



Council of the
European Union

Brussels, 25 March 2015
(OR. en)

7503/15

**Interinstitutional File:
2013/0408 (COD)**

LIMITE

**DROIPEN 28
COPEN 79
CODEC 410**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	5952/15 DROIPEN 15 COPEN 32 CODEC 148
Subject:	Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings - Outcome of the first trilogue and the first technical meeting / preparation of the second trilogue

On Wednesday 4 March 2015, EP rapporteur Mrs. Chinnici hosted the first trilogue of the Council, the European Parliament and the European Commission on the draft Directive on procedural safeguards for children.

During the discussions Articles 1-9 were examined; the accompanying recitals, however, were not (yet) examined. At the end of the debate, it was agreed to refer Articles 2(1), 2(2), 3, 4, 5, 7 and 8 to the technical meeting, and to keep the remaining (more difficult) provisions at the level of the trilogue, at least for the time being.

On Tuesday 17 March 2015, the first technical meeting took place, at which Articles 2(1), 2(2), 3, 4, 5, 7 and 8 were discussed. As during the trilogue, the Presidency defended and explained the Council position as it had been agreed during the DROIPEN Working Party on 16 February 2015.

The Presidency generally retains a positive impression of the two meetings, which were held in a very pleasant atmosphere. This being said, the pace of the meetings is rather low; the European Parliament clearly wants to take the negotiations regarding this Directive more slowly than the negotiations regarding the procedural rights Directives that were adopted in the recent years. It may therefore take more time before concrete results can be reported.

The outcome of the meetings has been set out in the five column table in the Annex. All Presidency- and compromise suggestions are subject to confirmation by the Working Party. As usual, it has been clearly underlined that "nothing is agreed until everything is agreed".

This document also contains comments in respect of the amendments that have not yet been examined by the Working Party.

At the next trilogue, which will take place on 22 April 2015, Articles 10 to 25 will be examined, as well as any results from the first technical meeting. In that view, the Presidency would appreciate obtaining the following from the Member States at the meeting of the Friends of the Presidency on 9 April 2015:

- a) comments on the LIBE amendments relating to Articles 10 to 25 (with the exception of Articles 13, 14, 18a and 19a, which have already been discussed - Member States who want to add anything to the observations as noted, however, are most welcome to do so);
 - b) comments on the (very provisional) suggestions and observations as noted in this document relating to Articles 2(1), 2(2), 3, 4, 5, 7 and 8;
 - c) comments on the LIBE amendments relating to Articles 6 (and 6a GA) and 9, which have not been discussed during the last Working Party.
- .

Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

Title				
Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings	Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings	Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings	Agreement.	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>(1) The purpose of this Directive is to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings, to enable such children to exercise their right to a fair trial and to prevent re-offending by children and foster their social integration.</p>	<p>(1) The purpose of this Directive is to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings, to enable such children to exercise their right to a fair trial and to prevent re-offending by children and foster their social integration.</p>	<p>(1) The purpose of this Directive is to establish procedural safeguards to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings, to enable such children to exercise their right to a fair trial and to prevent re-offending by children and foster their social integration.</p>	<p>Agreement.</p>	
<p>(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help improve mutual recognition of</p>	<p>(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help improve mutual recognition of</p>	<p>(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help improve mutual recognition of</p>	<p>Agreement.</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.	decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.	decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.		
(3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.	(3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.	(3) Although <i>the Charter of Fundamental Rights of the European Union (the Charter) applies, under certain conditions, to Member States and</i> the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child, experience has shown that <i>those facts alone do</i> not always provide a sufficient		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		degree of trust in the criminal justice systems of other Member States. <i>(AM 1)</i>		
<p>(4) The Stockholm Programme¹ put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals setting out a step by step approach² to strengthening the rights of suspects or accused persons.</p>	<p>(4) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap').³ Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and</p>	<p><i>(4) On 30 November 2009, the Council adopted the Roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure</i></p>	<p>Texts are almost identical; text EP is acceptable.</p>	

¹ OJ C 115, 4.5.2010, p.1.

² OJ C 291, 4.12.2009, p.1.

³ OJ C 295, 4.12.2009, p. 1.

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.</p>	<p><i>B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is indicative, implying that it may be changed according to priorities. It is designed to operate as a whole; only when all its components are implemented will its benefits be felt in full.</i> (AM 2)</p>		
	<p>(4a) On 11 December 2009, the European Council welcomed the</p>	<p><i>(4a) On 10 December 2009, the European Council welcomed the Roadmap and</i></p>	<p>Agreement.</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens (point 2.4).⁴ The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.</p>	<p><i>made it part of the Stockholm programme - An open and secure Europe serving and protecting citizens (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, inviting the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area. (AM 3)</i></p>		
(5) Three measures have been adopted to date,	(5) Three measures have been adopted to date,	(5) Three measures have been adopted to date,	Agreement.	

⁴ OJ C 115, 4.5.2010, p.1.

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
namely Directive 2010/64/EU of the European Parliament and of the Council ⁵ , Directive 2012/13/EU of the European Parliament and of the Council ⁶ and Directive 2013/48/EU of the European Parliament and the Council ⁷ .	namely Directive 2010/64/EU of the European Parliament and of the Council, Directive 2012/13/EU of the European Parliament and of the Council and Directive 2013/48/EU of the European Parliament and the Council.	namely Directive 2010/64/EU of the European Parliament and of the Council, Directive 2012/13/EU of the European Parliament and of the Council and Directive 2013/48/EU of the European Parliament and the Council.		
(6) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.	(6) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.	(6) This Directive promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice.	Agreement.	

⁵ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p.1).

⁶ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p.1).

⁷ Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities (OJ L 294, 6.11.2013, p. 1).

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<p><i>(6a) Given the case law of the Court of Justice of the European Union and the European Court of Human Rights, the criminal nature of proceedings cannot always be determined purely on the strength of their classification, and of the penalties which may be imposed, in national law. In order to achieve the aims of the Treaties and of this Directive and to ensure full respect for fundamental rights, including those set out in the Charter of Fundamental Rights and the ECHR, it is therefore appropriate, for the purposes of this Directive, to take into account not only the formal classification of proceedings in national law, but also their effects on</i></p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<i>the lives and development of the children concerned. This Directive should be applied, in any event, where there is a possibility that proceedings will result in a criminal record. (AM 4)</i>		
		<i>(6b) Member States should ensure that in all proceedings, children are treated with care, sensitivity and respect for their age, special needs, maturity and level of understanding and take into consideration any communication difficulties they may have. Criminal proceedings involving children should be carried out in a non-intimidating and child-sensitive way. (AM 5)</i>		
		<i>(6c) The safeguards provided for in this</i>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<p><i>Directive should therefore be applied, with such adjustments as might be necessary, to all proceedings which might entail restrictive measures or, at any rate, significant consequences for children's lives and hence influence the development processes that shape their personalities, and in cases where, although no punishment is ordered, proceedings could lead to a decision giving to understand – if only implicitly – that the person concerned was responsible for the offence with which he or she had been charged. In all such cases, application of this Directive should not be ruled out by the fact that the proceedings did not result from actions termed</i></p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<i>criminal offences in national law, do not take place in a criminal court, or entail penalties formally classed as criminal in national law. (AM 6)</i>		
(7) Children who are suspects or accused in criminal cases should be given special attention in order to preserve their potential for development and reintegration into society.	(7) Children who are suspects or accused in criminal cases should be given special attention in order to preserve their potential for development and reintegration into society.	(7) Children who are suspects or accused in criminal cases should be given special attention in order to preserve their potential for development and reintegration into society.	Agreement.	
		<i>(7a) Member States are encouraged to provide children involved in criminal proceedings with appropriate support and assistance in their efforts to reintegrate in society, in particular by taking measures to prevent suspected or accused</i>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<i>children from discrimination in access to education and labour market and to prevent them from marginalisation. (AM 7)</i>		
<p>(8) This Directive should apply to children meaning persons under the age of 18 at the time when they become suspected or accused of having committed an offence, regardless of their age during the criminal proceedings until the final judgment.</p>	<p>(8) This Directive should apply to children meaning persons under the age of 18 from the time when they are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence. In respect of children subject to European arrest warrant proceedings, the relevant provisions of this Directive should apply from the time of their arrest in the executing Member State.</p>	<p>(8) This Directive should apply to children meaning persons under the age of 18 at the time when they become suspected or accused of having committed an offence, regardless of their age during the criminal proceedings until the final judgment.</p>	<p>Linked to Article 2(1).</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>(9) This Directive should also apply in respect of offences which have been committed after the age of 18 years by the same suspect or accused person and which are jointly investigated and prosecuted as they are inextricably linked to offences where criminal proceedings started against that person before the age of 18.</p>	<p>[deleted]</p>	<p>(9) This Directive should also apply in respect of offences which have been <i>allegedly</i> committed after the <i>suspect or accused person had reached</i> the age of 18 years, <i>where such offences</i> are jointly investigated and prosecuted as they are inextricably linked to offences <i>to which this Directive applies</i>. (AM 8)</p>		
<p>(10) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person is above the age of 18, Member States are encouraged to apply the procedural safeguards foreseen by this Directive until this person reaches the age of 21.</p>	<p>(10) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person is above the age of 18, Member States are encouraged to apply the procedural safeguards foreseen by this Directive until this person reaches the age of 21, at least as regards offences that are</p>	<p>(10) When, at the time a person becomes a suspect or accused person in criminal proceedings, that person is above the age of 18, Member States <i>should, especially if the offence was committed before the child in question had reached the age of 18</i>, apply the procedural safeguards <i>provided for in</i> this</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to offences where criminal proceedings started against that person before the age of 18.</p>	<p>Directive <i>at least</i> until this person reaches the age of 21. (AM 9)</p>		
<p>(11) Member States should determine the age of children on the basis of the children’s own statements, checks of their civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, on the basis of a medical examination.</p>	<p>(11) Member States should determine the age of children on the basis of the children’s own statements, checks of their civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, on the basis of a medical examination.</p>	<p>(11) Member States should determine the age of children on the basis of the children’s own statements, checks of their civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, on the basis of a medical examination. <i>A medical examination should be carried out as a last resort and in strict compliance with the child’s rights, physical integrity</i></p>	<p>Linked to Article 3 (definition of child).</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<i>and human dignity. Where a person's age is still in doubt, that person should, for all purposes, be presumed to be a child. (AM 10)</i>		
	(11a) The application of this Directive should be excluded in respect of some minor offences. However, such exclusion should not be made where the suspect or accused person is deprived of liberty; in such situation, the Directive shall in any case fully apply, in accordance with its provisions.			
	(11b) In some Member States an authority other than a court having jurisdiction in criminal matters has competence			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this</p>			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>Directive should therefore apply only to the proceedings before that court following such an appeal or referral.</p>			
	<p>(11c) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive</p>			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.</p>			
	<p>(11d) In certain Member States children who have committed an act qualified as an offence are subject to proceedings which may not lead to the imposition of any criminal sanction, but which may lead to the imposition of restrictive measures, for instance protection measures, correction measures and education measures, with a view to promoting the proper conduct of the children, bringing about favourable changes in the children's personality and behaviour, and helping them to integrate in society. Such proceedings</p>			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	do not fall within the scope of this Directive.			
<p>(12) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU and Directive 2013/48/EU. Information with regard to minor offences should be provided under the same conditions as provided for by Article 2(2) of Directive 2012/13/EU. However, this Directive provides further complementary safeguards with regard to information to be provided to the holder of parental responsibility and mandatory access to a lawyer in order to take into account the specific needs of children.</p>	<p>(12) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU and Directive 2013/48/EU. Information with regard to minor offences should be provided under the same conditions as provided for by Article 2(2) of Directive 2012/13/EU. However, this Directive provides further complementary safeguards with regard to information to be provided to a holder of parental responsibility and concerning assistance by a lawyer in order to take into account the specific needs of children.</p>	<p>(12) This Directive should be implemented taking into account the provisions of Directive 2012/13/EU and Directive 2013/48/EU. However, <i>information should also</i> be provided <i>with regard to minor offences, taking</i> into account the specific <i>vulnerabilities</i> of children. (AM 11)</p>		
<p>(13) If a child is deprived of liberty, the Letter of</p>	<p>(13) If a child is deprived of liberty, the Letter of</p>	<p>(13) If a child is deprived of liberty, the Letter of</p>	<p>Agreement.</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Rights provided to the child pursuant to Article 4 of Directive 2012/13/EU should include clear information on the child's rights under this Directive.	Rights provided to the child pursuant to Article 4 of Directive 2012/13/EU should include clear information on the child's rights under this Directive.	Rights provided to the child pursuant to Article 4 of Directive 2012/13/EU should include clear information on the child's rights under this Directive.		
		<i>(13a) Children should be informed promptly and directly about their rights with regard to the proceedings, the charges brought against them, the possible consequences and the available remedies. The information should be provided in writing and orally in a manner adapted to their age and maturity and in a language that they understand.(AM 12)</i>		
(14) The term "holder of parental responsibility" means any person having parental responsibility over a	(14) The term "holder of parental responsibility" means any person having parental responsibility over	(14) The term "holder of parental responsibility" means any person having parental responsibility over a	Linked to discussion on Article 3 - definition of "holder of parental	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>child as defined in Council Regulation (EC) 2201/2003⁸. Parental responsibility means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.</p>	<p>a child as defined in Council Regulation (EC) 2201/2003. Parental responsibility means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.</p>	<p>child as defined in Council Regulation (EC) 2201/2003. Parental responsibility means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect, including rights of custody and rights of access.</p>	<p>responsibility".</p>	
<p>(15) Children should have the right to have the holder of parental responsibility informed about applicable procedural rights, either orally or in writing. This information should be provided promptly and in such detail as is necessary to</p>	<p>(15) Since children are vulnerable and are not always able to fully understand and follow criminal proceedings, Member States should inform a holder of parental responsibility about applicable procedural rights,</p>	<p>(15) Children should have the right <i>also</i> to have the holder of parental responsibility informed about applicable procedural rights, orally <i>and</i> in writing. This information should be provided promptly and in such detail as is necessary to</p>		

