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IMPACT ASSESSMENT

Accompanying the document

Proposal for a directive of the European Parliament and of the Council

Proposal for a
on procedural safeguards for children suspected or accused in criminal proceedings

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EXECUTIVE SUMMARY SHEET

Impact assessment on a Proposal for measures on special safeguards for children and vulnerable adults suspected or accused in criminal proceedings

A. Need for action

Why? What is the problem being addressed?

Despite the existence of common principles and minimum standards stemming from the European Union Charter of Fundamental Rights, the European Convention of Human Rights and other international law instruments, the fair trial rights of vulnerable persons (i.e. children as persons below the age of 18 years old and vulnerable adults) throughout the various stages of criminal proceedings are, at present, not sufficiently guaranteed within the EU. This leads to shortcomings with regard to the way in which these principles are applied which may undermine mutual trust between judicial authorities. Mutual recognition of judgments and judical decisions and police and judicial cooperation in criminal matters, which rely on mututal trust, may therefore be affected. The number of children facing criminal justice is approximately 1.086.000 across the EU, i.e. 12% of the European population facing criminal justice each year. Estimates with regard to vulnerable adults range between 358.000 to 719.000 persons.

What is this initiative expected to achieve?

The main objectives of the proposal are (1) to guarantee an effective minimum standard of protection of fundamental procedural rights for vulnerable persons suspected or accused in criminal proceedings; (2) to enhance mutual trust between Member States thus facilitating mutual recognition of judgments and judicial decisions and improving judicial cooperation in the EU. These general objectives will be achieved by putting in place appropriate assessment mechanisms of vulnerabilities, by ensuring adequate assistance by parents or legal representatives, by providing mandatory access to a lawyer, by ensuring appropriate safeguards taking into account the specific needs of vulnerable persons at all stages of the criminal proceedings.

What is the value added of action at the EU level?

Action at EU-level would establish common minimum standards of procedural safeguards for children and vulnerable adults suspected or accused in criminal proceedings across Member States. Those common minimum standards are necessary in particular when dealing with the most fragile part of citizens facing criminal justice (e.g. children) mostly because they face a higher risk of discrimination or deprivation of their fundamental rights due to their lack of knowledge, maturity or mental and physical disabilities. Moreover, children and vulnerable adults can be involved in criminal proceedings outside their own Member State. This cross-border dimension constitutes another factor for the need of action at EU-level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Four main policy options were considered: *status quo* (Option 1), a soft law option (Option 2) and two policy options which would take the form of a Directive (for children) or a Recommendation for (vulnerable adults) (Options 3 and 4). The *status quo* would involve taking no action at EU level. Option 2 (non-legislative action/soft-law) would support the protection of the rights of vulnerable persons though, for example, monitoring and evaluation, training and good practice examples dissemination, but its impact would be rather low. Options 3 would set minimum rules applying the ECtHR acquis and pertinent aspects of relevant international provisions on procedural safeguards (e.g. appropriate assistance by parents/legal representatives, mandatory access to a lawyer, protection of privacy rules, proportionality and limitation of detention). Option 4 is the most ambitious and prescriptive option which goes beyond option 3 on certain safeguards such as an "in-depth" assessment of vulnerability, enhanced medical examination (vulnerable adults) audio-video recording of police interviews, specially trained judges, access to educational facilities in detention. It is likely to contribute more effectively to the objectives. However, the costs are higher than the other options (under the assumption that a Recommendation for vulnerable adults would be implemented by Member States). The preferred option is a combination of elements from options 3 and 4, for children in the form of a Directive, and for vulnerable adults in the form of a Recommendation.

Who supports which option?

Consultations with stakeholders have demonstrated clear support for legislative action related to procedural safeguards for children. Most agree that other forms of action would neither be efficient nor effective enough to address the problems identified. With regard to measures for vulnerable adults the support for legislative action was more mitigated given in particular the difficulties to find a standard definition of vulnerable persons.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

By the introduction of procedural safeguards for children and vulnerable adults from the very beginning of the criminal proceedings until the trial stage, the preferred options for children and vulnerable adults will significantly contribute to the achievement of the general objectives set out. In terms of fundamental rights, the preferred options will have an overall very positive impact. The rights to a fair trial, to information and legal advice, protection against ill-treatment and protection of privacy will be significantly enhanced. The social impact will be overall very positive as the individual situations of children and vulnerable adults (including in most cases the situation of family members) will be improved (e.g. assessment, information, assistance). Moreover, limitation of the length of pre-trial detention will reduce costs and facilitate reintegration into society. As regards the proposed Recommendation for vulnerale adults, the impact will depend on its implementation by the EU Memer States.

What are the costs of the preferred option (if any, otherwise main ones)?

The costs of the different options vary quite considerably. The financial and economic impact of option 2 would be rather limited. The maximum financial costs are estimated to be approximately €20.2 million (including mainly training costs for law enforcement authorities and costs for studies and workshops). For options 3 and 4 total costs are expected to be in the higher range. Option 3 would amount to €100.1 million [children] and to range from €40.3 to 72.8 million [adults], Option 4 (which would be the highest of the four options) would amount to €164.2 million [€182.8 million, training incl.] [children] and to range from €134.4-228.9 million [€153 to 247.5 million, training incl.] [adults]. The total costs of the preferred option for children (Directive) amount to €136.2 million [€154.8 million, training incl]. The total costs of the preferred option for vulnerable adults (Recommendation) range between €70.9 to 133.6 million [€89.5 million to 152.2 million, training incl.] (based on the assumption that all Member States will implement the Recommendation). However, these costs do not take into account possible cost savings resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, aborted prosecutions due to breach of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and also to the reduction of custodial measures. In the long term, the financial impact estimated should gradually decrease as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

How will businesses, SMEs and micro-enterprises be affected?

Businesses, SME's and micro-enterprises will not be directly affected by this proposal.

Will there be significant impacts on national budgets and administrations?

The enhancement of procedural safeguards will lead to an increase in the costs for law enforcement authorities (e.g. assessment mechanisms, medical assistance, access to a lawyer, safeguards during police-interviews, pre-trial detention and court hearings, training costs). Almost all costs will have to be borne by public administration on both national and local level. However, cost savings will be achieved by a reduction of lengthy trials or the frequency of appeals.

Will there be other significant impacts?

The establishment of common minimum standards for the protection of children and vulnerable adults would enhance confidence in the judicial systems of Member States and the EU in general.

D. Follow up

When will the policy be reviewed?

It is foreseen that Member States should report on the effective implementation of this proposal. The Commission will be monitoring transposition and implementation of the Directive as well as carrying out specific

empirical studies with an emphasis on data collection 3-5 years into the application of the proposal. A number of indicators to assess the effectiveness of the proposal have been established.

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1. INTRODUCTION

This impact assessment concerns a set of measures for special safeguards for children and vulnerable adults suspected or accused[1] in criminal proceedings.[2] These measures aim at setting minimum rules and thereby ensuring an enhanced level of protection within the EU. This will not only strengthen the fair trial rights of children and vulnerable adults suspected or accused in criminal proceedings but it will also ultimately benefit the overall quality of justice within the EU, improve the mutual trust between EU Member States' judicial authorities and thus facilitate judicial cooperation in criminal matters between the Member States.

The right to an effective remedy and to a fair trial, presumption of innocence and a right of defence are laid down in the Charter of Fundamental Rights of the European Union ("the Charter") in Article 47 and Article 48 and have the same meaning and scope as the rights guaranteed by Article 6(3) of the European Convention of Human Rights ("ECHR"). The ability to effectively exercise these rights largely depends on the ability of the suspect or accused person to follow and fully participate in the procedure, which may be limited due to age, lack of maturity or disabilities. This means that for children and vulnerable adults[3] special measures need to be taken to ensure that they can effectively participate in the proceedings and benefit from their fair trial rights to the same extent as other suspects or accused persons.[4]

Despite these common principles, there are insufficient standards in some Member States with regard to special safeguards for children and vulnerable adults to ensure the effective exercise of their fair trial rights, for example regarding the detection of the need for special assistance. This leads to shortcomings with regard to the way in which these rights are applied which may hamper the mutual recognition of decisions. Moreover, while applying to suspects and

1 A suspect is an individual who is suspected of having committed a criminal offence but has not yet been formally charged. An accused person is someone who has been formally charged with an offence. Their rights are different according to their status.

2 See further Section 7.

3 For the definition of children and vulnerable adults see below section 2

4 The guiding principle of the European Court of Human Rights when assessing a potential breach of Article 6 ECHR with regard to suspects or accused persons who may be said to be vulnerable has been to focus on whether or not the person was able to "effectively participate" in their trial; For more details, see below, Section 4

accused persons who are children and vulnerable adults, the recent EU Directives adopted according to the Stockholm Programme to ensure the fair trial rights of suspected and accused persons, do not take particular account of the specific needs of these two groups to be able to exercise their fair trial rights and might not be sufficient to achieve mutual trust on the matter. To this end, the Stockholm Programme and the Roadmap on Procedural Rights explicitly foresee a specific measure for the protection of vulnerable persons.[5]

At present, there is no overarching comprehensive protection for children and other suspects or accused persons who are vulnerable across the EU.

This impact assessment accompanies the Commission's proposal for measures on special safeguards for children and vulnerable adults suspected or accused in criminal proceedings.

