

SENATE OF THE REPUBLIC
XVII LEGISLATURE

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RESOLUTION OF THE 2ND STANDING COMMITTEE

(Justice)

(Rapporteur CIRINNÀ)

adopted at the session on 11 February 2014

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) 822)**

under Article 144(1) and (6) of the Rules of Procedure

Forwarded to the President's Office on 18 February 2014

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The Committee,

having examined COM(2013) 822 final, containing the proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings and children subject to a surrender procedure pursuant to the Council Framework Decision 2002/584/JHA of 13 June 2002 (European arrest warrant proceedings);

in view of the overriding importance of the principle that in order to guarantee the fairness of proceedings and the right to a fair trial the person concerned must be able to understand the stages and essential points of the procedure and participate in it, to exercise his or her rights and to benefit from the protection of privacy;

bearing in mind the need to enhance the effectiveness of the fundamental rights already guaranteed by Articles 31(2), 24 and 111 of the Constitution, which concern the procedural safeguards for minors, with particular reference to criminal cases;

the Senate Justice Committee issues a favourable opinion,

given that Article 9 of the proposal for a Directive requires Member States to ensure that any questioning of children carried out prior to the indictment is recorded audiovisually, unless this would not be proportionate, taking into account the factors provided for in paragraph 1 of that article, it would be appropriate to coordinate such a provision with Article 141-bis of the Code of Criminal Procedure, which provides for compulsory audiovisual recording of any questioning of children deprived of their freedom, other than in court;

noting that Article 13 of the proposal for a Directive, which requires Member States to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence, should not in any way be interpreted as conflicting, even marginally, with Article 112 of the Constitution; on the contrary, it should be regarded as essentially endorsing the exclusive functional competence devolved to the juvenile court and to the supervising judge for minors, within the meaning of Article 3 of Presidential Decree No 448 of 22 September 1988;

pointing out, finally, that the transposition of Article 16(2) of the proposal for a Directive into Italian law would imply granting minors full rights to take part in the trial in person. That article states that where children were not present at the trial resulting in a decision on their guilt, they must have the right to a new procedure in which they can participate in person, and which allows a fresh determination of the merits of the case. It is therefore a matter of always ensuring that children who are on trial fully understand the procedure, which implies a careful re-examination of the rules on the service of documents in juvenile cases, on trial in absentia and on accused persons who cannot be found.

OPINION OF THE 14TH STANDING COMMITTEE

(EUROPEAN UNION POLICIES)

(Rapporteur: GUALDANI)

6 February 2013

The Committee, having examined the document,

whereas the aim of the proposal for a Directive is to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings and children subject to a surrender procedure pursuant to Framework Decision 2002/584/JHA of 13 June 2002 (European arrest warrant proceedings) are able to understand and follow the proceedings and to exercise their right to a fair trial. It also seeks to prevent re-offending by children and foster their social integration;

whereas the measure is part of the EU Agenda for the Rights of the Child to which the European Parliament, the Committee of the Regions, the European Economic and Social Committee and the Council of Europe as well as key stakeholders, such as UNICEF, have contributed;

noting that the proposal was presented together with a Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, which was adopted in compliance with the subsidiarity principle, given the absence of a definition of 'vulnerable adult' and the fact that, under domestic law, proceedings may be suspended if a vulnerable person cannot understand and effectively participate in the investigations or trial (Article 70 ff of the Code of Criminal Procedure), unless a decision is to be taken to acquit the suspect or dismiss the case;

recalling the observations in the Report on the Administration of Justice in 2013 by the First President of the Court of Cassation, which found that children, as individuals with rights, expectations, needs and desires, should become active protagonists not only in matters concerning them within the family, but also in all judicial proceedings in which their interests are discussed, thus envisaging a genuine 'children's charter',

comments favourably on the proposal, for matters within its remit, highlighting the following points:

the proposal complies with the principle of conferral, having as its legal base Article 82(2) of the Treaty on the Functioning of the European Union, which deals with the approximation of the laws and regulations of the Member States in matters of criminal procedure, including in relation to the 'rights of individuals';

moreover, the proposal does not adversely affect fundamental aspects of the national legal order - in view also of the non-regression clause in Article 22 of the proposal which excludes the law of any Member State which provides a higher level of protection. The conditions do not therefore exist for activating the 'emergency brake' (the procedure laid down in the first subparagraph of Article 82(3) of the Treaty on the Functioning of the European Union and Article 12(1) of Law No 234 of 2012);

the principle of subsidiarity is respected because the objectives pursued cannot be sufficiently achieved by the Member States;

the principle of proportionality is also respected because the proposal is limited to what is necessary to achieve the objectives identified. The Committee would point out, moreover, that if, in the course of the negotiations, there were to be further moves to establish common standards as regards the age of criminal responsibility, the creation of juvenile courts and systems of alternative justice (areas that were excluded from the initial proposal on grounds of the proportionality principle), the Italian system appears to have appropriate standards already.

As explained in the report provided by the Government pursuant to Article 6(4) of Law No 234 of 2012, it is indeed the case that the domestic legal order is already tending to comply with the contents of the proposal for a Directive and even goes beyond the minimum requirements proposed, in view of the provisions of Presidential Decree No 448 of 22 September 1988 (adoption of provisions on criminal cases against children), of Legislative Decree No 272 of 28 July 1989 (implementing, coordinating and transitional provisions for the above Presidential Decree) and of Royal Decree-Law No 1401 of 20 July 1934, converted with amendments into Law No 835 of 27 May 1935 (creation and operation of juvenile courts), and also of Article 141 bis of the Code of Criminal Procedure.

Consequently, the Committee would not be opposed to further progress on the matter of juvenile courts and alternative justice; the age of criminal responsibility, too, is already set by Italian law at 14, provided that the child has the ability to understand and to exercise his or her will (Articles 97 and 98 of the Criminal Code), and crimes committed by children under the age of 18 are tried by the juvenile court under Article 3 of Presidential Decree No 448 of 1988.

Finally, as regards the right of children to be present in person at their trial, laid down in Article 16(2) of the proposal, the rule must be placed in the context of the general issue of the child's knowledge and understanding of the trial and could entail an amendment to the national legislation on the system of service of documents and, more generally, trial in absentia.