⁸ Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (*OJ L 338, 23.12.2003, p. 1*).

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>safeguard the fairness of the proceedings and the effective exercise of the rights of defence of the child. Where it would be contrary to the best interests of the child to inform the holder of parental responsibility of those rights, another appropriate adult should be informed.</p>	<p>either orally or in writing. If there are two holders of parental responsibility, Member States should inform both holders, unless this is not practicable. This information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of defence of the child. In certain circumstances, the information should be provided to another appropriate adult nominated by the child or to a person designated by the competent authority. In the circumstance that no holder of parental responsibility can be reached or his or her</p>	<p>safeguard the fairness of the proceedings and the effective exercise of the rights of defence of the child. Where it would be contrary to the best interests of the child to inform the holder of parental responsibility of those rights, another appropriate adult should be informed. <i>(AM 13)</i></p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>identity is unknown, the Member States should only make use of the possibility to inform a person other than a holder of parental responsibility when they have done concrete efforts to reach a holder of parental responsibility or to obtain his or her identity.</p>			
<p>(16) Children should not be able to waive their right of access to a lawyer because they are not able to fully understand and follow criminal proceedings. Therefore, the presence or assistance of a lawyer should be mandatory for children.</p>	<p>(16) Children have the right of access to a lawyer in accordance with Directive 2013/48/EU. That Directive applies in its entirety, including, <i>inter alia</i>, the derogations for compelling reasons set out in Article 3(6) of that Directive. In no way, this Directive can limit the rights provided for in that Directive.</p>	<p>(16) Children should not be able to waive their right of access to a lawyer because they are not able to fully understand and follow criminal proceedings. Therefore, the presence <i>and</i> assistance of a lawyer should be mandatory for children. <i>(AM 14)</i></p>	<p>Linked to Article 6 (and 6a in GA).</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>(17) In some Member States an authority other than a public prosecutor and a court having jurisdiction in criminal matters has competence for imposing penalties other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require the competent authorities to ensure mandatory access to a lawyer. Where the law of a Member State provides for the imposition of a penalty regarding minor offences by such an authority and there is either a right of appeal or</p>	<p>[transferred in modified form to recitals 11a-11d]</p>	<p>[deleted] (AM 15)</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, mandatory access to a lawyer should therefore apply only to the proceedings before that court following such an appeal or referral. In some Member States proceedings involving children may be dealt with by public prosecutors who may impose penalties. In such proceedings children should have mandatory access to a lawyer.</p>				
	<p>(17) (new) Children are vulnerable and are not always able to fully understand and follow criminal proceedings. Therefore, where children have the right of access to a lawyer in accordance</p>			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>with Directive 2013/48/EU, they should be assisted by a lawyer when they are questioned by the police or by other law enforcement or judicial authorities, including during the trial, or when they are deprived of liberty, unless the deprivation of liberty is supposed to last only for a short period of time, for example where the deprivation of liberty has as purpose to surrender the child to a holder of parental responsibility or to another appropriate adult designated by the competent authority, or to bring the child before a court in the event of an unexcused absence. When children should be assisted by a lawyer in accordance with this Directive, Member States should</p>			

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>arrange a lawyer to assist the child concerned when such lawyer has not been arranged by the child itself or by a holder of parental responsibility.</p>			
	<p>(17a) For the purposes of this Directive, assistance by a lawyer means that the child is provided with legal support by the lawyer and that the child is represented by the lawyer during the criminal proceedings. When the child has to be assisted in accordance with this Directive during questioning, a lawyer has to be present. However, assistance by a lawyer does not mean that a lawyer has to be present during the criminal proceedings at moments other than during</p>			

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>questioning; for instance, a lawyer does not have to be mandatory present during each investigative or evidence-gathering act. This does not prejudice the right of the child to have access to a lawyer during such acts, if he has the right of access to a lawyer in accordance with Directive 2013/48/EU.</p>			
	<p>(17b) Where the child has to be assisted by a lawyer during questioning in accordance with this Directive, but no lawyer is present, the competent authorities shall postpone the questioning of the child for a reasonable period of time, so that the authorities can either await the arrival of the lawyer when the child has arranged a lawyer himself,</p>			

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	or can arrange a lawyer for the child when this has not yet been done.			
<p>(18) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. It would be disproportionate to require the competent authorities to ensure mandatory access to a lawyer in respect of such minor offences. Where the law of a Member State provides that deprivation of liberty cannot be imposed as a penalty in respect of minor offences, the right to mandatory access to a lawyer should therefore apply only to proceedings</p>	<p>[transferred in modified form to recitals 11a-11d]</p>	<p>[deleted] (AM 16)</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
before a court having jurisdiction in criminal matters.				
(19) Children who are suspected or accused in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, formation and social integration, to determine if and to what extent they would need special measures during the criminal proceedings and to determine the extent of their criminal responsibility and the adequacy of a penalty or educative measure for them	(19) Children who are suspected or accused in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, formation and social integration, to determine if and to what extent they would need special measures during the criminal proceedings and to determine the extent of their criminal responsibility and the adequacy of a penalty or educative measure for them.	(19) Children who are suspected or accused in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, formation and social integration, to <i>ensure that every decision taken during, or resulting from, the proceedings is tailored to the greatest extent possible to their particular circumstances.</i> (AM 17)	Linked to Article 7.	
(20) In order to ensure the personal integrity of a child who is arrested or detained, the child should have access	(20) In order to ensure the personal integrity of a child who is arrested or detained, the child should have access	(20) In order to ensure the personal integrity, <i>well-being and health</i> of a <i>suspected or accused</i> child	Linked to Article 8.	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>to a medical examination. The medical examination should be carried out by a physician.</p>	<p>to a medical examination. Such medical examination should be carried out by a physician, either, when specific health indications or the general mental or physical constitution of the child give reasons for such examination, on an initiative <i>ex officio</i> of the competent authorities, or following a request of the child or the holder of parental responsibility, or of the child’s lawyer. However, no follow-up has to be given to a request for a medical examination when this would go against the best interests of the child, e.g. when the child has indicated that it does not want to be medically examined, or where the strain placed on and disadvantages likely to be suffered by the child</p>	<p>who <i>is deprived of liberty, to assess his or her general physical and mental state, and any medical needs and to provide guidance on whether he or she should be subjected to questioning, investigative or evidence-taking measures, or any special measures taken or envisaged concerning him or her, the child should have access to a medical examination. Suspected or accused children who are not deprived of liberty should have access to a medical examination where proceedings or the best interests of the child so require.</i> The medical examination should be <i>as non-invasive as possible</i> and carried out <i>by a qualified professional.</i> (AM 18)</p>		

Recitals

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	<p>as a result of the medical examination are disproportionate to the reasons for such examination (e.g. when the duration of deprivation of liberty would have to be extended by a not insignificant amount of time in order to carry out the examination and there is no need for immediate treatment). Member States should lay down practical arrangements concerning medical examinations.</p>			
<p>(21) In order to ensure sufficient protection of children who are not always able to understand the content of interviews to which they are subject, to avoid any challenge of the content of an interview and</p>	<p>(21) In order to ensure sufficient protection of children who are not always able to understand the content of interviews to which they are subject, to avoid any challenge of the content of an interview and</p>	<p>(21) <i>Bearing in mind that children are particularly vulnerable, questioning may be perceived to be traumatic, therefore it is essential that questioning be carried out by trained professionals taking into</i></p>	<p>Linked to Article 9.</p>	