2. POLICY CONTEXT

Mutual recognition is the cornerstone of judicial cooperation. Judicial decisions taken in one Member State should be considered as equivalent to each other wherever that decision is taken, and so enforceable anywhere in the EU. Without mutual trust between authorities of the Member States of the EU, mutual recognition of judgments and judicial decisions and of police and judicial cooperation in criminal matters in the EU will be affected. It is recognised that the perception that the rights of suspects or accused persons are not respected in every instance has a disproportionately detrimental effect on mutual trust and, in turn, on judicial cooperation[6]. Thus, Article 82 of the Treaty on the Functioning of the EU (TFEU) states that the principle of mutual recognition of judgements and judicial decisions should be facilitated by means of minimum rules on procedural rights.

In this context, the Stockholm Programme[7] put a strong focus on the strengthening of the rights of individuals in criminal proceedings and on the rights of the child. It is specifically stated that the Commission must show special attention to suspected or accused persons who are vulnerable (i.e. who cannot understand or follow the context or the meaning of proceedings, owing, for example, to their age, mental or physical condition)[8], in order to safeguard the fairness of proceedings. This measure forms also part of the EU Agenda for the Rights of the Child[9] to which the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Council of Europe as well as key stakeholders such as UNICEF, the Ombudspersons for children in the Member States, and civil society have contributed[10].

The European Council also invited the Commission to put forward proposals contained in the Roadmap on Procedural Rights[11] ("the Roadmap") adopted by the Council of Ministers in November 2009, setting out a step by step approach to strengthening the rights of suspects and accused persons in criminal proceedings. The Roadmap measures deal with distinct procedural rights or set of rights of suspects or accused persons which had been identified by

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5 OJ C 1158, 5.4.2010, p.1 and OJ C 295, 4.12.2009, p.1

6 Study on "Analysis of the future mutual recognition in criminal matters in the European Union", *G. Vernimmen – Van Tiggelen and Laura Surano*, Final Report, 20 November 2008, para 18.

7 OJ C 115, 4.5.2010, p. 1.

8 The definition of what is vulnerable is in itself an important item for discussion in this Impact Assessment. This is discussed in greater detail in *Section 4.*

9 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 15.2.2011, COM(2011) 60 final

10 See EU Agenda for the Rights of the Child, p.4

11 OJ C 295, 4.12.2009, p. 1.

Member States and stakeholders alike as needing to be strengthened by action at EU level, and thus has to be considered as a building-block for a whole edifice.

Roadmap measures:

- Translation and Interpretation
- Information on Rights and Information about the Charges
- Legal Advice and Legal Aid
- Communication with Relatives, Employers and Consular Authorities
- **Special Safeguards for Suspected or Accused Persons who are Vulnerable**
- Green Paper on Pre-Trial Detention

A Directive on the right to interpretation and translation, a Directive on the right to information in criminal proceedings and a Directive on the right of access to a lawyer and the right to communicate upon deprivation of liberty in criminal proceedings have been adopted[12]. Moreover, a Directive establishing minimum standards on the rights, support and protection of victims of crime has been adopted in October 2012[13].

However, the instruments that have been adopted so far relate to procedural rights that apply to all suspects or accused persons in criminal proceedings. They are based on the assumption that all suspects are able to understand and to effectively participate in the criminal proceedings (which is often not the case for vulnerable persons). In fact, during the negotiations of these measures, specific rules with regard to vulnerable persons were left aside by the European Parliament and the Council as it was intended to foresee specific safeguards for vulnerable persons, in particular children, in a separate, overarching legal instrument[14]. Therefore these instruments provide for some limited and general provisions dedicated to children and vulnerable adults (such as persons with disabilities, *for further details, see Annex I*) and do not intend to address all their specific needs and guarantees to ensure that vulnerable persons can effectively exercise their rights. It results that without additional measures, specifically dedicated to the protection of children and vulnerable adults, the present legal

[12] Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (OJ l 280, 26.10.2010, p.1); Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p.1). Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in 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 while deprived of liberty (OJ L 294, 6.11.2013, p.1). The measure on the protection of vulnerable persons suspected or accused in criminal proceedings, the measure on legal aid (the part of the third measure not included in the above mentioned proposal) and presumption of innocence are presented as a package together. As regards the last measure, the Commission published on 14 June 2011 a Green Paper on the application of EU criminal justice legislation in the field of detention to reflect on ways to strengthen mutual trust and the application of the principle of mutual recognition in the area of detention, in accordance with and within the limits of the EU's competence; COM(2011)327 final, published on: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0327:FIN:EN:PDF.

[13] Directive 2012/29/EU of 25 October 2012, OJ L 315, 14.11.2012, p.57

[14] See for example in the context of the negotiations of the (future) Directive on access to a lawyer where further amendments had been proposed by the EP: EP legislative Observatory A2L (see EP page 37 of Report by Ms. Antonescu and her amendments 24.35 plus amendments 82, 102, 131 by other MEPs); http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=592050

situation would leave the weakest and most sensitive suspected persons without appropriate safeguards in criminal proceedings.

Finally, without specific measures for vulnerable persons, the objectives of the Roadmap in its entirety will be weakened as the already adopted measures do not provide sufficient protection for vulnerable persons. Only if all envisaged initiatives on procedural rights in criminal proceedings are implemented, an environment of enhanced mutual trust between judicial authorities will be in place.

Who are vulnerable suspected or accused persons?

Jurisprudence of the European Court of Human Rights (ECtHR) defines a vulnerable suspected and accused person as an individual who cannot effectively participate in criminal proceedings, i.e.: "*A suspected or accused that does not have a broad understanding of the nature of the accusation or the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed*"[15].

There are two main categories of vulnerable persons in criminal proceedings: children and vulnerable adults. The treatment of those two categories varies considerably which is why throughout this Impact Assessment these two categories will be treated separately. While there is no standard definition of who is a vulnerable adult in criminal proceedings in the EU Member States, there is a common definition for children and all Member States do regard children as being vulnerable in criminal proceedings.

Children[16]

Children are considered by definition vulnerable in criminal proceedings and special safeguards are in place to ensure their fair treatment primarily for **three** reasons:

- Children are vulnerable due to their **young age and their unfinished physical and psychological development and emotional and educational immaturity**. Because of their immaturity, children face difficulties in understanding what is at stake in a criminal proceeding, in understanding the law and their rights and to defend themselves and to effectively exercise their rights provided by law.

- Children are also vulnerable because of a **general imbalance that exists when they face adults** with special authority in criminal matters and might have limited and often incorrect knowledge or understanding of criminal courts and their rights in criminal procedures.

- Finally, children are further disadvantaged as a large number of them are not only vulnerable due to their young age but **also due to mental health problems, learning disabilities, learning difficulties and communication difficulties**.

Vulnerable adults

Vulnerable adults are not defined in any international or European legal instrument. Based on the ECtHR case law and legislation in Member States, vulnerable adults are "*individuals who cannot understand or effectively exercise their legal rights because of, for instance, **a disability, mental impairment, a physical or psychological weakness***".

Although vulnerable adults are not easy to define, it is generally recognised by stakeholders[17] that they need special safeguards in criminal proceedings in order to ensure that these persons understand their

15 ECtHR, Judgment of 10 November 2004, *SC v. UK*, Appl.N°60958/00

16 The preamble of the 1959 Declaration of the Rights of the Child (which has been taken as basis and further expanded by the UN Convention of the rights of the child (UN CRC, Article 40) reads: '*The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection': See also* ECtHR, Judgment of 10 November 2004, *S.C. v. UK*, Appl.N°60958/00.

17 See ECBA Statement, Annex II; Report of Fair Trials Internationals on vulnerable suspects, August 2012, point 38.

rights and can exercise them. If people do not understand the proceedings or the consequences of their actions in the proceedings, such as confessing, because their vulnerability is not identified or because special safeguards are not in place, this leads to inequality of arms, undermining the chances of receiving a fair trial and threatens the integrity of the judicial process. It is the objective of this initiative to ensure that the procedural rights of vulnerable adults are adequately respected in the EU by ensuring that their vulnerabilities are **identified and matched with relevant necessary safeguards.**

In the case *Vaudelle v. France*[18], the applicant who had a mental impairment was under the supervision of his son who was responsible for his affairs. The applicant was charged with sexual offences against minors and was sent a summons to attend the trial. He did not appear at trial and was convicted in this absence. The applicant claimed that the fact the summons to attend the trial and notification of the judgment were sent to him only and not to his supervisor had prevented him from exercising his defence rights under Article 6(1) ECHR (right to a fair trial) and Article 6(3) (right to be informed in detail of the nature of the accusation) ECHR.

The ECtHR ruled that the French authorities had indeed violated Article 6 ECHR in that they had failed to ensure that the applicant could understand the criminal proceedings, inform him in an appropriate manner of the accusation against him and grant a fair trial[19].

The absence of definition of vulnerable persons can be overcome by a modulated response in the form of a less prescriptive measure such as a Recommendation and by focussing on ensuring that there are procedures in place in the Member States that help identify vulnerabilities early on, in order to grant access to the necessary additional assistance.

3. PROCEDURE AND CONSULTATION OF INTERESTED PARTIES

3.1. Consultation of interested parties

General principles and minimum standards for consultation of interested parties have been followed in relation to this initiative. The views of all major stakeholders and Member States were sought on several occasions[20].

Vulnerable persons have been consulted through NGOs and professionals in contact or dealing with them.

This impact assessment relies on previous consultations of children made in the context of the EU Agenda for the Rights of the Child, for the Council of Europe, consultations made by the contractor in its external study, several meetings with experts and stakeholders and relevant studies (*for more details, see Annex II and III*)[21].

