



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2013)

Opinion

Title

DG JUST - Impact Assessment on a Proposal for measures on special safeguards for children and vulnerable adults suspected or accused in criminal proceedings

(draft version of 10 June 2013)*

(A) Context

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 and vulnerable adults) throughout the various stages of criminal proceedings are, at present, not sufficiently guaranteed within the EU. This may therefore undermine mutual trust between judicial systems. As the principle of mutual recognition is the cornerstone of the area of justice, the European Council invited the Commission to put forward proposals contained in the Roadmap on Procedural Rights ("the Roadmap") adopted by the Council of Ministers in November 2009, setting out a step by step approach to strengthening the rights of suspects and accused persons in criminal proceedings. While some measures of the Roadmap have been already dealt with, this impact assessment accompanies a Commission's proposal for measures related to the special safeguards for suspected or accused persons who are vulnerable.

(B) Overall opinion: NEGATIVE

The report needs to be significantly improved in a number of important respects. Firstly, the report should clarify how the minimum procedural safeguards considered necessary to build mutual trust between judicial authorities have been selected and how exactly they compare to the existing international standards. In this respect, it should justify why the problems relating to children and vulnerable adults are treated in the same manner, despite the absence of a common understanding of vulnerability and the fact that their needs might significantly differ. The report should also better describe the relationship between this initiative and the related procedural rights 'Roadmap' measures and explain in more depth why sufficient progress cannot be expected from currently 'non-compliant' Member States. Secondly, it should clarify the EU competence as regards further harmonisation of procedural safeguards, namely with respect to the feasibility of the option envisaging a high level of obligations. The report should justify why no implementation alternatives have been considered for any of the measures under the medium set of obligations. Thirdly, it should enhance the impact analysis by better assessing the benefits (if and how the improvements are likely to materialise), by clarifying the cost

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

calculations and by presenting them in a more transparent manner (i.e. overall costs per Member State). Finally, the report should clearly spell out the views of different categories of stakeholders, including Member States and public authorities.

Given the nature of these concerns, the IAB requests DG JUST to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Better describe the problems and the baseline scenario. The report should better demonstrate the problems this initiative intends to address, namely as regards the need to facilitate (cross-border) mutual recognition of judgments and judicial decisions on children and/or vulnerable adults. In doing so, it should: (i) clarify if there is concrete evidence of the alleged insufficient trust between judicial authorities specifically related to inadequate national safeguards for vulnerable persons; (ii) describe how the minimum procedural safeguards necessary to build such trust have been selected, how they compare to the existing (binding) international standards and why they include measures such as training requirements; (iii) explain why the same set of minimum safeguards has been defined for both children and vulnerable adults, despite the fact that their problems and needs might significantly differ (namely given the diverse understanding of vulnerability); (iv) corroborate the analysis of specific problems, such as the assessment of vulnerability, assistance or pre-trial and trial provisions, by giving estimates of the affected population of children and vulnerable adults in currently 'non-compliant' Member States. On this basis, the report should further develop the baseline scenario, particularly by fully describing the relationship between this initiative and the other instruments of the Roadmap (such as legal advice and legal aid, information and communication safeguards), i.e. how these initiatives might also contribute to addressing the problems identified in this report. In addition, it should explain in more depth why sufficient improvements cannot be expected from all Member States currently lagging behind, including the views of national authorities expressed during the consultation process.

(2) Clarify the EU competence and the design of options. The report should clarify the EU competence as regards further harmonisation of procedural safeguards, namely for legislative option 4, which provides for a 'high level of obligations' and incorporates (currently) non-binding provisions and good practices from some Member States into the EU legislative framework. Furthermore, on the basis of a strengthened problem definition and baseline scenario, it should better demonstrate the need for and proportionality of regulatory measures that do not appear to address any of the problems in practice or only to a limited extent (e.g. assessment of age or medical assistance to children) and that do not appear to differ substantially from other 'Roadmap' initiatives (e.g. information to parents). Separate options should be considered for vulnerable adults to better reflect the potentially wider range of (not precisely defined) problems that might need to be tackled. Finally, the report should explain why no (implementation) alternatives have been considered for any of the measures under option 3, i.e. 'medium level of obligations'.

(3) Better assess and present impacts. First of all, the report should avoid giving the impression that all the affected population is expected to benefit from the envisaged measures. The analysis should therefore: (i) clarify how exactly the improvements are expected to materialise in practice (e.g. requirement of the physical presence of the child's legal representative) and corroborate this with relevant anecdotal evidence; (ii) better reflect the assumptions made (e.g. on the share of vulnerable persons making calls,

receiving medical assistance and legal aid) as well as the absence of an operational definition of vulnerable adults; and (iii) duly take into account the flexibility given to Member States, their budgetary constraints as well as any enforcement difficulties, particularly for those lagging most behind. Moreover, it should further assess the cost savings from reducing appeals and detentions. Secondly, the report should better explain the cost calculations and provide an overview of implementation costs across Member States and the envisaged safeguard measures. For example, it should clarify why the EU average hourly wage rate has been preferred to national rates and explain how informative these estimates are. The report should also explain how realistic it is to assume that, for example, a lawyer would be paid for 5 minutes of their time instead of charging a minimum fee, or indicate how much it would cost to assess non-obvious signs of vulnerability. On that basis, it should present the overall costs per Member State, the indicative improvement of mutual trust (that currently does not seem to differ between the two legislative options) as well as the varying degree of the positive impact on fundamental rights. Finally, the report should clarify if the envisaged initiative would be accompanied by any of the measures listed under the soft-law option and if any synergies can be identified with other 'Roadmap' initiatives, for example with respect to training or monitoring obligations.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The views of different categories of stakeholders, including Member States and public authorities, should be presented throughout the text, particularly with respect to the problem definition, subsidiarity, options and impacts sections. In doing so, the report should clearly present the views of the most affected Member States. Stakeholder positions should be further detailed in an Annex. The executive summary should include the overview of total costs per each Member State as well as the detailed description of policy options and stakeholder views. The report should clarify what exactly the Member States will be expected to report as regards the 'effective' implementation of the measures, at which point of time and how this would fit into a Commission evaluation of the entire regulatory framework. In doing so, plausible monitoring indicators should be also defined.

(E) IAB scrutiny process

Reference number	2013/JUST/016
External expertise used	No
Date of IAB meeting	3 July 2013