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>thereby undue repetition of questioning, questioning of children should be audio-visually recorded. This does not include questioning necessary to identify the child.</p>	<p>thereby undue repetition of questioning, questioning by police or other law enforcement authorities of children who are deprived of liberty should be audio-visually recorded when it is proportionate to do so. This Directive does not require Member States to make recordings of questioning of children by a judge or a court. Also, an audio-visual recording is not required when questioning has as sole purpose to verify the identity of the child or to determine whether an investigation should be started.</p>	<p><i>consideration the children's age, maturity, level of understanding and any communication difficulties they may have. Questioning should take place in the presence of a lawyer and, where so requested by the child and/or where that is in the best interest of the child, the holder of parental responsibility and, where necessary, specialist professionals. Thorough documentation and audio-visual recording of interviews are a vital safeguard serving both to guarantee that interviews will be conducted properly and to ensure sufficient protection of children who are not always able to understand the content of interviews to which they are subject. In order to avoid any challenge of the content</i></p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		of an interview and thereby undue repetition of questioning, questioning of children should <i>therefore</i> be audio-visually recorded. (AM 19)		
(22) However, it would be disproportionate to require the competent authorities to ensure audio-visual recording in all circumstances. Due account should be taken of the complexity of the case, the seriousness of the alleged offence and the potential penalty that can be incurred. If a child is deprived of liberty before conviction, any questioning of the child should be audio-visually recorded.	[deleted]	(22) However, it would be <i>unreasonable</i> to require the competent authorities to ensure audio-visual recording <i>even when it is not in the best interests of the child</i> . If a child is deprived of liberty before conviction, any questioning of the child should be audio-visually recorded. (AM 20)		
(23) Such audio-visual records should be accessible	(23) In all circumstances, whether the questioning of	(23) Such audio-visual <i>recordings</i> should be		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
only to the judicial authorities and the parties to the proceedings. Moreover, the questioning of children should be carried out in a manner that takes into account their age and level of maturity.	children is audio-visually recorded or not, questioning should be carried out in a manner that takes into account the age and level of maturity of the children concerned.	accessible only to the judicial authorities and the parties to the proceedings. <i>(AM 21)</i>		
(24) When deciding the issue of legal aid, Member States should aim at having rules which guarantee the effective exercise of the right to access to a lawyer for children.	[deleted]	(24) When deciding the issue of legal aid, Member States should aim at having rules which guarantee the effective exercise of the right to access to a lawyer for children.	Linked to Article 18.	
(25) Children are in a particularly vulnerable position in relation to detention. Special efforts should be undertaken to avoid deprivation of liberty of children given the inherent risks for their physical, mental and social	(25) Children are in a particularly vulnerable position in relation to detention. Special efforts should be undertaken to avoid detention of children at any stage of the proceedings before the final determination by a	(25) Children are in a particularly vulnerable position in relation to detention. Special efforts should be undertaken to avoid deprivation of liberty of children given the inherent risks for their physical, mental and social	Linked to Article 10.	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>development. The competent authorities should consider alternative measures and impose such measures whenever this is in the best interests of the child. This may include the obligation to report to a competent authority, a restriction on contact with specific persons, a requirement to undergo therapeutic treatment or treatment for addiction and participation in educational measures.</p>	<p>court of the question whether the child concerned has committed the offence, given the inherent risks for their physical, mental and social development. The competent authorities should consider alternative measures instead of such detention and impose such measures whenever this is in the best interests of the child. Such alternative measures could include an obligation for the child not to be in certain places or an obligation for the child to reside in a specific place, restrictions of contact with specific persons, reporting obligations to the competent authorities, undergoing of therapeutic treatment or treatment for addiction subject to the</p>	<p>development <i>and given that it seriously hampers their reintegration in society. Deprivation of liberty should therefore be used only as a measure of last resort and for the shortest appropriate period of time.</i> The competent authorities should consider alternative measures and impose such measures whenever this is in the best interests of the child. This may include the obligation to report to a competent authority, a restriction on contact with specific persons, a requirement to undergo therapeutic treatment or treatment for addiction and participation in educational measures. <i>(AM 22)</i></p>		

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>child's consent, and participation in educational measures.</p>			
	<p>(25a) Detention of children before the final determination by a court of the question whether the child concerned has committed the offence should be subject to a periodic review by a court, which could also be a single judge. The periodic review may be carried out either <i>ex officio</i> by the court, or at the request of the child, of the child's lawyer or of a judicial authority which is not a court, in particular a prosecutor. Member States should lay down practical arrangements in this respect. These arrangements may provide that if a periodic review is</p>			

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	<p>already being carried out <i>ex officio</i> by the court, no follow-up has to be given to a request of the child or of the child's lawyer to carry out such review.</p>			
<p>(26) When deprivation of liberty is imposed on children, they should benefit from special protection measures. In particular they should be held separately from adults unless it is considered in the child's best interest not to do so, in accordance with Article 37(c) of the United Nations Convention of the Rights of the Child. When a detained child reaches the age of 18 years, there should be the possibility to continue the separate detention where warranted, taking into account the individual</p>	<p>(26) When children are detained at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence, they should benefit from special protection measures. In particular they should be held separately from adults unless it is considered in the child's best interest not to do so, in accordance with Article 37(c) of the United Nations Convention of the Rights of the Child. When a detained child reaches the</p>	<p>(26) When deprivation of liberty is imposed on children, they should benefit from special protection measures. In particular they should <i>always</i> be held separately from adults unless <i>in exceptional circumstances</i> it is considered in the child's best interest not to do so, in accordance with Article 37(c) of the United Nations Convention of the Rights of the Child. When a detained child reaches the age of 18 years, there should be the possibility to continue the separate detention where</p>	<p>Linked to (former) Article 11 (Article 10 GA).</p>	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>circumstances of the case. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.</p>	<p>age of 18 years, there should be the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the case. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs.</p>	<p>warranted, taking into account the individual circumstances of the case. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Children should have access to educational facilities according to their needs. <i>(AM 23)</i></p>		
	<p>(26a) Children may be detained with young adults unless these persons are not suited for joint accommodation with children. Member States should determine which persons are considered to be young adults in accordance with their national law and</p>			

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
	<p>procedures. Member States are encouraged to determine that persons older than 24 years cannot qualify as young adults.</p>			
		<p><i>(26a) Children deprived of liberty should in particular have the right to maintain regular and meaningful contact with parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the best interests of the child and in the interests of justice. (AM 24)</i></p>		
<p>(27) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should take care that the</p>	<p>(27) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should take care that the</p>	<p>(27) Professionals in direct contact with children should take into account the particular needs of children of different age groups and should take care that the</p>	<p>Agreement.</p>	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
proceedings are adapted to them. For that purpose, they should be specially trained in dealing with children.	proceedings are adapted to them. For that purpose, they should be specially trained in dealing with children.	proceedings are adapted to them. For that purpose, they should be specially trained in dealing with children.		
	(27a) Children should be treated in a manner appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.			
(28) Children should be judged in the absence of the public in order to protect their privacy and to facilitate their re-integration into society. In exceptional cases the court may decide that a hearing should be held publicly after it has taken due account of the best interests of the child.	(28) Taking into account the differences between the legal traditions and systems between the Member States, the privacy of children during criminal proceedings should be ensured in the best possible way with a view, <i>inter alia</i>, to facilitating the re-integration of children	(28) Children should be judged in the absence of the public in order to protect their privacy and to facilitate their re-integration into society. The court <i>should be allowed to hold</i> a hearing <i>in public only</i> in exceptional cases, <i>when in the best interests of the child. Such a decision should be open for appeal by the child.</i>		

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	<p>into society. To this end, Member States should make a balancing exercise by taking due account, on the one hand, of the best interests of children, which could for instance be achieved by setting as a principle that trials against children be organised in the absence of the public, by protecting the personal characteristics of the child that are taken into account and derive from the individual assessment foreseen in this Directive, by protecting the audio-visual recordings made during questioning and by avoiding that any inappropriate use of these recordings is made, or by protecting the images of the child and its family members and, on the other</p>	<p><i>Member States should take appropriate measures to ensure that the competent authorities do not commit violations of privacy of children in connection with criminal proceedings and their outcome. They should also seek to prevent breaches of privacy that might be committed through the media, including the Internet. Furthermore, Member States should facilitate the reintegration into society of children involved in criminal proceedings, and should actively take steps in order to prevent discrimination and marginalisation of such children. (AM 25)</i></p>		

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	hand, of the general principle of a public hearing.			
		<i>(28a) Member States should ensure that no information or personal data is made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including the image or the name of the child or the child's family. (AM 26)</i>		
		<i>(28b) Member States should ensure that when records or documents containing personal and sensitive data of children are transferred, that transfer complies with relevant data protection legislation. (AM 27)</i>		

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
		<i>(28c) Member States should consider ensuring that the protection of privacy as set out in this Directive extends after the child reaches the age of 18 and throughout his or her lifetime, avoiding stigmatization, prejudgments and/or enhancing future sentencing. (AM 28)</i>		
(29) In order to ensure appropriate assistance and support of children, the holder of parental responsibility or another appropriate adult should have access to the court hearings involving the suspected or accused child.	(29) Since children are vulnerable and are not always able to fully understand and follow criminal proceedings, they should have the right to be accompanied by a holder of parental responsibility or by another appropriate adult during court hearings in which they are involved. Where there are two holders of parental responsibility, the child	(29) In order to ensure appropriate assistance and support of children, the holder of parental responsibility or another appropriate adult should have access to the court hearings involving the suspected or accused child.	Linked to Article 15.	

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	<p>should have the right to be accompanied by both holders, unless this is contrary to the best interests of the child. Where it is not possible for a holder of parental responsibility to accompany the child, or where no holder of parental responsibility is willing to do so, where it would be contrary to the best interests of the child to be accompanied by a holder of parental responsibility, or where the presence of a holder of parental responsibility could prejudice the criminal proceedings, including when the presence of a holder of parental responsibility could seriously endanger the life, liberty or physical integrity of a person, the</p>			

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	<p>child has the right to be accompanied by another appropriate adult.</p>			
	<p>(29a) In the case the child has chosen an adult that is not acceptable to the court, the competent authority should designate another appropriate adult that is acceptable to the court. In the case the child has not designated another appropriate adult, the competent authority could designate an appropriate adult that is acceptable to the court. The appropriate adult can be the same adult that was provided with information that the child receives regarding his rights, or another appropriate adult, who can also be a person belonging to an authority or other institution</p>			

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	<p>responsible for the protection or welfare of children. Member States should lay down practical arrangements regarding the presence of accompanying persons during the court hearing. These arrangements could include provisions concerning a delay in the arrival of accompanying persons, and concerning the conditions under which an accompanying person can be temporarily excluded from the court hearing.</p>			
<p>(30) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental</p>	<p>(30) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental</p>	<p>(30) The right of an accused person to appear in person at the trial is based on the right to a fair trial provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental</p>	<p>Linked to Article 16.</p>	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>Freedoms, as interpreted by the European Court of Human Rights.</p>	<p>Freedoms, as interpreted by the European Court of Human Rights. Member States should take appropriate measures to promote that children are present at their trial, including by summoning them in person and by sending a copy of the summons to a holder of parental responsibility or, where that would be contrary to the best interests of the child, to another appropriate adult designated by the competent authority. Member States should lay down practical arrangements regarding the presence of the child at their trial. These arrangements could include provisions concerning the conditions under which a child can be</p>	<p>Freedoms, as interpreted by the European Court of Human Rights.</p>		

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	temporarily excluded from the trial.			
		<i>(30a) Member States should ensure that children have the right to appear in person and to participate actively in the trial, including by giving them the opportunity to be heard and to express their views when they are deemed to have a sufficient understanding of the procedure. (AM 29)</i>		
(31) The rights provided for by this Directive should apply to children subject to European arrest warrant proceedings from the time they are arrested in the executing Member State.	(31) The rights provided for by this Directive should apply to children subject to European arrest warrant proceedings from the time they are arrested in the executing Member State.	(31) The rights provided for by this Directive should apply to children subject to European arrest warrant proceedings from the time they are arrested in the executing Member State.	Linked to Article 17.	
	(31a) The surrender procedure is crucial for			

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	<p>cooperation in criminal matters between the Member States. Observance of the time-limits contained in Framework Decision 2002/584/JHA is essential for such cooperation. Therefore, while children should be able to exercise their rights under this Directive in European arrest warrant proceedings, those time-limits should be respected.</p>			
<p>(32) Any individual assessment, medical examination and audio-visual recording provided for by this Directive should be carried out free of charge for the child.</p>	<p>(32) An individual assessment, medical examination and audio-visual recording provided for by this Directive should be carried out free of charge for the child. The Member States will assume the relevant costs, unless they are covered in any other</p>	<p>(32) Any individual assessment, medical examination and audio-visual recording provided for by this Directive should be carried out free of charge for the child.</p>	<p>Linked to Article 21.</p>	

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	<p>way, e.g. through a medical insurance. However, without prejudice to national rules concerning the bearing of costs of criminal proceedings and without prejudice to national rules on legal aid, Member States may provide case-by-case assessment on the fairness of reimbursement of those costs by the convicted child. To that end, the potential consequence on the child's general mental and physical development, including education and professional future, should be taken into account.</p>			
<p>(33) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of data by the</p>	<p>(33) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of relevant data,</p>	<p>(33) In order to monitor and evaluate the effectiveness of this Directive, there is a need for collection of data by the</p>	<p>Linked to Article 20.</p>	