Member States and stakeholders (such as bar associations, family associations, NGO's specialised in the protection of children) clearly underlined the need for specific safeguards for vulnerable persons, in particular for children. In this context, stakeholders highlighted the insufficient and patchy implementation of international standards and the absolute need to establish common minimum rules among EU Member States.

Stakeholders suggested to provide safeguards for children in a specific measure, preferably a directive. All safeguards set out in this Impact Assessment were largely supported by

18 ECtHR 30 January 2001, Application N°35683/97

19 For more details, *see Annex V*

20 Given that Member States and stakeholders were consulted in several expert meetings and workshops, a public consultation was not held.

21 See Article 24 of the Charter and the European Commission's Communication "*An Agenda for the Rights of the Child*".

stakeholders, in particular mandatory access to a lawyer was considered as a key measure.

Despite the similarity of problems faced by vulnerable adults in criminal proceedings, stakeholders suggested to deal separately with vulnerable adults given the absence of a common definition and the need to avoid any form of discrimination or stigmatisation by naming certain categories of person as vulnerable. An appropriate solution should be found to overcome the lack of definition. This could be done by a less prescriptive legal instrument, such as a Recommendation. *(For more details see overview on stakeholder views, Annex II).*

(a) A meeting with experts was held on 23 September 2011. Representatives of 18 Member States as well as a panel of experts from the Council of Europe, International Association of Youth and Family Judges and Magistrates, the United Nations, medical and legal practitioners specialising in children cases were gathered. A reflection paper outlining the current legislative framework concerning suspected and accused children and vulnerable persons was issued to which all Member States replied.

(b) A workshop was held by the contractor of the external study ICF - GHK on 13 January 2012 to evaluate the problem definition and policy options[22].

(c) A further experts' meeting was held on 26 April 2012, bringing together experts from NGOs active in the field of protecting the rights of defendants, children and persons with disabilities, bar associations and organisations of magistrates. The experts discussed legislative and non-legislative measures that could be taken at an EU level to increase protection for children and vulnerable adult suspects and accused persons.

(d) A third experts' meeting was held on 11 December 2012 hosting representatives of 18 Member States as well as experts from the International Association of Youth and Family Judges and Magistrates, the European Parliament and legal practitioners specialising in children cases. This meeting offered the opportunity to collect reactions from the experts regarding the introduction at EU level of certain safeguards for vulnerable person. (e) Also, the 2003 Green Paper Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union and the discussions with stakeholders in this context have been a valuable starting point and guide in the development of this Impact Assessment.

It resulted from the meetings and written replies that Member States agreed on the need for action on EU level, especially in relation to children. Any proposal should take into account existing international rules and standards. Mandatory access to a lawyer for children and those vulnerable adults who cannot understand the proceedings was considered as the core issue, also the assistance and presence of parents or legal representatives, the need for a proper assessment of vulnerabilities, safeguards for police interviews, court hearings and detention were generally acknowledged. Finally, also the need for appropriate training of professionals in contact with children and vulnerable adults was highlighted (*for more details, see Annex II)*.

[22] Three experts were present at the workshop: *Professor Ed Cape* of the University of the Westof England who was a former criminal defence practitioner and who is also author of leading criminal practitioner and academic studies such as "Effective Criminal Defence Rights in Europe"; *Panayotis Voyatzis* is a legal officer of the European Court of Human Rights; and *Professor Agnès Cerf-Hollender*, of the University of Caen – Basse Normandie, who is specialised in fundamental rights in the context of criminal law and procedure.

3.2. Studies and publications

Given the comprehensiveness of this area of criminal procedural law, the Impact Assessment relies on a number of studies and publications. Bearing in mind length constraints, the most central studies for this Impact Assessment are indicated in *Annex III*.

An external study (hereafter referred to as "external study") to gather evidence for this Impact Assessment was commissioned on 14 September 2011. The external study, carried out by the consultant company ICF-GHK, focused on the problem definition, policy options and costs of the various options.

3.3. Internal consultation and scrutiny of the Impact Assessment

An Inter-service Impact Assessment Steering Group (IASG) was created in September 2011 involving representatives from DGT, SCIC, COMP, MARKT, RELEX, ELARG, OLAF, HOME, CNECT, the Legal Service and the Secretariat-General. The competency of this IASG was extended to the presumption of innocence. A second and third meeting were held on 15 January and 30 April 2013 both on vulnerable persons and presumption of innocence. The feedback received at these meetings has been largely taken into account throughout this Impact Assessment. Participants had the opportunity to express their views on the previously submitted text of the draft Impact Assessment *(for more details, see Annex II*).

The European Commission's Impact Assessment Board (IAB) examined this report and issued an opinion on 5 July 2013 in which it was requested to resubmit the report to the IAB, together with a number of suggested improvements.

A revised report submitted to the IAB on 31 July 2013 took on board the recommendations of the IAB and introduced a number of modifications and clarifications (set out in detail in *Annex XI*). On 6 September 2013 the IAB issued a positive opinion on the revised report, together with some recommendations which are taken into account in the present final version of the report (modifications are set out in *Annex XI*).

4. PROBLEM DEFINITION

4.1. The general problems

An analysis of the legislation in place in the Member States, shows that the procedural safeguards granted by the Member States to both children and vulnerable adults are insufficient to guarantee their effective participation in criminal proceedings. This is further supported by the case-law of the ECtHR *(for more details see Annex V*). The problem of insufficient protection of the fair trial rights of children and vulnerable adults (*see Section 4.1.1)* is not sufficiently addressed by the already adopted measures on procedural rights (*see section 4.1.2*) and thus, at present the legal framework does not sufficiently foster mutual trust at a level which will ensure the smooth functioning of the mutual recognition instruments in criminal proceedings (*see section 4.1.3*).

4.1.1. Insufficient protection of fair trial rights of children and vulnerable adults

The current national,[23] international and European legal framework for the protection of the rights of suspected or accused vulnerable persons in criminal proceedings in Europe is insufficient.

On an international level, the rights of vulnerable persons in criminal proceedings are primarily governed by the UN Convention of the Rights of the Child (UN CRC)[24] and the UN

[23] *See Section 4.2*.

Convention on the Rights of Persons with Disabilities (UN CRPD)[25]. However, the provisions are very general and relate only to a limited extent to criminal proceedings[26]. Moreover, international treaties are rarely directly applicable and - to benefit from these rights - individuals must rely on national implementing legislation – a step which EU Member States have not always taken or, if legislation is adopted, it may insufficiently capture the international law provisions. Censures of Member States by international monitoring bodies such as the UN Committee on the Rights of the Child (CRT) and the Council of Europe's Committee for the Prevention of Torture (CPT), in case of non-compliance, have not been able to change the practice of Member States[27].

Moreover, a number of other international standards are not binding upon Member States but foresee recommendations or guidelines (e.g. Guidelines of the Council of Europe on child-friendly justice, UN Beijing, Riyadh and Havana Rules for the Administration of Juvenile Justice).

While the international instruments should be considered as a starting point (*for more details, see Annex IV*), action at EU level will ensure more effective minimum rules for vulnerable persons, in particular for children. In the European legal framework, the Charter and the ECHR provide specific safeguards[28] and fair trials rights in criminal proceedings,[29] applicable for all suspects and accused persons. In ECtHR case-law[30], these articles have been interpreted in relation to children and vulnerable adults (*for more details see Annex V on ECHR case-law*):

The principle of "effective participation"

The guiding principle of the European Court of Human Rights when assessing a potential breach of Article 6 ECHR with regard to suspects or accused persons who may be said to be vulnerable has been to focus on whether or not the person was able to "*effectively participate*" in their trial.

The European Court of Human Rights highlights that in the case of a **child**, it is essential that he/she will be dealt with in a manner which takes full account of his/her age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his/her ability to understand and participate in the proceedings, including conducting the hearing in such a way as to reduce as far as possible his feelings of intimidation and inhibition (ECtHR, *S.C v the United Kingdom*, N°60958/00, judgment of 15.6.2004).

In addition, Article 24 of the Charter specifically provides for the need of the EU to promote and safeguard the rights of the children and to take the best interests of the child into account in all actions[31].

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24 Entry into force on 2 September 1990

25 Entry into force in March 2008

26 The UN CRC covers civil, administrative and criminal issues and only one article of the UN CRC - Article 40 - addresses the rights of children in criminal proceedings.

27 See CPT, 21st General Report, 1 August 2010 to 31 July 2011, § 19 (with regard to access to a lawyer)

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

29 Article 6 the right to a fair trial, corresponds to Article 47 of the Charter.

30 For more details with regard to ECtHR case-law, see *Annex V*

31 Article 24: 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity; 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration; 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his and her parents, unless that is contrary to his or her interests.

However, in many cases the application of the ECHR and the related jurisprudence is developed in a piecemeal and ad hoc way and results in diverging interpretations in the Member States[32]. Therefore, the standards and rights that vulnerable adults and children have in criminal proceedings remain legally uncertain and difficult to access. As regards the interpretation of the Charter, there is currently very limited case-law interpreting the relevant rights.

