal proceedings. The importance of assistance by a lawyer for children has been repeatedly underlined by the European Court of Human Rights² and is also recognised by relevant international rules³.

However, the Commission also considers that with regard to certain minor offences, mandatory assistance by a lawyer would be disproportionate. For such offences, the right of mandatory assistance by a lawyer does not need to be ensured.

Moreover, this provision has been subject to detailed discussions in the competent working group of the Council. Further proportionality considerations along the lines the Bundesrat

¹ An EU Agenda for the Rights of the Child – Communication of the Commission to the European Parliament and Council of 15.2.2011 – COM(2011) 60 final.

² ECtHR, Panovits v. Cyprus, Judgment of 11 December 2008, Appl.N°4268/04; Adamkiewicz v. Poland, Judgment of 2 March 2010, Appl.N°54729/00.

³ See, for example, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, points 37 (to 43).

has set out in its Opinion might be included into the text which will then be subject to discussions between the European Parliament and the Council.

As regards the right to an individual assessment and medical examination, the Commission appreciates that these rights are generally welcomed in the Opinion of the Bundesrat. For proportionality reasons, the Commission proposal foresees already that the extent and detail of an individual assessment may be adapted depending on the seriousness and the circumstances of the case. Also the possibility for derogations by Member States has been foreseen. The right to medical examination is limited to children, who are deprived of liberty, given that – due to their young age and immaturity – they are more strongly exposed to health problems and ill-treatment.

The questioning of children suspected or accused in criminal proceedings is a potentially risky situation where their procedural rights may not always be respected and their particular vulnerability may not always be duly taken into account. In order to ensure sufficient protection of children who are not always able to understand the content of interviews they are subject to the Commission considers that interviews should be audio-visually recorded. However, the Commission agrees with the Bundesrat that it would not be proportionate to require this in all cases. Therefore, the Commission proposal foresees already that due account should be taken of the seriousness and complexity of the case and the potential sanction that can be incurred. Only if the child is deprived of liberty, the audio-visual recording should be ensured in all cases.

The Commission appreciates that in Germany a high level of protection is ensured as regards the privacy of children. Certain clarifications as regards the use of images and video-material may be indeed be useful and might be further discussed.

The Commission further appreciates that the Bundesrat is in favour of certain specific protection measures if a child is deprived of liberty. The need to ensure appropriate education of children is essential to promote the reintegration of children into society. The individual circumstances of the cases, including the duration of the deprivation of liberty, should be taken into account.

Given the particular needs of children, the Commission considers that professionals dealing with cases involving children should receive appropriate training with regard to children's legal rights, the needs of children of different age groups and pedagogical skills which would enable them to adapt proceedings appropriately. Training for professionals is considered as a flanking measure which has already been foreseen in other Directives⁴ in the criminal justice area.

⁴ See, for example, Art. 6 of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings ; Art. 9 of the Directive 2012/13/EU on the right to information or Art. 25 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Also provisions on data collection have been provided for by other Directives⁵. The Commission considers it important to monitor and evaluate the effectiveness and efficiency of the proposed directive.

As regards the possible costs resulting from the application of this Directive with regard to the assessment of the child, the medical examination and audio-visual recording, it may be considered to take into account possible reimbursement mechanism foreseen by medical insurance schemes. However, the Commission considers that a general reimbursement clause would not be in line with the objective of this Directive which is to ensure procedural safeguards for children.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the main issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Johannes Hahn
Member of the Commission*

⁵ See Art. 28 of the above-mentioned Victims' Directive.