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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>Member States with regard to the implementation of the rights set out in this Directive. Relevant data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.</p>	<p>from available data, with regard to the implementation of the rights set out in this Directive. Such relevant data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.</p>	<p>Member States with regard to the implementation of the rights set out in this Directive. Relevant data include data recorded by the judicial authorities and by law enforcement authorities and, as far as possible, administrative data compiled by healthcare and social welfare services as regards the rights set out in this Directive, in particular in relation to the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.</p>		
<p>(34) This Directive upholds the fundamental rights and principles as recognised by</p>	<p>(34) This Directive upholds the fundamental rights and principles as recognised by</p>	<p>(34) This Directive upholds the fundamental rights and principles as recognised by</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of defence. This Directive should be implemented in accordance with those rights and principles.</p>	<p>the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of defence. This Directive should be implemented in accordance with those rights and principles.</p>	<p>the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of defence. This Directive should be implemented in accordance with those rights and principles.</p>		
<p>(35) This Directive sets minimum rules. Member</p>	<p>(35) This Directive sets minimum rules. Member</p>	<p>(35) This Directive sets minimum rules. Member</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice of the European Union and the European Court of Human Rights</p>	<p>States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice of the European Union and the European Court of Human Rights.</p>	<p>States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice of the European Union and the European Court of Human Rights.</p>		
(36) Since the objectives of	(36) Since the objectives of	(36) Since the objectives of		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>this Directive, namely setting common minimum standards on procedural safeguards for children suspected or accused in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.</p>	<p>this Directive, namely setting common minimum standards on procedural safeguards for children suspected or accused in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.</p>	<p>this Directive, namely setting common minimum standards <i>across the Union</i> on procedural safeguards for children suspected or accused in criminal proceedings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives. (AM 30)</p>		
(37) [In accordance with	(37) In accordance with	(37) [In accordance with		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
<p>Articles 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to participate in the adoption and application of this Directive] OR [In accordance with Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member</p>	<p>Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application. (...)</p>	<p>Articles 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to participate in the adoption and application of this Directive] OR [In accordance with Articles 1 and 2 of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member</p>		

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
States are not taking part in the adoption of this Directive and are not bound by it or subject to its application] ⁹ ;		States are not taking part in the adoption of this Directive and are not bound by it or subject to its application];		
(38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.	(38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.	(38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.		
(39) In accordance with the Joint Political Declaration of Member States and the Commission of 28	(39) In accordance with the Joint Political Declaration of Member States and the Commission of 28	(39) In accordance with the Joint Political Declaration of Member States and the Commission of 28		

⁹ The final wording of this recital in the Directive will depend on the position of the United Kingdom and Ireland taken in accordance with the provisions of Protocol No 21.

Recitals

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Orientation vote LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
September 2011 on explanatory documents ¹⁰ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	September 2011 on explanatory documents ¹¹ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	September 2011 on explanatory documents ¹² , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,		

¹⁰ OJ C 369, 17.12.2011, p. 14.

¹¹ OJ C 369, 17.12.2011, p. 14.

¹² OJ C 369, 17.12.2011, p. 14.

ARTICLES

CHAPTER 1

INTRODUCTORY PROVISIONS

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 1				
<i>Subject matter</i>	<i>Subject matter</i>	<i>Subject matter</i>		
This Directive lays down minimum rules concerning certain rights of suspects or accused persons in criminal proceedings who are children and of children subject to a surrender procedure pursuant to Council Framework Decision 2002/584/JHA ¹³ (“European arrest warrant proceedings”).	This Directive lays down minimum rules concerning certain rights of suspects or accused persons in criminal proceedings who are children and of children subject to a surrender procedure pursuant to Council Framework Decision 2002/584/JHA (“European arrest warrant proceedings”).	This Directive lays down minimum rules concerning certain rights of suspects or accused persons in criminal proceedings who are children and of children subject to a surrender procedure pursuant to Council Framework Decision 2002/584/JHA (“European arrest warrant proceedings”).	Agreement	

¹³ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1).

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Council	Possible Compromise
Article 2				
<i>Scope</i>	<i>Scope</i>	<i>Scope</i>		
<p>1. This Directive applies to children subject to criminal proceedings from the time when they become suspected or accused of having committed an offence and until the conclusion of the criminal proceedings.</p>	<p>1. This Directive applies to children subject to criminal proceedings from the time when they are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.</p>	<p>1. This Directive applies to children subject to criminal proceedings from the time when they become suspected or accused of having committed an offence and until the conclusion of the criminal proceedings.</p>	<p>As regards the <u>first part of the amendment</u>, regarding "made aware", PRES explained EP that CNS prefers the GA text for the following reasons:</p> <ul style="list-style-type: none"> - clear "kick-off" point is necessary to allow a proper implementation of the Directive; - consistency with other Directives. <p>EP expressed concerns that the GA text would allow MS to defer the application of the rights in the Directive by not making children aware that they are suspected or accused of having committed a criminal offence.</p>	

			<p>At technical level COM suggested a compromise solution whereby the text of the GA would be kept, but whereby text would be added (in the operative part and/or in a recital?) saying that children who are suspected or accused of having committed a criminal offence, should be made aware [as soon as possible] [without delay] that they are suspected or accused.</p> <p>MS are invited to express their opinion on this suggestion.</p> <p>As regards <u>the second part of the amendment</u>, regarding the "end-point" in time of the application of the Directive, PRES explained EP that MS are unanimously of the opinion that the Directive cannot and should not apply to the execution phase (issue of legal base, 'criminal procedure'): the Directive is about suspects and accused persons in</p>	
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			<p>criminal proceedings, not about convicted persons.</p> <p>COM and EP felt that the legal basis would allow the Directive to apply to the execution phase.</p> <p>It was agreed that this point is a legal/political issue that should be dealt with at the next trilogue.</p>	
<p>2. This Directive applies to children subject to European arrest warrant proceedings from the time of their arrest in the executing Member State.</p>	<p>2. This Directive applies to children subject to European arrest warrant proceedings (requested persons) from the time of their arrest in the executing Member State in accordance with Article 17.</p>	<p>2. This Directive applies to children subject to European arrest warrant proceedings from the time of their arrest in the executing Member State.</p>	<p>PRES explained to EP that the text of the GA is more precise and in line with similar text in Article 2(2) of Directive 2013/48/EU on the right of access to a lawyer.</p> <p>It was agreed to revise this provision once Article 17 would have been agreed to.</p>	
<p>3. This Directive applies to suspects or accused persons subject to criminal proceedings referred to in paragraph 1, and to persons subject to European arrest warrant proceedings referred to in paragraph 2, who are</p>	<p>3. Member States may provide that this Directive, in particular Articles 4, 7, 8, 10 and 16 thereof, shall apply also to suspects or accused persons subject to criminal proceedings referred to in paragraph 1,</p>	<p>3. This Directive applies to suspects or accused persons subject to criminal proceedings referred to in paragraph 1, and to persons subject to European arrest warrant proceedings referred to in paragraph 2, who are</p>	<p>PRES explained to EP that various MS have a problem with the very principle of the Directive being applicable to persons older than 18 years, since in their systems a person is either a child, or an adult - there are no</p>	

<p>no longer children in the course of those proceedings, which started when they were children.</p>	<p>and to persons subject to European arrest warrant proceedings referred to in paragraph 2, who were children when they became subject to these proceedings, but who subsequently have become of age.</p>	<p>no longer children <i>but are still under the age of 21 at the beginning</i> of those proceedings, which <i>relate to offences allegedly committed before those persons had reached the age of 18 (AM 31)</i></p>	<p>intermediate categories. Therefore, CNS in the GA has decided to make the prolonged application optional for Member States, by using the word "may".</p> <p>PRES also explained to EP that MS feel that some Articles of the Directive should never apply to adults. This holds true, for example, for Article 5, regarding information to be provided to a holder of parental responsibility informed. Indeed, young adults may not want that their parents be informed of their alleged criminal conduct.</p>	
<p>4. This Directive also applies to children other than suspected or accused who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.</p>	<p>4. This Directive also applies to children other than suspected or accused who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.</p>	<p>4. This Directive also applies to children other than suspected or accused who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.</p>	<p>Agreement.</p>	
<p>5. This Directive does</p>	<p>5. This Directive does</p>	<p>5. This Directive does</p>	<p>Agreement.</p>	

not affect national rules determining the age of criminal responsibility.	not affect national rules determining the age of criminal responsibility.	not affect national rules determining the age of criminal responsibility.		
	<p>5a. Without prejudice to the right to a fair trial, in respect of minor offences:</p> <p>(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or</p> <p>(b) where deprivation of liberty cannot be imposed as a sanction,</p> <p>this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.</p> <p>In any event, this Directive shall fully apply where the</p>		<p>PRES explained to EP that CNS considers that this Directive should have the same exclusion for minor offences as the other procedural rights Directives that have already been adopted. This is necessary for reasons of consistency, and in order to ensure the proper application of the Directive (example of driving a bike without a helmet). If MS would be obliged to apply the Directive fully in respect of all minor offences, their systems would simply collapse. It is better that the Directive applies properly to offences other than those which are minor, than that it would apply in a not so proper way to all offences. CNS is therefore very much attached to the text of paragraph 5a GA.</p>	

	child is deprived of liberty, irrespective of the stage of the criminal proceedings.			
	6. This Directive does not apply to proceedings in relation to children who have committed an act qualified as an offence, where these proceedings may not lead to the imposition of any criminal sanction, but which may lead to the imposition of restrictive measures on children.		PRES explained to EP that CNS considers it appropriate to clearly mention in the operative part that the Directive does not apply to proceedings which are not criminal proceedings, but which may lead to the imposition of certain restrictive measures (for instance protective measures or education measures). This is in line with the COM proposal (see point 16 of the explanatory memorandum).	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 3				
<i>Definition</i>	<i>Definition</i>	<i>Definitions</i>		
<p>For the purposes of this Directive the term "child" means a person below the age of 18 years.</p>	<p>For the purposes of this Directive the term "child" means a person below the age of 18 years.</p>	<p>For the purposes of this Directive <i>the following definitions apply:</i></p> <ul style="list-style-type: none"> - "child" means a person below the age of 18 years. <i>Where, even after checks, doubts remain about a person's age, that person shall, for all purposes, be presumed to be a child. (AM 32)</i> - <i>"holder of parental responsibility" means any person having parental responsibility over a child as defined in Article 2(7) of Council Regulation (EC) No 2201/2003 (AM 33).</i> 	<p><u>Definition of "child":</u></p> <p>PRES explained to EP that CNS prefers sticking to the text as proposed by COM, but that it might agree on adding some language in recital 11.</p> <p>EP however insisted on language in the operative part.</p> <p>PRES said that it would enquire with MS whether language similar to that set out in Article 13(2) of the THB Directive (2011/36/EU) would be acceptable.</p> <p>MS are invited to comment on this suggestion (see fifth column).</p>	<p>For the purposes of this Directive the following definitions apply:</p> <ul style="list-style-type: none"> - "child" means a person below the age of 18 years. Where the age of a person is uncertain and there are reasons to believe it is a child, that person should be presumed to be a child; - "holder of parental responsibility" means any person having parental responsibility over a child. - "parental responsibility" means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of

			<p><u>Definition of "holder of parental responsibility":</u></p> <p>PRES explained to EP that CNS prefers sticking to the COM approach by keeping the definition of "holder of parental responsibility" in the recitals only (recital 14). PRES noted that Directive 2013/48/EU on access to a lawyer, and other Directives, do not contain a reference to Council Regulation 2201/2003. PRES also indicated that a reference to another instrument may not be appropriate, since that other instrument may change.</p> <p>EP however insisted on language in the operative part.</p> <p>PRES wonders if the text of Regulation 2201/2003 may be copied in this Directive.</p> <p>MS are invited to comment on this suggestion (see fifth column).</p>	<p>law or by an agreement having legal effect. The term includes rights of custody and rights of access.</p>
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CHAPTER 2
RIGHT TO INFORMATION OF CHILDREN