Moreover, even if there is case-law from the ECtHR on how to interpret the relevant rights in relation to vulnerables, such rulings are not always implemented. The insufficient protection of procedural safeguards is, to a certain extent, due to the absence of any effective enforcement mechanism to oblige and encourage States to change their national laws in the case of breaches of ECtHR decisions. Moreover, as rulings are given in a specific case, it is difficult to generalise and extract the exact meaning of the ruling. This is one reason for the high ratio of 'repetitive decisions' before the ECtHR in relation to fair trial issues (around 70 per cent of the Court's judgments in 2011[33]). This indeed suggests that the concerned Member State, or even less other Member States, are not reforming their national legislation after a breach of Article 6 ECHR. There are also limitations for individuals wishing to bring a case before the ECtHR, and the reparations to remedy a violation generally consist of declaratory judgments, coupled with, depending on the circumstances, damages[34]. Moreover, experience shows that vulnerable persons often do not understand that their procedural rights have been breached and introduce therefore only very rarely remedies in accordance with national law or an appeal to the ECtHR.

This shortage of strong enforcement powers in the ECHR system, coupled with the perennial ECtHR backlog that poses a serious risk to the effectiveness of the whole ECHR system,[35] also adds to the insufficiency of relying only on the ECtHR to ensure sufficient protection of vulnerable persons in the EU criminal justice area as being developed under the Roadmap.

4.1.2. No overarching protection of children and vulnerable adults by the measures already adopted according to the Stockholm Programme

The measures relating to procedural rights which have already been adopted in the EU according to the Stockholm Programme do not foresee a sufficient protection of vulnerable persons, in particular children *(for more details see Annex I*).

Whereas it is considered that the Directive on the right to interpretation and translation and the Directive on the right to information, once they are implemented by Member States[36], will ensure a certain level of protection within the EU with regard to the right of interpretation and translation[37] and the right of information of vulnerable persons on their procedural rights and

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32 The ECtHR's judgments, firstly, only slowly build up a clear and consistent jurisprudence, secondly, depend upon the circumstances of particular applications, and, finally, may not even be followed by all national courts. See e.g. *Christou et al*., *European Cross border Justice: A Case Study of the EAW*, The AIRE Centre, 2010

33 P. Leach, "*On Reform of the European Court of Human Rights",* 6 European Human Rights Law review, p.725 (727); http://www.ejil.org/pdfs/21/4/2013.pdf

34 Article 41 ECHR

35 With a reach extending to over 800 million individuals within the jurisdiction of the 47 contracting States to the Convention, the flood of applications lodged in Strasbourg threatens to clog the Court to the point of asphyxiation. There are delays in processing some cases of up to seven years http://www.ejil.org/pdfs/21/4/2103.pdf

36 27 October 2013 and 2 June 2014

37 According to Articles 2 and 3 Member States shall ensure that suspected or accused persons who do not speak or understand the language of criminal proceedings are provided without delay with interpretation

about the accusation, the Directive 2013/48/EU on the right of access to a lawyer and to communicate upon arrest[38] does not foresee any specific safeguards for vulnerable persons with regard to legal assistance, especially with regard to children.

In addition, although these measures of the Roadmap foresee safeguards with regard to certain specific rights of vulnerable persons, they do not take account of all problems suspected and accused vulnerable persons may face in the various stages of criminal proceedings (e.g. need for appropriate assessment mechanisms of vulnerabilities, medical assistance, mandatory access to a lawyer, specific safeguards with regard to police questioning, need for protection against abuse and ill-treatment in detention etc.). In fact, the Stockholm programme and the ensuing Commission Action Plan[39] explicitly forsee that a specific measure should be adopted to provide common minimum rules for vulnerable persons in addition to the other procedural rights measures. Without such an instrument, the protection of suspects or accused persons in criminal proceedings would not be complete and and the objectives of the Stockholm Programme and the Roadmap could not be fully achieved[40].

4.1.3. The insufficient protection of children and vulnerable adults affects mutual trust and hampers the smooth functioning of mutual recognition

Mutual recognition and judicial cooperation in criminal matters presupposes that there is mutual trust in the legal systems of other Member States. The underlying idea of the mutual recognition instruments is to ensure fast-track and simple procedures for cross-border law enforcement and cooperation. Such cross-border instruments build on the assumption that each Member State provides a system of justice which guarantees fair trial rights to a fairly similar degree; something that is not the case in practice. The grounds for refusal for the executing Member State in the EU mutual recognition instruments, including the European Arrest Warrant Framework Decision[41] and the Transfer of Prisoners Framework Decision[42], were built to verify the compatibility of the measure sought with the "public policy" of the executing Member State, but not to help ensure respect for human rights in the main criminal proceedings taking place in the issuing Member State. The European Arrest Warrant (EAW)

[…] and a written translation of "essential" documents. Appropriate assistance should be foreseen for persons with hearing or speech impediments.

38 OJ L 294, 6.11.2013, p.1

39 COM(2010) 171 final, 20.4.2010

40 In its statement of 15 May 2013, the European Criminal Bar Association stated that "When discussing Measure E (on vulnerable persons) we take it for granted that Measures A to D (related to translation and interpretation, information, access to a lawyer and communication with relatives, employers and consular authorities) and F (on pre-trial detention) will form part of the EU Directives to the Member States. None of them can work effectively without the others." "The CA is of the opinion that procedural safeguards in addition to those covered by Measures A to D and F are necessary to protect all vulnerable people (not just minors and children) so as to satisfy the standards set in the Stockholm Programme." It concluded "everyone who has had experience in criminal investigations knows of vulnerable suspects who, even if not children or minors, have some deviation in their personality or in the way they live which causes the police to check them more often than others as suspects of crime. It is clear from experience that there are characters and personalities of huge diversity, making it even more difficult to define who might need special safeguards under Measure E (on vulnerable persons). That, however, should not prevent us from trying to find a solution which could result in an Equality of Arms."

41 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

42 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU, OJ L 327, 5.12.2008, p.27

is also applicable to children and vulnerable adults. In addition, several mutual recognition instruments (e.g. Framework Decision on Probation Measures and Alternative Sanctions[43], Framework Decision on Custodial Sentences[44], Framework Decision on supervision measures[45]) foresee specific provisions with regard to children in order to strengthen the control of the executing State when it comes to the recognition of judicial decisions or judgments[46].

If judicial authorities doubt the compliance with fair trial rights by another jurisdiction and believe that a suspect or accused person might not get, or has not got sufficient protection, requests for judicial cooperation from that jurisdiction can be denied or systematically challenged, in the latter case leading to delays in the judicial cooperation. This means that a person is not to be surrendered under the EAW, that a court might refuse to collect evidence requested by judicial authorities in another Member State and that a transfer of a prisoner request is denied as the receiving Member State has doubts as to the fairness of the trial underlying the conviction.

In practice, the system of mutual recognition often works sub-optimally as the swift operation is hampered by challenges and appeals, resulting in additional costs and delays, partially due to complex and drawn-out investigations into the systems of other Member States in such situations. The insufficient protection of fair trial rights that results from the lack of adequate protection of procedural safeguards for children and vulnerable adults, as has been set out in the previous *section 4.1.1*, may affect mutual trust negatively. This has the potential to undermine confidence in cross-border instruments such as the European Arrest Warrant.

There is limited statistical quantifiable evidence on insufficient mutual trust between the Member States. Member States do not collect data on the number of judicial cooperation requests that are challenged or refused. Therefore, it is also difficult to quantify the problem. However, the execution of an estimated 4 to 8% of EAWs is refused. This means that up to 1 in 12 EAW requests are unsuccessful; added to the number that are delayed, this points to a degree of strain in the confidence and trust that Member States and their citizens place in each other's criminal justice systems, and shows that judicial cooperation does not run smoothly. There is wide support from stakeholders on how fostering mutual trust, by laying down common minimum standards, will help the system work more smoothly, and avoid delays and refusals.

Indeed, stakeholder interviews conducted by ICF GHK with NGOs representing children (e.g. EJJO[47] and DEI[48]) as well as professionals involved in criminal proceedings (e.g. ECBA[49] and IAYFJM[50]) - in the context of the external study – confirmed that there could be a clear link between lack of minimum standards for fair trial rights at EU level and the suboptimal functioning of judicial cooperation in the EU. Perceptions of potential unfair treatment in the trial rights afforded to defendants in other Member States could lead to delays in certain cases and in a few instances to failure of European Arrest Warrant requests and other judicial

43 Council Framework Decision 2008/947/JHA of 27.11.2008, OJ L 337, 16.12.2008, p.102

44 Council Framework Decision 2008/909/JHA of 27.11.2008, OJ L 327, 5.12.2008, p.27

45 Council Framework Decision 2009/829/JHA of 23.102009, OJ L 294, 11.11.2009, p.20

46 "Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity [to state his or her opinion orally or in writing] shall be given to his or her legal representative." See Article 6(3) FD 2008/909/JHA on Custodial Sentences.

47 European Juvenile Justice Observatory

48 Défense des Enfants International

49 European Criminal Bar Association

50 International Association of Youth and Family Judges and Magistrates

agreements[51]. Stakeholder interviews suggested that delays in recognition proceedings have taken place on account of concerns about the procedural rights available to children or other vulnerable persons in the Member States.

There is therefore a need to foster and reinforce mutual trust by setting some common minimum standards with respect to a set of procedural safeguards. This will establish a climate of mutual trust that also ensures the proper working of upcoming mutual recognition instrument such as the European Investigation Order.

By ensuring that fair trial rights are respected from the outset of proceedings, by enacting common minimum standards, one can avoid costs in the administrative and judicial system, costs which are usually not that visible.[52] By respecting fair trial rights and operating a system where there is trust in the respect of such rights, there are fewer appeals, fewer claims for retrial and one avoids appeals to and condemnations by the ECtHR. By having sufficient safeguards for fair trial rights, one also avoids challenges that obtained evidence is inadmissible. In mutual recognition proceedings, one avoids delays and costs arising therefrom, e.g. costs of providing pre-trial detention in EAW cases, or having more lengthy proceedings and more judicial and legal costs in case of non-consent in EAW cases.

As the principle of mutual recognition is the cornerstone of the area of justice, it is necessary to enhance mutual trust for the effective functioning of the area of Freedom, Security and Justice. To establish this climate of mutual trust, the Member States have in the Roadmap indicated the measures that are considered necessary to achieve these minimum standards of mutual trust, and specific safeguards for vulnerable persons is one of these necessary measures. An enhancement of procedural safeguards for children (and other vulnerable persons) by the existing and foreseen measures of the Roadmap and by the present initiative will contribute to the reinforcement of mutual trust and thereby to a more optimal functioning of mutual recognition mechanisms between Member States.

4.2. The specific problems

In this context, seven specific problems need to be addressed by this initiative which are relevant for both children and vulnerable adults, but to a varying degree. The problems and possible safeguards have been discussed in several meetings with Member States and stakeholders. They interact with each other and need to to be addressed in order to provide an overall protection of children and vulnerable persons in all stages of criminal proceedings.

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51 See for instance Rechtbank Amsterdam, Case AU7667, Judgment of 4 January 2006; and Lisowski v. Regional Court of Bialystock, WHC 3227 (Admin), High Court of England and Wales, Judgment of 28 November 2006

52 Member States' potential savings owing to a reduction in a number of appeals, condemnations by the ECtHR, or delays in judicial cooperation proceedings cannot be estimated with any statistical precision due to lack of Member State data on costs per case. Only indicative qualitative expectations in non-numerical terms can therefore be provided based on stakeholders' judgments. However, the *Cadde*r case (on insufficient legal representation) could be referred to as an example for the costs arising from a case undergoing all domestic instances and ultimately arriving before the ECtHR. It is estimated that the costs exceeded €175,000. Cadder v. Her Majesty's Advocate, The Supreme Court of Scotland, 26.10.2012

Examples for interaction of problems:

Parents who are not duly informed are neither in a position to explain to their child what is at stake nor assist the child in the exercise of his or her rights of defence nor provide moral support. Moreover, they cannot inform the police about any specific vulnerabilities of their child.

In the absence of a lawyer a child may make wrong confessions without understanding the consequences of such action. Moreover, possible ill-treatment of the child during interviews may happen more easily. A child left on its own might not ask for necessary medical examination which might have been requested by a lawyer who is present.

In the absence of an individual assessment of the child, specific needs with regard to detention conditions might be overlooked (e.g. level of maturity, educational needs)[53].

4.2.1. Specific Problem 1: The vulnerability of suspected or accused persons is not sufficiently assessed from the very beginning of the criminal proceedings

There is currently no legal definition of vulnerable persons, neither at International or European level. The notion of "vulnerability" is very broad. Based on ECtHR case-law, potential categories of vulnerable persons include children, foreign nationals, persons with mental health problems, disabilities and persons affected by chronic illness. Traditionally, two main categories of vulnerable persons can be distinguished: (1) Children and (2) Vulnerable adults.

- Children

In the case of *S.C. v. The United Kingdom*[54] which concerned an 11 year old boy convicted for an attempted theft, the Court held that "*effective participation"* requires that the accused has a "broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court".

Children are considered, *per se*, vulnerable persons in criminal proccedings due inter alia to their insufficient maturity and/or mental capacity. It is commonly accepted in international law instruments (Article 1 of UN CRC), that in criminal matters any individual below the age of 18 should be considered as a child[55].

The foreseen measures will not deal with the age of criminal responsibility for children. This is the age when a child becomes criminally responsible for his/her actions. Although the age of criminal responsibility varies considerably between Member States, it became clear from the discussions in the expert meetings that there would be no consensus to legislate in this area. In addition, this is a matter of substantive criminal law which would go beyond the current legal basis of Article 82(2) (b) TFEU (relating to criminal procedural law) *(See below,*

53 See in this context also below Chapter 6.3 (Interaction of safeguards within the different policy options).

54 ECtHR, Judgment of 10 November 2004, Appl. N°60958/00 (2004)

55 However, the definition of a child in national legislation does not always correspond to the generally accepted standard. At present, 17 years-old are not treated as children everywhere in the EU. In England, Wales and Scotland 17 year-olds may be treated under adult criminal law. This means that they may not systematically enjoy the procedural safeguards that are in place to ensure the fair treatment of suspected and accused children.

Section 6.1 lit.b).

The determination of the exact age of a child is important to determine the criminal responsibility of the child and triggers his or her specific rights in the criminal proceedings which may vary according to the age (e.g. the nature of sanctions and level of sanctions may be different). In certain circumstances the age assessment may be more complicated (e.g. the birth certificate or identity card is unobtainable, has been destroyed or falsified or documents need to be required from other Member States). One international standard[56] recommends that if there is no proof of age of children, they should be entitled to a reliable medical (or social) investigation that may establish his/her age; in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

The determination of the exact age of a child suspected or accused in criminal proceedings is essential to determine the criminal responsibility of the child and the procedural rights which result from it, and research evidence shows that all Member States foresee already such an age assessment. Given that no particular problems have been identified in this respect and taking into account the principle of subsidiarity, this confirmed that there is no need for EU action.

All international and European standards emphasises that the child's best interests should be a primary consideration in all cases involving children within justice systems[57]. It derives from that fundamental principle that the assessement of the personal situation of the children confronted to criminal justice needs to be undertaken appropriately.

In addition to their age, a significant proportion of children in conflict with criminal law may face vulnerabilities such as mental disorders or multiple addictions. Studies demonstrate that a high proportion of children entering the criminal justice system have mental health problems, learning disabilities and communication difficulties[58]. Despite the prevalance of multiple vulnerability among suspected or accused children, in many cases the vulnerability of children on grounds other than their age is not systematically identified[59]. At present, certain Member States do not foresee any specific assessment mechanisms (e.g. LT), others only provide for a one-off screening on a case-by-case basis, usually at the beginning of the proceedings (e.g. BE, CY, ES, SK). Currently, only the NL and LV foresee a systematic assessment mechanism conducted on all children. The absence of any systematic and regular assessment mechanism or procedure in a large majority of Member States bears the risk that the detection of potential vulnerabilities of children remains random.

In addition, the mental state of a child, his or her maturity and economic, social and cultural situation may differ substantially. In order to take into account the best interests of the child and to adapt the proceedings in an appropriate manner to the child's intellectual capacities and social background, an individual assessment of the child should be ensured. The extent of such an assessment may be adapted according to the severity of the offence and the damage caused. This would also comply with the fact that traditional objectives of criminal justice,

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56 UN CRC, 2007 General Comment N°10, Children's rights in juvenile justice, point 39

57 See, for instance, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Fundamental principles, Best interests of the child, point 1

58 "Who is looking after the children?" A joint inspection of appropriate adult provision and children in detention, p.20, § 2.35, December 2011

59 External Study, p.22

such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders[60].

- ***Vulnerable Adults***

As explained above, vulnerable adults are individuals who cannot understand or effectively exercise their legal rights because of, for instance, a mental impairment, a physical or psychological weakness. These vulnerabilities might be of permanent or temporary nature. Permanent vulnerabilities include, for instance, mental, physical, or sensorial disabilities, chronic illness and illiteracy. Temporary vulnerabilities include, for instance, intoxication through alcohol or drugs, or injury or short-term illness requiring medical treatment. An additional challenge that vulnerable adults face is that they often suffer from more than one vulnerability.

Stakeholders and Member States have indicated at various occasions that it is very difficult if not impossible to find a definition for vulnerability[61]. Nevertheless, they have acknowledged the need of protection of vulnerable persons and the need to ensure minimum safeguards in criminal proceedings[62]. Research evidence suggests that a high proportion of the persons who enter the criminal justice system are potentially vulnerable. However, there is limited reliable data on the exact percentage of vulnerable adults among the arrested and accused population but it is commonly accepted that vulnerabilities are prevalent[63]. It is increasingly acknowledged that these additional disadvantages act as multipliers of difficulty[64].

In the case *Standford v. UK*[65], an adult defendant was involved who was convicted of sexual offences against a 15 year old girl. He claimed that during the trial he was unable to hear and to check for himself which matters of evidence where consistent or inconsistent. The ECtHR recalled that Article 6 ECHR, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. In general this includes, inter alia, not only his right to be present but also to hear and follow the proceedings.

Against this background, it is essential that vulnerabilities are carefully assessed at an early stage of the proceedings. Otherwise, if the existence and nature of the impairments are unknown, special safeguards assisting vulnerable adults cannot be put in place. This may breach Article 6 ECHR and potentially hamper Member States' trust in their respective judicial systems.

At present, international and European legal instruments do not require a standardised assessment procedure with regard to vulnerabilities. Although relevant provisions exist in the

60 CRC, General Comment N°. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) – 29 May 2013.

61 Discussion at expert meeting of 11 December 2012, see *Annex II*

62 For reactions of Member States, see overview tale in *Annex II*; for other stakeholders, for instance, *Fair Trials International* concluded in its Report on vulnerable suspects in EU Member States that "The application of special safeguards to vulnerable suspects at the earliest stage of criminal proceedings is essential to ensure that these suspects understand what their rights are and how to exercise them. If people do not understand the proceedings because their vulnerability is not identified or because special safeguards are not in place, then this leads to a serious inequality of arms, undermining the chances of receiving a fair trial." In "The practical operation of safeguards for vulnerable suspects and defendants in European Union Member States", August 2012, point 38

63 *T. Weaver* (2003), *Comorbidity of substance misuse and mental illness in community mental health and substance misuse services*, Brit. Journal of Psychiatry, vol.183, p.304

64 *G.Moon*, *Multiple Discrimination: The Need for Justice for the Whole Person*, 2008.