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 4				
<i>Right to information of children</i>	<i>Information to be provided to children</i>	<i>Right to information of children</i>		
<p>1. Member States shall ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU. They shall also be informed about the following rights within the same scope as Directive 2012/13/EU:</p>	<p>1. Member States shall ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU. They shall also be informed promptly about their rights and entitlements on the following issues, where and when these rights and entitlements apply:</p>	<p>1. Member States shall ensure that children are informed promptly – <i>in writing and orally, by procedures appropriate to their age, understanding, and intellectual ability, in a simple language which the child understands</i> – about <i>the charges against them, the conduct of the proceedings and</i> their rights in accordance with Directive 2012/13/EU, <i>including</i> the following rights: <i>(AM 34)</i></p>	<p>PRES explained to EP that CNS prefers to stay close to the text of Directive 2012/13/EU.</p> <p>PRES informally suggested the following compromise text for the heading:</p> <p>1. Member States shall ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU. Member States shall also ensure that children are informed promptly, <u>in writing or orally, in simple and accessible language,</u></p>	

			<p>about the following rights, where and when these rights apply:</p> <p>EP said that it would reflect on this suggestion.</p> <p>The following alternative text for the second phrase was also suggested:</p> <p>Member States shall also ensure that children are informed promptly, in writing or orally, in simple and accessible language, about the following rights, where applicable, unless it would be in the best interest of the child to postpone providing the child with the information:</p> <p>MS are invited to comment on this suggestion.</p> <p>NB: CLS considers that there is no difference between "rights" and "entitlements". COM and EP share this view. Hence, PRES suggests dropping this point and return to "rights"</p>	
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			all-over.	
<p>(1) their right to have the holders of parental responsibility informed as provided for in Article 5;</p> <p>(2) their right to a lawyer, as provided for in Article 6;</p> <p>(3) their right to an individual assessment, as provided for in Article 7;</p> <p>(4) their right to a medical examination, as provided for in Article 8;</p> <p>(5) their right to liberty and the right to specific treatment in detention, as provided for in Articles 10 and 12;</p> <p>(6) their right to protection of privacy, as provided for in Article 14;</p> <p>(7) their right that the holders of parental responsibility have access to the court hearings, as</p>	<p>(a) the information to be given to a holder of parental responsibility, as provided for in Article 5;</p> <p>(b) the right of access to a lawyer, as provided for in Article 6;</p> <p>(c) the assistance by a lawyer, as provided for in Article 6a;</p> <p>(d) the individual assessment, as provided for in Article 7;</p> <p>(e) the access to medical examination, as provided for in Article 8;</p> <p>(f) the limitation of detention and use of alternative measures, as provided for in Article 10;</p> <p>(g) the specific treatment in detention, as provided for in Article 12;</p> <p>(h) the protection of privacy,</p>	<p>(1) their right to have the holders of parental responsibility informed as provided for in Article 5;</p> <p>(2) their right to <i>be assisted by</i> a lawyer, as provided for in Article 6; (<i>AM 35</i>)</p> <p>(3) their right to an individual assessment, as provided for in Article 7;</p> <p>(4) their right to a medical examination, as provided for in Article 8;</p> <p>(5) their right to liberty and the right to specific treatment <i>when arrested or</i> in detention, as provided for in Articles 10 and 12; (<i>AM 36</i>)</p> <p>(6) their right to protection of privacy, as provided for in Article 14;</p> <p>(7) their right that the holders of parental</p>	<p>It was agreed that the text of the different items could best be examined after the text of the other Articles has been finalised.</p> <p>Further to a request by PRES, EP promised however to enquire whether point 9b (new) (right of access to justice) was really necessary.</p>	

<p>provided for in Article 15;</p> <p>(8) their right to appear in person at the trial, as provided for in Article 16;</p> <p>(9) their right to legal aid, as provided for in Article 18.</p>	<p>as provided for in Article 14;</p> <p>(i) the right to be accompanied by an adult during the court hearings, as provided for in Article 15;</p> <p>(j) the right to appear in person at the trial, as provided for in Article 16;</p> <p>(k) legal aid, as provided for in Article 18.</p>	<p>responsibility have access to the court hearings, as provided for in Article 15;</p> <p>(8) their right to appear in person at the trial, as provided for in Article 16;</p> <p>(9) their right to legal aid, as provided for in Article 18.</p> <p><i>(9a) their right to effective remedies, as provided for in Article 18a. (AM 37)</i></p> <p><i>(9b) their right of access to justice which is adapted to their needs (AM 38)</i></p>		
<p>2. Member States shall ensure that, where children are deprived of liberty the Letter of Rights given to them pursuant to Directive 2012/13/EU includes their rights under this Directive.</p>	<p>2. Member States shall ensure that, where children are arrested or detained, the Letter of Rights given to them pursuant to Directive 2012/13/EU includes their rights and entitlements under this Directive.</p>	<p>2. Member States shall ensure that, where children are deprived of liberty the Letter of Rights given to them pursuant to Directive 2012/13/EU includes their rights under this Directive.</p>	<p>PRES explained to EP that CNS prefers avoiding any confusion with Directive 2012/13/EU, and that it seems therefore best to stick to the wording "arrested or detained" as used in that Directive (Article 4.1).</p> <p>COM referred however to Recital 21 of that Directive, where it is said that "arrested or detained" should be</p>	

			<p>interpreted as "deprived of liberty". COM suggested therefore putting "deprived of liberty", also since Directive 2013/48/EU on A2L only speaks about "deprivation of liberty".</p> <p>PRES wonders whether "deprived of liberty" could be put, while excluding (in the recitals?) some situations of deprivation of liberty for the purposes of this Directive (such as deprivation of liberty for reasons of verifying/establishing someone's identity).</p> <p>MS are invited to reflect on this solution and, where relevant, indicate which situations of deprivation of liberty should be excluded in this context.</p>	
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 5				
<i>Right of the child to have the holder of parental responsibility informed</i>	<u><i>Information to be provided to a holder of parental responsibility</i></u>	<i>Right of the child to have the holder of parental responsibility informed</i>		
Member States shall ensure that the holder of parental responsibility of the child or, where that would be contrary to the best interests of the child, another appropriate adult, is provided with the information that the child receives in accordance with Article 4.	1. Member States shall ensure that a holder of parental responsibility is provided as soon as possible with the information that the child receives in accordance with Article 4.	Member States shall ensure that the holder of parental responsibility or, where that <i>is impossible or</i> would be contrary to the best interests of the child, another appropriate adult, <i>to be designated by the child and approved by the competent authority or – if the child has not designated any such person – a person designated by the competent authority and accepted by the child</i> , is provided <i>as quickly as possible</i> with the information that the child receives in accordance with Article 4. (AM 39)	If the category of "entitlements" is deleted, the title of this Article could read as follows: <i>"Right of the child to have a holder of parental responsibility informed"</i> On the substance, it was agreed that the positions of the three Institutions are very close. PRES invited EP to accept the GA text. Paragraph 1 GA is possibly OK.	
	2. Where providing the information referred to in		PRES explained to EP	2. Where providing the information referred to in

	<p>paragraph 1 to a holder of parental responsibility</p> <p>(a) would be contrary to the best interests of the child; (b) could jeopardise the criminal proceedings; or (c) is not possible, because no holder of parental responsibility can be reached or his/her identity is unknown,</p> <p>the information shall be provided to another appropriate adult, nominated by the child and accepted as such by the competent authority, or to a person designated by the competent authority, who can also be an authority or other institution responsible for the protection or welfare of children.</p>		<p>points a) and b) of the GA:</p> <p>Explanation point a): It could be contrary to the best interest of the child to inform the holder of parental responsibility in certain cases, e.g. where the child has been previously (sexually) abused by a parent or has been victim of domestic violence.</p> <p>Explanation point b): Informing a holder of parental responsibility could jeopardise the criminal proceedings if that holder is (probably) involved in the same criminal activity as the child.</p> <p>PRES observed that if considered useful, it could be underlined in the recitals that these exceptions should be interpreted narrowly.</p> <p>EP and COM felt that point b) of the GA text was most complicated. COM observed that the text of this Directive</p>	<p>paragraph 1 to a holder of parental responsibility would be contrary to the best interests of the child, the information shall be provided to another appropriate adult, nominated by the child and accepted as such by the competent authority, or to a person designated by the competent authority, who can also be an authority or other institution responsible for the protection or welfare of children.</p> <p>Revised accompanying recital 15:</p> <p>(15) Since children are vulnerable and are not always able to fully understand and follow criminal proceedings, Member States should inform a holder of parental responsibility about applicable procedural rights, either orally or in writing. If there are two holders of parental responsibility,</p>
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			<p>may not go below the standards of the Directive 2013/48/EU on A2L.</p> <p>The suggestion was made to incorporate point b) (and possibly also c) in point a), regarding the best interests of the child - which, according to EP, is a large concept - and explain that in the recitals.</p> <p>MS are invited to comment on the relevant suggestion in the fifth column.</p>	<p>Member States should inform both holders, unless this is not practicable. This information should be provided as soon as possible and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of defence of the child. Where providing the information to a holder of parental responsibility would be contrary to the best interests of the child, such as when the child has been victim of domestic violence by the holder of parental responsibility, when providing the information could substantially jeopardise the criminal proceedings or when no holder of parental responsibility can be reached or his/her identity is unknown, the information should be provided to another appropriate adult nominated by the child or to a person designated by the competent</p>
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				authority. In the circumstance that no holder of parental responsibility can be reached or his or her identity is unknown, the Member States should only make use of the possibility to inform a person other than a holder of parental responsibility when they have done concrete efforts to reach a holder of parental responsibility or to obtain his or her identity.
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 6				
<i>Right of a mandatory access to a lawyer</i>	<i>Right of access to a lawyer</i>	<i>Right to mandatory <u>assistance by a lawyer</u> (AM 40)</i>		
1. Member States shall ensure that children are assisted by a lawyer throughout the criminal proceedings in accordance with Directive 2013/48/EU. The right to access to a lawyer cannot be waived.	Member States shall ensure that children have the right of access to a lawyer throughout the criminal proceedings in accordance with Directive 2013/48/EU.	1. Member States shall ensure that children are assisted by a lawyer <i>at every stage in</i> the proceedings. The right to <i>be assisted by</i> a lawyer cannot be waived. (AM 41)	This can be compared with Article 6a of the GA. MS are invited to comment on this provision.	
		<i>1a. The derogations provided for in Directive 2013/48/EU shall not apply to children. (AM 42)</i>	This is difficult to understand: the derogations provided for in Articles 3.5 and 3.6 of Directive 2013/48/EU, should also apply in respect of children (illustration: one cannot by miracle produce a lawyer in the forests of French Guyana, not even for a child). See also Article 6a(2) GA.	

<p>2. The right to access to a lawyer shall also apply to criminal proceedings that may lead to the final dismissal of the case by the prosecutor after the child has complied with certain conditions.</p>	<p>[deleted]</p>	<p>The right to access to a lawyer shall also apply to criminal proceedings that may lead to the final dismissal of the case by the prosecutor after the child has complied with certain conditions.</p>	<p>MS are invited to comment on this provision, which was deleted in the GA. Which arguments should be used towards the EP?</p>	
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 6a				
	<i>Assistance by a lawyer</i>			
	<p>1. Member States shall ensure that children, who have the right of access to a lawyer in accordance with Article 6, are assisted by a lawyer in the following situations:</p> <p>(a) when they are questioned by the police, or by other law enforcement or judicial authorities, including during the trial, unless this is not proportionate taking account of the following elements:</p> <p>i) the complexity of the case;</p> <p>ii) the seriousness of the alleged offence;</p> <p>iii) the maximum penalty that can reasonably be</p>		MS are invited to comment on this Article. Is there any flexibility?	