65 ECtHR Judgment of 23 February 1994, Application N°16757/90

Council of Europe Recommendation[66] (2004) 10, these are not binding. In most Member States the assessment which is conducted in relation to vulnerable adults is rather basic[67]. Medical expert advice is sought only if the suspected persons have "obvious" signs of vulnerability. This means that often vulnerabilities remain unrecognised at an early stage of the proceedings and "less obvious" are not at all detected. Thus, vulnerable adults facing criminal charges who are not able to understand the nature of the allegations against them, or to effectively participate in the proceedings, may experience a number of potential disadvantages and breaches of their fair trial rights. An appropriate assessment of the vulnerability of suspected or accused persons in criminal proceedings in the form of a screening by police officers and, if indicated, by medical expertise is therefore key to detect the vulnerability of persons at an early stage of the proceedings and to ensure that they will get adequate safeguards.

Member States generally agreed on the need to detect and assess potential vulnerabilities of suspects or accused persons, if needed by an expert (see *Annex II*).

4.2.2. Specific Problem 2: Vulnerable persons, in particular children, are not sufficiently assisted throughout the criminal proceedings and their access to a lawyer is not ensured

In order to ensure that children and vulnerable adults can fully understand and follow the criminal proceedings, procedural safeguards for the following key aspects need to be ensured:

- (a) Assistance by parents/legal representative or a person of trust[68];
- (b) Medical assistance;
- (c) Mandatory access to a lawyer.

*(a) **Need to ensure assistance by parents/legal representative***

- Children

The role of the parents[69] is important to ensure moral and psychological support and adequate guidance to the suspected or accused child. Parents are better placed to protect the rights of defense of the suspected person (e.g. to appoint a lawyer or to decide to appeal of a decision). Moreover, the parents are also legally responsible and can be held civilly liable for the behaviour of the child.

The provision of appropriate information of parents as well as their assistance during the proceedings is recommended by international rules, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the Beijing Rules and the 2007 UN CRC General Comment N°10 on the Children's rights in juvenile justice. Moreover, it is generally acknowledged by Member States and stakeholders (*for more details, see Annex II).*

Whereas Directive 2013/48/EU on the right of access to a lawyer foresees specific rules on the notification of custody of children to parents, it does not foresee the provision of appropriate information on the procedural rights and charges concerning children to parents or

66 Article 32(1) and Article 33

67 Discussion at expert meeting of 11 December 2012, *see Annex II*

68 A person of trust can be defined as a person other than a lawyer appointed or exercising the rights of the defence, with a family or social relationship with the child and who is likely to interact with the child in order to enable it to exercise its rights in its best interests.

69 In cases of conflicts of interests (e.g. if one of the parent is involved in the same alleged offence) another appropriate adult should be informed.

a person of trust. Also the Directive 2012/13/EU on the right to information in criminal proceedings does not foresee such a right.

Moreover, the subsequent presence of parents at the police station and court – where they could actually assist and guide the child – is not covered by these measures[70]. In this respect, the situation varies across Member States. In several Member States the presence of parents at the police station is currently not foreseen (e.g. BE, BG, EE, ES, FR, HU, NL, PT, SE).

However, the issue whether parents should be present at interrogations is discussed controversially[71] and will therefore not be covered by this initiative[72]. This does not affect any existing legislation in Member States or prevent Member States from adopting rules in this respect.

- Vulnerable Adults

The information of the legal representative or a person of trust is important if a vulnerable adult is involved in criminal proceedings because they provide any necessary support to the vulnerable suspected or accused person and facilitate communication between the vulnerable person on the one hand and any lawyer and the police on the other. If appropriate adults are not informed on how they can assist vulnerable adults when they are notified of the vulnerable person's custody they might not be able to assist them in the course of the proceedings and this increases their risk to be subject to ill-treatment.

Neither the Directive 2013/48/EU on the right of access to a lawyer nor the Directive 2012/13/EU on the right to information foresee the provision of appropriate information on the procedural rights and charges concerning the vulnerable adult to their legal representative or a person of trust.

Also the review of national legislation demonstrates that with the exception of England and Wales, the right to notification for vulnerable adults does not go beyond what is accorded to non-vulnerable adults.

(b) ***Need to ensure appropriate medical assistance***

- Children

International standards require that law enforcement authorities respect the dignity and personal rights of all children, having regard to their vulnerability. Children, due to their young age and physical and mental immaturity, are more strongly exposed to ill-treatment and health problems than other suspects or accused persons. Often they are not able to properly express their health problems. Particular care is needed to ensure their integrity, in particular in detention (e.g. the health of children with learning disabilities is often poorer than for the general offender population, particularly with regard to mental health[73]).

The right to medical examination by a physician and adequate medical care throughout a child's stay in detention is recommended, for instance, by the 2007 UN General Comment

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70 Parents and legal representatives may provide important (moral) support and general assistance or guidance to children and vulnerable adults whereas the role of the lawyer is to provide advice on legal issues.

71 In certain cases the presence of parents could be even counterproductive (e.g. sexual crimes).

72 Discussion at experts meeting 23.11.2011 and 11.12.2012, see *Annex II*

73 R. Rickford and K. Edgar, "Troubled Inside: Responding to the Mental Health Needs of Men in Prison". Prison Reform Trust, p.101

N°10 on the Children's rights in juvenile justice[74]. The CPT has repeatedly stressed the importance of prompt and thorough medical screening of persons in detention. CPT country reports demonstrate that the right to medical assistance for children is not ensured in certain Member States (EE[75], IT[76], LT[77]).

- Vulnerable Adults

Insufficient protection of the right to medical assistance has significant implications for vulnerable adults as the general health of such persons is often poorer than for the general population, particularly with regard to mentally ill persons[78]. The need to ensure an access of a vulnerable person to a doctor, and to receive medical care adapted to his needs, in particular in the case of deprivation of liberty, is important. Similar to children, the right to medical assistance for vulnerable adults is not ensured in certain Member States (EE, IT, LT).

(c) Need to ensure appropriate access to a lawyer

Article 6 (3) lit.c) ECHR and Articles 47 and 48 of the Charter guarantee the right of an individual to have access to a lawyer. The Directive 2013/48/EU on the right of access to a lawyer lays down general rules on such a right for all suspects and accused persons in criminal proceedings. However, this Directive allows suspects and accused persons to renounce to their right to be assisted by a lawyer. No specific safeguards are foreseen for children or vulnerable adults. There is a high risk that children and vulnerable adults renounce to their right to a lawyer without fully understanding the consequences of their action.[79]

- Children

Although there is no specific ECtHR jurisprudence requiring mandatory defence for vulnerable persons, the ECtHR has repeatedly underlined the importance of assistance by a lawyer for children from the outset of the proceedings and during police questioning thereby suggesting that a waiver can represent significant risks for them. The importance of access to a lawyer for children is also recognised by all relevant international rules, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice[80], the Beijing Rules[81] and the 2007 UN 2007 General Comment N°10 on the Children's rights in juvenile justice[82].

Examples of case-law by the ECtHR concerning violations of the right to legal assistance

74 Point 89: "*Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community."*

75 CPT report, 2011, EE, http://www.cpt.coe.int/documents/est/2011-15-inf-eng.htm

76 External Study, Table A1.9, p.235

77 CPT report 2011, LI, http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.htm

78 Rickford, R. and Edgar, K. (2005) "Troubled inside: Responding to the Mental Health Needs of Men in Prison". London, Prison Reform Trust, p.101

79 It is estimated that as an average 44% of the persons involved in criminal proceedings waive their right to a lawyer (e.g. in FR about 65%, in BE about 20%, in the NL about 89%). *See* Study of Financial and other Impacts for an IA of a measure covering the right of a suspected or accused person to have legal aid in criminal proceedings, 2013

80 Points 37 (to 43):"*Children should have the right to their own legal counsel and representation […]".*

81 Point 15.1: "*Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser […]."*

82 Point 49 "*The child must be guaranteed legal […] assistance in the preparation and presentation of his/her defence*."

with regard to children: In the case *Panovits v. Cyprus* where a 17 year old boy was sentenced in May 2001 for manslaughter and robbery, the Court ruled that the absence of a lawyer during police questions had been particularly detrimental for his defence given that he was a minor at the time."[83]

In the case *Adamkiewicz v. Poland* where a 16 year old boy had been arrested for the murder of a 12 year old boy, the Court held that the fact that the applicant was questioned without the presence of a lawyer and was not informed of his right to remain silent and not incriminate himself had amounted to a violation of Article 6 § 3 c) in conjunction with Article 6 §1 ECHR[84].

Access to a lawyer throughout the proceedings is particularly important for children, as evidence suggests that they find the trial experience "intimidating", "stressful" and "confusing"[85]. The common problems they encounter are as follows: they have even more limited and often incorrect knowledge of criminal proceedings and courts; they fail to foresee the long-term consequences of their action; they tend to consider legal rights as "conditional", i.e. that they can be withdrawn or waived.

The need to ensure mandatory access to a lawyer for children has been generally acknowledged by stakeholders[86] and Member States and is considered as the "core measure" of any initiative with regard to vulnerable persons. (*for more details see Annex II*).

At present, there are significant differences between EU Member States in terms of when access to a lawyer is mandatory. As regards children, some Member States do not at all provide for mandatory defence (CY, IE, LU, UK), others provide for a mandatory defence at court but not at police stations (FR, NL, SI). Again others foresee mandatory defence upon decision by the competent judge (DE, FI, SE)[87].

The costs for mandatory access to a lawyer are governed by national law, including national legal aid schemes. The analysis of legal measures related to legal aid will be subject of a separate impact assessment on legal aid.

- Vulnerable Adults

Access to a lawyer throughout the proceedings is particularly important for vulnerable adults who are unable to understand and follow the proceedings. Research evidence has shown that this concerns in particular persons with mental problems but also with learning disabilities and communication problems as evidence suggests that it is difficult for them to communicate and effectively defend themselves[88]. The ECtHR has underlined, when applicants have mental health problems, the importance of presence of a lawyer in a number of cases suggesting that a waiver of this right can present significant risks for them. However, there is no specific ECtHR jurisprudence requiring mandatory defence for vulnerable adults.

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83 ECtHR, Judgment of 11 December 2008, Appl. N°4268/04

84 ECtHR, Judgment of 2 March 2010, Appl. N° 54729/00

85 *J.Jacobson, J.Talbot*, "*Vulnerable Defendants in the Criminal Courts: a review of provision for adults and minors"*, Prison Reform Trust, 2009, p.34

86 See ECBA Statement, points 13, 19, 22 The ECBA underlines, in particular, the importance to ensure access to a lawyer from the very beginning of the proceedings (at the earliest opportunity) until the end.

87 This means that in a considerable number of cases children do not have access to a lawyer.

88 External Study, Chapter 2.6.2.1

Example of violation of the right to legal assistance with regard to vulnerable adults

In the case *Megyeri* v. *Germany*[89] the applicant was arrested and detained in a psychiatric hospital after he had committed criminal acts for which he could not been held responsible due to mental health problems. The applicant requested the reopening of criminal proceedings in which he was not represented by a legal counsel. The ECtHR ruled that the applicant's deteriorated mental condition and need for guardianship had been known to the court and that he would have been unable to represent himself in the review proceedings.

The legal situation with regard to mandatory access to a lawyer varies within the EU. Several Member States do not foresee mandatory access to a lawyer (e.g. BE, CY, DK, IE, UK) and would therefore be affected by the proposed measure.

4.2.3. Specific Problem 3: Vulnerable persons, in particular children, lack particular safeguards taking into account their special needs at the various stages of the proceedings

Vulnerable persons are more susceptible to ill-treatment or discrimination by law-enforcement officers than other suspected and accused persons. Because of their lack of capacity to fully understand and participate in the criminal proceedings, there is a higher risk for vulnerable persons to be deprived of their fundamental rights, to see the available safeguards denied and even more to suffer from discrimination or ill-treatment.

In several cases relating to children, the ECtHR has found a violation of Article 3 ECHR which prohibits torture or inhuman or degrading treatment or punishment.

Example for violations of Article 3 ECHR in connection with children:

In the case of *Darraj v. France*[90], where a 16-year-old boy sustained serious injuries in the hands of police officers, the ECtHR rejected the police's version of events, whereby force had been used against the applicant, a child at the time of the incident, because of his violent behaviour when they attempted to handcuff him. Instead, the ECtHR found that handcuffing a child who was not visibly violent prior to his arrival at the police station could not be justified.[91]

In order to ensure that vulnerable persons are treated with adequate respect and dignity, appropriate procedural safeguards for the following key steps of criminal proceedings should be ensured: police interviews, pre-trial detention, hearings.

*(a) **Need to ensure appropriate safeguards during police interviews***

The arrest and questioning of children and vulnerable adults are potentially risky situations where their personal rights and dignity may not always be respected and their vulnerability may not be duly taken into account. Moreover, police interviews may be lengthy and the pace is not always adapted to their capacities.

- Children

Example for ill-treatment of children during police questioning:

89 ECtHR, Judgment of 12 May 1992, Appl. N°13770/88

90 ECtHR, Judgment of 4 November 2010, Appl. N°34588/07

91 See also similar case, *Stoica v. Romania*, ECtHR, Judgment of 4 June 2008, Appl.N°42722/02, where a 14 year old child of Roma origin was beaten by the police.

Mr. Wall was 17 years old when he was held at the young offenders unit in Bridgend in the UK. Mr. Wall alleged that the police gave him cigarettes and alcohol, took him on a drive and questioned him about burglaries. Later on, the police asked him to admit to some of these offences. Although Mr. Wall asked repeatedly for a lawyer, no access to a lawyer was granted. It appeared later on that Mr. Wall admitted to crimes that occurred when he was in custody awaiting sentence for other burglaries.

Following the revelation that Mr. Wall had admitted to crimes he could not have committed, the police officers were found guilty of misconduct[92].

Mr. James Milton (not his real name) was 16 years old and had recently moved from the UK to Malta when he was arrested. He was taken to the police station when he was questioned aggressively for several hours without a lawyer or any appropriate adult present. During police questioning, James was not informed about any details of the allegations or of any charges against him or informed of his legal rights. He was interrogated from 9.30 pm until 2.30 am the following morning without receiving anything to eat or to drink. His passport was taken pending trial, so that from June 2009 until the trial in June 2010 he was unable to visit his family in the UK.

At the trial, James Milton was acquitted of all charges[93].

One significant element to protect children against ill-treatment (in addition to other safeguards like appropriate information, assistance by parents and access to a lawyer) is the recording of police interviews. According to the CPT[94], the electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. It provides a complete and authentic record of the interview process, thereby also greatly facilitating the investigation of any potential allegations of ill-treatment. This would be in the interest of both persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have been engaged in physical ill-treatment or psychological pressure.

At present, there are no legally binding standards within the EU on how interviews with children should be conducted. Only in eight Member States police interviews are systematically audio or video recorded: BE, FI, FR, IT, IE, LV, NL and UK (England and Wales).

The use of video or audio recording has been recommended by the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. During the expert meetings, several Member States were in favour of video or audio recording (*see Annex II*)[95].

- Vulnerable Adults

With regard to vulnerable adults there are certain Member States where standardised procedures on how the police interview should be conducted do not exist. Moreover, even when there is clear guidance, this is often not systematically followed in practice.[96] Research evidence shows that the majority of Member States do not systematically tape or video record the interviews with vulnerable adults[97].

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92 External Study, Chapter 2.3.4.1, p.27

93 Fair Trials International, Report, Defence rights in the EU, October 2012, p.24

94 Committee on the Prevention of Torture, Council of Europe, Report to the PL Government in 2004, p.17, § 28

95 Some Member States raised cost concerns. For possible synergies with regard to the use of audio-video facilities already installed in the context of the implementation of Directive 2012/29/EU on the protection of victims of crime*, see below section 7, impact analysis, financial impact*.

96 See External Study, Chapter 2.6.4, p.44

97 The only eight Member States where police interviews are systematically audio or video recorded are identical with those which foresee such recording also for children.

*(b) **Need to ensure appropriate measures with regard to detention***

- Children

Children held in detention, given their young age and physical and mental immaturity, are often subject to ill-treatment. They are at heightened risk of abuse from prison officials and other detainees. Lack of privacy, frustration, overcrowding and failure to segregate detainees according to their age and the gravity of the alleged offence are all factors that can exacerbate violence. There exist other less obviously brutal risks as well. Contacts with parents and friends are reduced and decrease moral and social support. A child who is detained is more likely to drop out of school.

Recent example of abuse of a child in pre-trial detention:

In Austria, a fourteen years old boy, showing signs of multiple vulnerability, was raped in pre-trial detention in May 2013. He was not held separately from adult inmates[98].

Such cases underline the urgent need to detain children separately from adult inmates. It is the responsibility of public authorities to protect children in detention and to avoid their victimisation.

The Committee of Ministers of the Council of Europe has recommended that pre-trial detention for children, in whatever form, needs to be avoided as much as possible and should only be a measure of last resort, used for the shortest time possible and restricted to serious cases[99]. International children's rights bodies are very critical about the use of pre-trial detention and are seeking to reduce it[100].

In order to avoid pre-trial detention for children, all measures alternative to the deprivation of liberty should be taken by the competent authorities whenever this is in the best interests of the child. Such measures should include for instance reporting obligations to the competent authorities, restrictions on contacts with specific persons or participation in therapeutic treatment or educational measures.

Nevertheless, in certain cases pre-trial detention might be necessary, for example, to avoid the risk of tampering with evidence, influencing witnesses, when there is a risk of collusion or flight, etc. In such cases, particular attention should be paid to the way detained vulnerable persons are treated and relevant alternatives to detention that can achieve similar aims should be envisaged. Whereas international standards[101] provide that children should not be detained together with adults, this is not the situation in all EU Member States. Separate detention of children does not exist in several Member States (e.g. BG, CY, CZ, EL) and even where Member States, in principle foresee separate detention it is not always implemented in practice[102]. Such practical measures for the detention of children are suggested in the above-

98 http://www.orf.at/stories/2189225/2189210/

99 Recommendation of the Committee of Ministers (2008), 11, on European rules for Juvenile Offenders, paragraph 59.1; see also Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, pt.19; ECtHR, Cases *Selçuk v. Turkey*, Appl.N°21768/02, *Kosti a.o. v. Turkey*, Appl.N°74321/01, *Nart v. Turkey*, Appl.N°20817/04

100 See, for example, the above mentioned Report by DCI; see also Explanatory Memorandum on the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, p. 67

101 Article 37 UN CRC, Article 13.4 of Beijing Rules, Council of Europe Recommendation (2008)11

102 See above, recent example for abuse of a child in detention. Once, Member States will be legally obliged (by a directive) to foresee separate detention, they will also be obliged to implement it accordingly. If Member States do not fulfil their obligations, proceedings according to Article 258 TFEU could be initiated by the Commission.

mentioned Council of Europe instruments which are, however, not binding upon Member States and certain variations with regard to the application of safeguards exist. However, the measures foreseen in this report do not require the creation of detention centers or prisons specifically designed for children, although this would be the most effective solution implementing the international standards, but only that children should be held separately from adults and that detention should be the last resort for them.