	<p>expected to be imposed.</p> <p>(b) when they are deprived of liberty, unless the deprivation of liberty is supposed to last only for a short period of time.</p>			
	<p>2. Where the child has to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child for a reasonable period of time. However, in exceptional circumstances and only during the pre-trial stage, the competent authorities may immediately proceed with the questioning when, in the light of the particular circumstances of the case, this is justified on the basis of one of the following compelling reasons:</p> <p>(a) where there is an urgent need to avert serious adverse</p>			

	<p>consequences for the life, liberty or physical integrity of a person;</p> <p>(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.</p>			
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 7				
<i>Right of an individual assessment</i>	<i>Individual assessment</i>	<i>Right of an individual assessment</i>		
1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.	1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.	1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.	Agreement.	
2. For that purpose children shall be individually assessed. The assessment shall take particular account of the personality and maturity of the child and their economic and social background.	2. For that purpose children shall be individually assessed. The assessment shall take particular account of the personality and maturity of the child and their familial and social background.	2. For that purpose children shall be individually assessed. The assessment shall take particular account of the personality and maturity of the child, its <i>family</i> , economic and social background, <i>its living environment and any specific vulnerabilities</i> . (AM 43)	PRES observed that "living environment" could be comprised under "social background". EP could provisionally accept this. It was also provisionally agreed to put "specific vulnerabilities" in the text, and explain that in a recital (see text in the next column; reading difficulties could e.g. be dyslexia).	Subject to confirmation by the Working Party and the rapporteur/shadows, the following solution was provisionally agreed: 2. For that purpose children shall be individually assessed. The assessment shall take particular account of the personality and maturity of the child, its <i>family</i> , its economic and social background, <i>and of any</i>

				<p><i>specific vulnerabilities of the child.</i></p> <p>Accompanying new recital 19a:</p> <p><i>The individual assessment should take particular account of the personality and maturity of the child, of its family, its economic and social background, including its living environment, and of any specific vulnerabilities of the child, such as learning disabilities and communication difficulties</i></p> <p>Member States are invited to indicate if this would be agreeable.</p>
<p>3. The individual assessment shall take place at an appropriate stage of the proceedings and in any event before indictment.</p>	<p>3. The individual assessment shall take place at the earliest appropriate stage of the proceedings and, at the latest, in due time for it to be taken into account by the court when sentencing.</p>	<p>3. The individual assessment shall take place at <i>the earliest</i> appropriate stage of the proceedings and in any event before indictment <i>or the ordering of measures involving deprivation of liberty, except where this is</i></p>	<p>PRES indicated that the LIBE text is difficult to understand, since in practice it often happens that a suspect or accused child is arrested "red handed" regarding a serious offence; in such a case, making an individual assessment before</p>	

		<p><i>impossible. (AM 44)</i></p>	<p>arrest is impossible in practice.</p> <p>EP said that perhaps the text could be modified as follows:</p> <p><i>"... at the earliest appropriate stage of the proceedings and in any event before indictment or before a judge or a court orders a measure involving deprivation of liberty."</i></p> <p>MS are invited to comment on this suggestion.</p> <p>MS are also invited to comment on the following PRES suggestion, which is inspired by Article 6(3) of Directive 2012/13/EU on the right o information:</p> <p><i>"... at the earliest appropriate stage of the proceedings and in any event before submission of the merits of the accusation to the court".</i></p>	
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<p>4. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the seriousness of the alleged offence and the penalty which will be imposed if the child is found guilty of the alleged offence, whether or not the child has previously come to the attention of competent authorities in the context of criminal proceedings.</p>	<p>4. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the seriousness of the alleged offence and the penalty which will be imposed if the child is found guilty of the alleged offence, whether or not the child has in the past come to the attention of competent authorities in the context of criminal proceedings.</p>	<p>4. The extent and detail of the individual assessment may vary depending on the circumstances of the case, <i>taking into account the best interests of the child.</i></p> <p><i>The assessment shall serve to establish and record such information about the individual characteristics and circumstances of the child as might be of use to the competent authority in order to:</i></p> <p><i>(a) determine whether special measures concerning the child should be taken during the proceedings;</i></p> <p><i>(b) assess the appropriateness and effectiveness of any precautionary measures;</i></p> <p><i>(c) take decisions within its remit arising from the proceedings. (AM 45)</i></p>	<p>PRES explained to EP that the second part of the EP amendment ("the assessment ... arising from the proceedings") could most probably best be placed in the recitals. EP however stressed that it would like to keep it in the operative part.</p> <p>The suggestion was made to put the text in paragraph 2. A possible drafting could be the following:</p> <p>2. For that purpose children shall be individually assessed, <u>so as to allow the competent authority to verify whether any specific measure or decision should be taken in respect of the child.</u> (*)</p> <p>2a. The assessment shall take particular account of the personality and maturity of the child, its <i>family</i>, economic and social background, <i>its living environment and any</i></p>	
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			<p><i>specific vulnerabilities.</i></p> <p>(*) In a recital, some examples could be given of such specific measures or decisions.</p> <p>Member States are invited to comment on this suggestion.</p>	
<p>5. Individual assessments shall be carried out with the close involvement of the child.</p>	<p>5. Individual assessments shall be carried out with the close involvement of the child.</p>	<p>5. Individual assessments shall be carried out with the close involvement of the child. <i>They shall be carried out by qualified personnel, following a multidisciplinary approach and, where deemed advisable, with the involvement of the holder of parental responsibility or another appropriate adult and/or specialist professional. (AM 46)</i></p>	<p>PRES explained the concerns of MS with this text. It was agreed to examine possible alternative drafting.</p>	<p>Possible alternative drafting:</p> <p>5. Individual assessments shall be carried out with the close involvement of the child. <i>They shall be carried out by qualified personnel, following, <u>where necessary</u>, a multidisciplinary approach and, where [deemed advisable] [appropriate], <u>after consultation</u> of the holder of parental responsibility or another appropriate adult and/or specialist professional.</i></p> <p>Member States are invited to comment on this alternative drafting.</p>

<p>6. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.</p>	<p>6. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.</p>	<p>6. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.</p>	<p>Agreement.</p>	
<p>7. Member States may derogate from the obligation in paragraph 1 when it is not proportionate to carry out an individual assessment taking into account the circumstances of the case and whether or not the child has previously come to the attention of Member State authorities in the context of criminal proceedings.</p>	<p>7. Member States may derogate from the obligation in paragraphs 1 and 2 when it is not proportionate to carry out an individual assessment taking into account the circumstances of the case, including the lack of seriousness of the alleged offence, and whether or not the child has in the past come to the attention of Member State authorities in the context of criminal proceedings.</p>	<p>7. Member States may derogate from the obligation to carry out an individual assessment, <i>if the derogation is warranted by the circumstances of the case and it is in the best interests of the child.</i> (AM 47)</p>	<p>The three texts on this provision seem on substance to be rather close. It was agreed to further reflect on this text.</p>	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 8				
<i>Right to medical examination</i>	<i>Access to medical examination</i>	<i>Right to medical examination</i>		
<p>1. In case of deprivation of liberty of a child, Member States shall ensure that the child has access to a medical examination with a view, in particular, to assessing the general mental and physical condition of the child with the aim to determine the capacity of the child to face questioning or other investigative or evidence gathering acts or any measures taken or envisaged against the child.</p>	<p>1. In case of deprivation of liberty of a child, Member States shall ensure that the child has access to a medical examination with a view, in particular, to assessing the general mental and physical condition of the child. (...)</p>	<p>1. <i>Where a child has been deprived of liberty, where the proceedings so require, or where it is in the best interests of the child, Member States shall ensure that the child has access without delay to a medical examination and medical care in order to evaluate, protect and, where necessary, improve the health and the well-being of the child. The medical examination shall be as non-invasive as possible and carried out by a qualified professional.</i></p>	<p>In line with the outcome of the Working Party on 16 February, PRES said to EP that this Article should not be about medial care, but only about a medical examination.</p> <p>In the view of PRES, reference to medical care, if any, should be made in Article 12, and it should be limited to urgent medical assistance (see also Article 4.2.c of Directive 2012/13/ on the right to information).</p> <p>EP considered that at least in cases of deprivation of liberty, MS should not only ensure a medical examination, but also provide medial care to children. According to the</p>	

			<p>Legal Service of the EP, there would not be an issue with the legal basis, given that Article 168(1) TFEU states that "a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities".</p> <p>Further to the meetings with EP, PRES examined this issue in more detail, also with help of the CLS.</p> <p>PRES observes that the legal basis of this Directive is Article 82(2) TFEU, which is part of the justice and home affairs provisions.</p> <p>As a general rule, combining legal bases is possible only if the legal bases are compatible. Since Article 82(2) belongs to Title V (AFSJ, Articles 67 to 89) TFEU, it cannot legally be combined with a legal basis from outside this Title, because Title V and</p>	
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			<p>Protocols 21 and 22 provide for "variable geometry" (not all MS participate, emergency break, etc), which is different from the other Titles. The combination between provisions from Title V with other provisions of the TFEU (where all MS participate) is therefore excluded.</p> <p>In addition, even if such combination would be possible, Article 168 TFEU does not give the power to the EU to take harmonisation measures in the public health area (except the measures related to human origin, blood and blood derivatives, veterinary and phytosanitary fields and medicinal products stipulated in paragraph 4 of this Article). The EU action under this Article is limited only to complement MS' action and to encourage cooperation between MS in the public health area,</p>	
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			<p>"excluding any harmonisation of the laws and regulation of MS".</p> <p>Finally, the main objective of this Directive is to guarantee a minimum protection of children suspected or accused in criminal proceeding. By obliging the MS to ensure a "medical care in order to evaluate, protect and, where necessary, improve the health and the well-being of the child", the Directive would go beyond that objective.</p> <p>Hence, the legal basis of the Directive does not allow adding a right to "medical care". PRES suggests explaining this again to EP.</p>	
		<p><i>1a. The results of that medical examination shall be taken into account when determining the capacity of the child to face questioning or other investigative or evidence gathering acts or</i></p>		

		any measures taken or envisaged against the child. (AM 48)		
<p>2. The following persons shall have the right to ask for a medical examination:</p> <p>(a) the child,</p> <p>(b) the holder of the parental responsibility or the appropriate adult referred to in Article 5;</p> <p>(c) the child's lawyer.</p>	<p>2. The medical examination shall be carried out either <i>ex officio</i> by the competent authorities, when specific health indications or the general mental or physical constitution of the child give reasons for such a medical examination, or following a request by any of the following persons:</p> <p>a) the child,</p> <p>b) a holder of parental responsibility or another appropriate adult referred to in Article 5;</p> <p>c) the child's lawyer.</p> <p>A request for a medical examination may be refused if it is obvious that such request has been made with the sole purpose of delaying the criminal</p>	<p>2. The following persons shall have the right to ask for a medical examination:</p> <p>(a) the child,</p> <p>(b) the holder of the parental responsibility or the appropriate adult referred to in Article 5;</p> <p>(c) the child's lawyer.</p>	<p>The first sentence of the second part of the GA text on "abuse" ("A request ... delaying the criminal proceedings") is problematic for EP/COM.</p> <p>MS are invited to indicate if this text could perhaps be put in the recitals.</p>	

	proceedings. In the cases of (b) and (c), the request can also be rejected if the examination would go against the best interests of the child.			
3. The conclusion of the medical examination shall be recorded in writing.	3. The conclusion of the medical examination shall be recorded in writing.	3. The conclusion of the medical examination shall be recorded in writing <i>and all steps necessary to protect the physical and mental health of the child shall be taken without delay. (AM 49)</i>	Linked to issue on medical care.	
4. Member States shall ensure that the medical examination is repeated where the circumstances so require.	4. Member States shall ensure that the medical examination is repeated where the circumstances so require.	4. Member States shall ensure that the medical examination is repeated where the circumstances so require.	Agreement.	

Commission proposal (ST 17633/13)	Council GA approach (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 9				
<i>Questioning of children</i>	<i>Questioning of children</i>	<i>Questioning of children</i>		
<p>1. Member States shall ensure that any questioning of children by police or other law enforcement or judicial authority carried out prior to the indictment is audio-visually recorded, unless it is not proportionate taking into account the complexity of the case, the seriousness of the alleged offence and the potential penalty that can be incurred.</p>	<p>1. Member States shall ensure that questioning of children by police or other law enforcement authorities carried out prior to the submission of the merits of the accusation before a court may be audio-visually recorded.</p>	<p>1. Member States shall ensure that any questioning of children by police or other law enforcement or judicial authority carried out is audio-visually recorded, unless <i>it</i> is not <i>in the best interests of the child</i>. (AM 50)</p>	<p>This is a difficult Article, where the differences between EP/COM and CNS are substantial.</p> <p>MS are invited to comment on the LIBE amendments.</p>	
<p>2. In any event, the questioning of children shall be audio-visually recorded where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.</p>	<p>2. When children are deprived of liberty, Member States shall ensure that questioning as referred to in paragraph 1 shall be audio-visually recorded when this is proportionate, taking account of the following elements:</p>	<p>2. In any event, the questioning of children shall be audio-visually recorded where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.</p>		

	<p>(a) the complexity of the case;</p> <p>(b) the seriousness of the alleged offence;</p> <p>(c) the maximum penalty that can be imposed or that can reasonably be expected to be imposed.</p>			
	<p>2a. However, as an exception to paragraph 2, Member States may decide not to proceed to an audio-visual recording when the questioning takes place in the presence of a lawyer.</p>		<p>This point is very much contested by EP and COM, who do not want to make the link between audio-visual recording and the presence of a lawyer.</p>	
		<p><i>2a. Member States shall ensure that the questioning of children is carried out in a manner that takes account of their age, level of maturity and any other needs determined during the individual assessment conducted in accordance with Article 7. (AM 51)</i></p>	<p>Comparable to recital 23 in the GA.</p>	

<p>3. Paragraph 1 is without prejudice to the possibility to ask questions for the purpose of personal identification of the child without such audio-visual recording.</p>	<p>3. When it is proportionate to make an audio-visual recording in accordance with paragraph 2 but an unforeseeable technical problem renders it impossible to make such recording, the police or other law enforcement authorities may question the child without an audio-visual recording if questioning of the child is imperative</p> <p>a) because of an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; or</p> <p>b) to prevent substantial jeopardy to criminal proceedings.</p>	<p>3. Paragraph 1 is without prejudice to the possibility to ask questions <i>solely</i> for the purpose of personal identification of the child without such audio-visual recording. <i>(AM 52)</i></p>	<p>EP objects the Council GA on this point - according to EP there should be no exceptions possible.</p>	
	<p>4. This Article is without prejudice to the possibility to ask questions for the purpose of personal identification of the child without such audio-visual</p>			

	recording.			
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 10				
<i>Right to liberty</i>	<i>Limitation of detention and use of alternative measures</i>	<i>Right to liberty</i>		
<p>1. Member States shall ensure that children are deprived of liberty before their conviction only as a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child.</p>	<p>1. Member States shall ensure that detention of a child at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence, shall only be a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case.</p>	<p>1. Member States shall ensure that children are deprived of liberty before their conviction only as a measure of last resort, <i>after specific and detailed reasons have been given</i>, and for the shortest appropriate period of time, <i>ensuring in every case respect for the human dignity and the rights of the child in custody</i>. Due account shall be taken of the age, individual situation <i>and personality</i> of the child <i>and the particular circumstances under which the offence was committed.</i> (AM 53)</p>	<p>MS are invited to comment on all amendments of the LIBE committee; is anything acceptable?</p> <p>PRES considers that the title as in the GA should in any case be maintained - Right to liberty is very confusing.</p> <p>For the issue of legal basis, see Article 2(1) last sentence.</p>	
<p>2. Member States shall</p>	<p>2. Member States shall</p>	<p>2. Member States shall</p>		

<p>ensure that any deprivation of liberty of children before their conviction is subject to a periodic review by a court.</p>	<p>ensure that any detention as referred to in paragraph 1 is subject to a periodic review by a court. Such review shall be carried out either <i>ex officio</i> by the court, or at the request of the child, of the child's lawyer, or of a judicial authority which is not a court.</p>	<p>ensure that any deprivation of liberty of children before their conviction is subject to a periodic review, <i>at reasonable intervals of time</i>, by a court. <i>Every child deprived of liberty shall have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such challenge. (AM 54)</i></p>		
	<p>3. Member States shall ensure that, wherever possible, the competent authorities shall have recourse to alternative measures instead of detention as referred to in paragraph 1.</p>			

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 10a				
		<i>Provisional detention</i>		
		<i>Member States shall ensure that children placed in provisional detention are kept separately from adults and convicted children. (AM 55)</i>	This seems to belong to Article 12.	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 11				
<i>Alternative measures</i>	<i>Alternative measures</i>	<i>Alternative measures</i>		
<p>1. Member States shall ensure that, where the conditions for deprivation of liberty are fulfilled, the competent authorities have recourse to alternative measures, wherever possible.</p>	<p><i>[deleted / moved to Article 10 and recitals]</i></p>	<p>1. Member States shall ensure that, where the conditions for deprivation of liberty are fulfilled, the competent authorities have recourse to alternative measures, wherever possible.</p>	<p>PRES considers that the fusion of Article 11 into 10 should be maintained.</p>	
<p>2. The alternative measures may include:</p> <p>(d) an obligation for the child to reside in a specific place,</p> <p>(e) restrictions of contact with specific persons,</p> <p>(f) reporting obligations to the competent authorities,</p> <p>(g) undergoing of therapeutic treatment or</p>		<p>2. The alternative measures may include:</p> <p>(a) an obligation for the child to reside in a specific place,</p> <p>(b) restrictions of contact with specific persons,</p> <p>(c) reporting obligations to the competent authorities,</p> <p>(d) <i>participation in</i> therapeutic or addiction</p>		

treatment for addiction, (h) participation in educational measures.		<i>treatment programmes,</i> <i>(AM 56)</i> (e) participation in educational <i>programmes.</i> <i>(AM 57)</i>		
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 12				
<i>Right to specific treatment in case of deprivation of liberty</i>	<i>Specific treatment in case of detention</i>	<i>Right to specific treatment in case of deprivation of liberty</i>		
		<i>-1. Member States shall ensure that arrests of children are carried out on the basis of procedures and with safeguards appropriate to the child's age and degree of maturity. (AM 58)</i>	MS are invited to comment on all amendments of the LIBE committee regarding this Article; is anything acceptable?	
		<i>-1a. Member States shall further ensure that once arrested the child has the right to meet the holder of the parental responsibility or another appropriate adult as referred to in Article 5(1) promptly and in any event prior to questioning. (AM 59)</i>		
1. Member States shall	1. Member States shall	1. Member States shall	NB: issue of legal basis - see	

<p>ensure that children are detained separately from adults, unless it is considered in the child's best interest not to do so. When a detained child reaches the age of 18 years, Member States shall provide the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the detained person.</p>	<p>ensure that children who are detained at any stage of the proceedings before the final determination by a court of the question whether the child concerned has committed the offence, are held separately from adults, unless it is considered in the child's best interest not to do so.</p>	<p>ensure that children are detained separately from adults <i>and may, when they reach</i> the age of 18 years, continue <i>to be detained separately from adults unless it is considered to be in their best interests or in the best interests of other detained children not to do so. (AM 60)</i></p>	<p>Article 2(1) last sentence.</p>	
	<p>1a. When a detained child reaches the age of 18 years, Member States shall endeavour to provide the possibility to continue the separate detention where warranted, taking into account the individual circumstances of the detained person.</p>			
	<p>1b. Without prejudice to paragraph 1, children may be detained with young adults unless these persons are not suited for joint accommodation with</p>			

	children.			
<p>2. Member States shall, during the period of deprivation of liberty, take all appropriate measures to:</p> <p>(a) ensure and preserve the health and physical development of the child,</p> <p>(b) ensure the right to education and training of the child,</p> <p>(c) ensure effective and regular exercise of the right to family life including the maintenance of family ties,</p> <p>(d) foster the development of the child and its future integration into society.</p>	<p>2. When children are detained in accordance with paragraph 1, Member States shall take all appropriate measures to:</p> <p>(a) ensure and preserve the health and physical development of the child,</p> <p>(b) ensure the right to education and training of the child,</p> <p>(c) ensure effective and regular exercise of the right to family life,</p> <p>(d) foster the child's future integration into society.</p> <p>The measures taken shall be proportionate and appropriate to the period of detention.</p>	<p>2. Member States shall, during the period of deprivation of liberty, take all appropriate measures to:</p> <p>(a) ensure and preserve the health, physical <i>and mental</i> development of the child, (AM 61)</p> <p>(aa) protect the dignity and identity of the child, (AM 62)</p> <p>(b) ensure the right to education and training of the child,</p> <p>(c) ensure effective and regular exercise of the right to family life including the maintenance of family ties,</p> <p>(d) <i>ensure access to programmes that</i> foster the development of the child and <i>his or her</i> future integration into society, (AM 63)</p>		

		<p><i>(da) ensure that the special requirements of those children with physical, sensory, and learning disabilities are provided for, (AM 64)</i></p> <p><i>(db) ensure that all other rights of the child are protected, (AM 65)</i></p> <p><i>(dc) ensure the freedom of the child to manifest his or her religion or belief. (AM 66)</i></p>		
		<p><i>2a. Member States shall ensure that effective means of complaint and remedies are available to detained children, their lawyers and holders of parental responsibility or other appropriate adults. Member States shall also ensure that independent inspections are carried out on a periodic basis to check the state of detention facilities and the treatment of detainees, and shall take appropriate</i></p>		

		<i>action on the findings. (AM 67)</i>		
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 13				
<i>Timely and diligent treatment of cases</i>	<i>Timely and diligent treatment of cases</i>	<i>Timely and diligent treatment of cases</i>		
1. Member States shall ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.	Member States shall take appropriate measures to ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.	1. Member States shall ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.	MS stated that they foresee difficulties with the implementation of these provisions. Judges are independent - MS can only exercise a certain control - therefore words "take appropriate measures to" are crucial.	
2. Member States shall ensure that children are treated in a manner appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.		2. Member States shall ensure that children are treated in a manner appropriate to their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.	This paragraph could only be accepted, if the words "take appropriate measures to" are again inserted. Accompanying recital 6c should also be taken.	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 14				
<i>Right to protection of privacy</i>	<i>Protection of privacy</i>	<i>Right to protection of privacy</i>		
1. Member States shall ensure that criminal proceedings involving children take place in the absence of the public, unless, after due consideration of the best interest of the child, exceptional circumstances justify a derogation.	1. Member States shall ensure that the privacy of children during criminal proceedings is protected.	1. Member States shall ensure that criminal proceedings involving children take place in the absence of the public, unless <i>in exceptional circumstances</i> the best <i>interests</i> of the child justify a derogation. (AM 68)	This issue has been debated at length in the Council. Should the criminal proceedings involving children in principle be open to the public, or should they in principle be closed? It was agreed to take a "neutral" position, given also that the differences between the legal traditions and systems of the Member States should be taken into account (Article 82.2 TFEU). MS confirmed that this neutral position should be maintained.	
2. Member States shall ensure that the competent authorities take appropriate measures in criminal	2. To that end, the Member States shall take appropriate measures, such as protecting the	2. Member States shall ensure that the competent authorities take appropriate measures in criminal	Some observations were made on the amendments: - difficult to protect the "wellbeing" of the child and	

<p>proceedings to protect the privacy of the child and family members, including their names and images. Member States shall ensure that the competent authorities do not publicly disseminate information that could lead to the identification of the child.</p>	<p>personal characteristics of the child that are taken into account and derive from the individual assessment referred to in Article 7, protecting the records referred to in Article 9(1) and 9(2) and avoiding that any inappropriate use of these records is made, and protecting the images of the child and its family members.</p>	<p>proceedings to protect the privacy <i>and wellbeing</i> of the child and family members, including their names and images. Member States shall ensure that the competent authorities <i>and non-state actors, such as the media</i>, do not publicly disseminate information that could lead to the identification of the child. <i>(AM 69)</i></p>	<p>its family members; - it is impossible to control non-state actors, such as the media.</p>	
<p>3. Member States shall ensure that the records referred to in Article 9(1) are not publicly disseminated.</p>	<p>3. This Article shall not prevent the competent authorities from publicly disseminating information that can lead to the identification of a child when this is strictly necessary in the interest of the criminal proceedings.</p>	<p>3. Member States shall ensure that the records referred to in Article 9(1) are not publicly disseminated.</p>		

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 15				
<i>Right of access to court hearings of the holder of parental responsibility</i>	<i>Right of the child to be accompanied by an adult during the court hearings</i>	<i>Right of access to court hearings of the holder of parental responsibility</i>		
Member States shall ensure that the holder of parental responsibility or another appropriate adult as referred to in Article 5 have access to the court hearings involving the child.	1. Member States shall ensure that children have the right to be accompanied by a holder of parental responsibility during court hearings in which they are involved.	<i>Except in cases where this would not be in the best interests of the child,</i> Member States shall ensure that the holder of parental responsibility or another appropriate adult as referred to in Article 5 have access to the court hearings involving the child <i>and may, where appropriate, be present during other stages in the proceedings at which the child is present. (AM 70)</i>	PRES considers that the GA text should be maintained, since it is more detailed and better. MS are invited to comment on the last sentence of the EP amendment ("and may ... present"): could that be accepted ?	
	2. In the situations where (a) it is not possible for a holder of parental responsibility to accompany the child			

	<p>during a court hearing in which the child is involved;</p> <p>(b) no holder of parental responsibility is willing to accompany the child;</p> <p>(c) it would be contrary to the best interests of the child to be accompanied by a holder of parental responsibility; or</p> <p>(d) the presence of a holder of parental responsibility could prejudice the criminal proceedings,</p> <p>the child has the right to be accompanied by another appropriate adult acceptable to the court.</p>			
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 16				
<i>Right of children to appear in person at the trial aiming at assessing the question of their guilt</i>	<i>Right of children to appear in person at the trial aiming at assessing the question of their guilt</i>	<i>Right of children to appear in person at, <u>and take part in</u>, the trial aiming at assessing the question of their guilt (AM 71)</i>		
1. Member States shall ensure that children are present at the trial.	1. Member States shall ensure that children have the right to be present at the trial aiming at assessing the question of their guilt. Member States shall take appropriate measures to promote that children are present at their trial.	1. Member States shall ensure that children <i>are entitled to be present and to participate in</i> the trial <i>and shall take all necessary steps to enable them to participate fully, including by giving them the opportunity to be heard and to express their views.</i> (AM 72)	This Article is very much linked to Articles 8 and 9 on the right to be present at the trial in the Directive on presumption of innocence (POI). Since this Article should at least give the same protection as those Articles in the POI Directive - and possibly something "more" for children - it seems advisable to firstly await that the contents of the POI Directive become clearer.	

<p>2. Member States shall ensure that where children were not present at the trial resulting in a decision on their guilt, they shall have the right to a procedure in which they have the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.</p>	<p>2. Member States shall determine in their national law the conditions under which children, who were not present at their trial, have the right to a new trial or another legal remedy at which they can be present and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.</p>	<p>2. Member States shall ensure that where children were not present at the trial resulting in a decision on their guilt, they shall have the right to a <i>retrial</i> in which they have the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed. (<i>AM 73</i>)</p>		
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 17				
<i>European Arrest Warrant proceedings</i>	<i>European Arrest Warrant proceedings</i>	<i>European Arrest Warrant proceedings</i>		
<p>1. Member States shall ensure that a requested child has the rights referred to in Articles 4, 5, 6, 8, 10, 11, 12, 14, 15 and 18 in the executing Member State upon arrest pursuant to European arrest warrant proceedings.</p>	<p>Member States shall ensure that the rights and entitlements referred to in Articles 4, 5, 6a, 8, 12(1), 13 and 14 shall apply <i>mutatis mutandis</i> in respect of a requested child upon his arrest pursuant to European arrest warrant proceedings in the executing Member State.</p>	<p>1. Member States shall ensure that a requested child has the rights referred to in Articles 4, 5, 6, 8, 10, 11, 12, 14, 15 and 18 in the executing Member State upon arrest pursuant to European arrest warrant proceedings.</p>	<p>It is suggested to drop the reference to "entitlements" in the GA text, which was opposed by CLS, COM and EP (see also above).</p> <p>The rest of the Article can best be examined at the end of the negotiations, when it is clearer how the Articles look like.</p>	
<p>2. Without prejudice to Article 12 of the Framework Decision 2002/584/JHA, the executing authorities shall take all measures to limit the duration of the deprivation of liberty of children subject to European arrest warrant proceedings.</p>		<p>2. Without prejudice to Article 12 of the Framework Decision 2002/584/JHA, the executing authorities shall take all measures to limit the duration of the deprivation of liberty of children subject to European arrest warrant proceedings.</p>		

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 18				
<i>Right to legal aid</i>	<i>Right to legal aid</i>	<i>Right to legal aid</i>		
Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to access to a lawyer as referred to in Article 6.	This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR.	Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to <i>be assisted by</i> a lawyer as referred to in Article 6. (<i>AM 74</i>)	It is likely that this Article will have to be modified and extended, since it was agreed in the Legal Aid Directive that this Directive on Children should contain special provisions on legal aid for children ("top-up"). It is suggested to examine any new drafting once it has become clearer how the Legal Aid Directive will look like.	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 18a				
		<i>Remedies</i>		
		<i>Member States shall ensure that suspected or accused children in criminal proceedings, as well as children subject to European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive. (AM 75)</i>	<p>This is a standard text that is also used in other instruments (for example, 2013/48/EU, 2012/13/EU).</p> <p>It was agreed to revisit this Article at the end, when it is clearer what the rights in this Directive entail.</p>	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 19				
<i>Training</i>	<i>Training</i>	<i>Training</i>		
<p>1. Member States shall ensure that judicial and law enforcement authorities and prison staff who deal with cases involving children are professionals specialising in the field of criminal proceedings involving children. They shall receive particular training with regard to children's legal rights, appropriate interviewing techniques, child psychology, communication in a language adapted to the child and pedagogical skills.</p>	<p>1. Member States shall ensure that law enforcement authorities and staff of detention facilities who deal with cases involving children receive adequate training to a level appropriate to their contact with children with regard to children's legal rights, appropriate interviewing techniques, child psychology, communication in a language adapted to the child and pedagogical skills.</p>	<p>1. Member States shall ensure that judicial and law enforcement authorities and prison staff who deal with cases involving children are professionals specialising in the field of criminal proceedings involving children. They shall receive particular training with regard to children's legal rights, appropriate interviewing techniques, child psychology, communication in a language adapted to the child and pedagogical skills, <i>as well as on rules of confidentiality. (AM 76)</i></p>	<p>PRES considers that the GA text is more detailed and better and should be defended.</p> <p>MS who so wish are invited to comment on this Article.</p>	
	<p>1a. Without prejudice to judicial independence and</p>			

	differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available the training referred to in paragraph 1.			
2. Member States shall ensure that lawyers defending children also receive such training.	2. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of children.	2. Member States shall ensure that lawyers defending children also receive such training.		
3. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to	3. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to	3. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to		

receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.	receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.	receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.		
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 19a				
		<i>Non-discrimination</i>		
		<p><i>1. Member States shall respect and ensure the rights set forth in this Directive as regards any child within their jurisdiction without discrimination of any kind, and irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status.</i></p>	<p>PRES has noted that MS could possibly accept this amendment in the context of an overall agreement, on condition that the text be transferred to the recitals - compare recital 9 of the Victims Directive (2012/29/EU).</p>	
		<p><i>2. Member States shall promote training of all professionals involved in the administration of juvenile justice, specifically</i></p>	<p>PRES has noted that MS are opposed to this amendment, which seems to go too far, has an overlap with Article 19, and has weird language</p>	

		<p><i>in the light of particularly vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, migrant children, indigenous children, girls, children with disabilities and children who are repeatedly in conflict with the law, who may be victims of a lack of consistent policy and de facto discrimination. Their effective access to justice shall be ensured.</i> (AM 77)</p>	<p>(e.g. reference to "girls").</p>	
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 20				
<i>Data collection</i>	<i>Data collection</i>	<i>Data collection</i>		
<p>1. Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights set out in this Directive have been implemented.</p>	<p>Member States shall by [<i>two years after the date mentioned in Article 23.1</i>] and every three years thereafter, send to the Commission available data showing how the rights set out in this Directive have been implemented.</p>	<p>1. Member States shall, by [...] and every three years thereafter, send to the Commission data showing how the rights set out in this Directive have been implemented.</p>	<p>PRES suggests sticking to the GA, which has been based on Article 28 of the Victims Directive (2012/29/EU).</p>	
<p>2. Such data shall include in particular the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.</p>		<p>2. Such data shall include in particular the number of children given access to a lawyer, the number of individual assessments carried out, the number of interviews audio-visually recorded and the number of children deprived of liberty.</p>		

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 21				
<i>Costs</i>	<i>Costs</i>	<i>Costs</i>		
Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings.	1. Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings, unless these costs are covered in any other way.	Member States shall meet the costs resulting from the application of Articles 7, 8 and 9 irrespective of the outcome of the proceedings.	This Article is likely to become one of the most difficult Articles - CNS will probably face strong opposition from COM and EP. PRES invites MS to indicate if they see any compromise solution.	
	2. Without prejudice to the right of access to justice, Member States may provide that a court may order to reimburse the costs mentioned in paragraph 1 if the following two conditions are complied with: (a) the child has been convicted; and			

	(b) the reimbursement of the costs will not jeopardise the child's further development.			
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 22				
<i>Non-regression clause</i>	<i>Non-regression clause</i>	<i>Non-regression clause</i>		
Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.	Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.	Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.	Agreement.	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 23				
<i>Transposition</i>	<i>Transposition</i>	<i>Transposition</i>		
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after its publication]. They shall immediately inform the Commission thereof.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 months after its publication]. They shall immediately inform the Commission thereof.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after its publication]. They shall immediately inform the Commission thereof.	Agreement on the Article, except for the transposition period: CNS requests 36 months, COM and EP request 24 months. Perhaps 30 months could be a middle way ...	
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.		
3. Member States shall communicate to the	3. Member States shall communicate to the	3. Member States shall communicate to the		

Commission the text of the measures of national law which they adopt in the field covered by this Directive.	Commission the text of the measures of national law which they adopt in the field covered by this Directive.	Commission the text of the measures of national law which they adopt in the field covered by this Directive.		
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Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 24				
<i>Entry into force</i>	<i>Entry into force</i>	<i>Entry into force</i>		
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	Agreement.	

Commission proposal (ST 17633/13)	Council GA (ST 10065/14)	Draft amendments LIBE (DS 1098/15)	Observations Presidency	Possible Compromise
Article 25				
<i>Addresses</i>	<i>Addresses</i>	<i>Addresses</i>		
This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	Agreement.	