- Vulnerable Adults

Vulnerable adults, in particular the mentally impaired or persons with reduced mental or physical capacities, are particularly exposed to abuse and ill-treatment in detention. Moreover, separation from family, friends and their social environment may have dramatic consequences on their mental and physical condition.

Most Member States do not foresee any separation between vulnerable and non-vulnerable adults in detention[103]. Some have specific provisions for mentally impaired persons (e.g. detention in hospital or psychiatric unit)[104].

(c) ***Need to ensure safeguards with regard to Court hearings***

- Children

Their involvement in criminal proceedings stigmatises children and may have a detrimental impact on their chances for reintegration into society and their future professional and social life. All international standards, notably the UN CRC, the ECHR and the ECtHR's case-law underline the importance to respect the right of privacy for children, including when involved in criminal proceedings, as a critical component of their rehabilitation.

In its General Comment N°10 on Children's Rights in Juvenile Justice, the UN CRC recommends, among others, proceedings 'in camera', preserving confidentiality in records, delivering judgments which will not reveal the child's identity, etc. However, according to research evidence, in several Member States court hearings relating to children are open to the public[105] (AT, DK, EE, FI, LV, LT, MT, SK, SE)[106]. In Italy, the public is always to be excluded in cases of defendants under 16 years old but not for those between 16 and 18 years old. Moreover, in Austria and in Portugal judgments related to children are rendered public.

- Vulnerable Adults

With regard to vulnerable adults, several Member States foresee that medical expertise is kept confidential[107]. However, most Member States indicated that no other specific safeguards with regard to the protection of privacy of vulnerable adults are available[108].

4.2.4. Lack of training of professionals in contact with children and vulnerable adults and lack of specialisation of judges

- Children

International requirements[109] recommend that all professionals working with children should receive necessary training on the rights and needs of children.

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103 External Study, Annex 2, Table A1.14

104 For instance AT, BE, ES, IT, PL, SK

105 In some of these Member States the hearing can be closed for public upon order of the judge.

106 External Study, Annex 2, Table A1.17

107 AT, BE, CZ, DE, FI, IE, IT LU, PL, UK (Scotland)

108 External Study, Annex 2, Table A1.18

Judicial authorities (i.e. judges and prosecutors) and law enforcement authorities (e.g. police officers) are often not sufficiently aware of the particular problems that children face in criminal proceedings and of the special safeguards that exist to ensure their fair treatment. Due to a lack of specialised training, competent authorities do not always adequately assess their particular needs.

Stakeholders confirmed that the lack of training is a key factor contributing to insufficient protection of the rights of suspected and accused children[110]. An enhanced need for training of judges and law enforcement authorities on the specific needs of children in all Member States results from the external study.

Research evidence suggests that judges are not required to be specialised to deal with juvenile cases in a number of Member States. A certain number of Member States (EE, FI, LV, LT, RO, SK, SE) do not have specific youth courts. Three further Member States (BG, UK partly - England and Wales, IE) do not require judges to be specialised[111]. In the remaining Member States in principle there are certain requirements for specialisation of judges. However, these provisions are not systematically implemented in practice.[112] Similar problems of insufficient specialisation exist to varying degrees in the Member States in relation to prosecutors, police officers and lawyers. For reasons of proportionality and subsidiarity, this initiative will not, however, foresee any changes to the organisation of judicial systems in the Member States with regard to juvenile justice, but rather contemplate the strengthening of the specialisation of practitioners confronted with children during the criminal proceeding by better training.

- Vulnerable Adults

Several Member States do not foresee any specific training of judges for the treatment of vulnerable adults (e.g. DE, ES, IT, LT, LU, MT, SK, SE). Due to lack of training[113], judges are not always aware of the specific needs of vulnerable persons.

Conclusion: Despite the existence of common principles and minimum standards stemming from the ECHR, the EU Charter, and other international law instruments, the fair trial rights of children and vulnerable adults throughout the various stages of criminal proceedings are, at present, not sufficiently guaranteed within the EU with regard to their specific needs and vary from one Member State to another. The criminal proceedings and practices of a certain number of Member States have serious shortcomings when measured against these minimum criteria. This lack of adequate standards affects the overall quality of justice within the EU and consequently undermines mutual trust between judicial authorities. Mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters, which rely on mutual trust, may therefore be affected.

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109 Article 40(1) and (3) UN CRC; see also pt.63 of Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

110 In the Expert's meeting of 23 September 2011, some representatives stressed the importance of specialised training for legal professionals.

111 In the UK, this problem has repeatedly been highlighted by the Prison Reform Trust. *Jacobson, Talbot*, Vulnerable Defendants in the Criminal Courts: a review of provision for adults and minors, Prison Reform Trust, 2009, p.19.

112 A. *Gensing,* "*Jurisdiction and characteristics of juvenile criminal procedure in Europe*", in Juvenile Justice Systems in Europe (2011), ed. By F. *Dunkel* et al., pp. 1607-1648; See also External Study, Annex 2, Table A1.17

113 Mainly due to lacking financial resources it is not probable that this situation will improve without action on EU level.

4.3. The scale of the problem

Data suggest that the number of children facing criminal justice is approximately 1.086.000[114] across the EU, i.e. 12% of the total of the European population facing criminal justice each year. About 1.6% of the total prison population within the EU are children[115]. When it comes to other vulnerable persons it is assessed that 4 to 8%[116] of the total population facing criminal justice could face some kind of impairment that prevents them to fully participate or to fully understand and therefore to properly exercise their rights. These figures are unlikely to decrease by any significant amount in the coming years.

In terms of cross-border cases, there is no precise information with regard to vulnerable persons being arrested or prosecuted outside their own Member State. Data suggest that a 1% figure can be retained as representative of the cross-border cases concerning vulnerable defendants[117].

Nevertheless, the number of cross-border cases is likely to rise. Available statistics compiled for the years 2005 to 2010 record 68580 issued EAWs and 15923 executed EAWs in that time. Taking into account provisional figures for 2011 (as at 15/01/2013, 8 MS have not yet supplied figures), the total number is 78364 issued EAWs and 19076 executed EAWs. The rise of cross-border cases can also concern prison sentences and requests for mutual legal assistance. This will lead to a greater need for judicial cooperation in criminal proceedings, including also cases relating to children and vulnerable adults.

4.4. Baseline scenario: how would the problem evolve in the future if no EU action takes place?

Whilst a range of international standards on children and vulnerable adults' rights have been established in the past years, these have not led to a significant improvement in the manner that vulnerable persons suspected or accused in criminal proceedings are treated. These provisions are often very general and only very few relate to criminal proceedings. They are rarely directly applicable and require national implementing legislation which is not always adopted.

At EU level, the Directives on procedural rights that have been adopted provide certain specific provisions with regard to children and vulnerable adults but do not take account of all problems suspected or accused children and vulnerable persons may face in the various stages of criminal proceedings. They do not provide an overarching protection for the specific needs of these persons. This is not a flaw of the already adopted measures but inherent to the Stockholm Programme which left explicitly the protection of vulnerable persons for a separate legal instrument *(for more details, see above, Section 4.1.2)*.

Without further action, it is unlikely that there will be a sufficient development in national legislation and action to ensure that vulnerable persons receive treatment which fully respects their rights to a fair trial, no matter where in the EU they find themselves, in particular during custody, interrogations by police services or during hearings at courts. This may in turn affect

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114 See *Annex VI*, Table A1.1 based on UNODOC, Eurostat and ICF GHK estimates

115 See Green Paper on pre-trial detention, Annex, Table 1, COM(2011)327 final, 14.6.2011

116 This would correspond to approximately 358.000 to 719.000 persons. However, in the absence of a standard definition, it is very difficult to indicate any precise figures. The estimates are based upon data on the prevalence of mental and physical vulnerabilities in the general population adjusted because those with mental disabilities have a higher likelihood of being in contact with judicial process and those with physical disabilities are understood to have less likelihood. *See Annex VI, table A1.2*

117 See External Study, Chapter 2.8.2, p.55

mutual trust in judicial systems in the European Union and undermine the effective application of the Treaty-endorsed principle of mutual recognition.

At Member State level, Finland and Belgium are the only Member States where forthcoming initiatives addressing the needs of vulnerable defendants have been identified[118]. In the near future, there is no indication that all Member States will tackle deficits with regard to the protection of vulnerable persons in their legislation and practice. Consequently, in the absence of major legislative developments in the protection of procedural rights of the vulnerable defendants, it is anticipated that these rights will remain at the current insufficient level.

4.5. Does the EU have power to act?

4.5.1. The Legal basis

The power to act and, where necessary, propose EU legislation in the area of civil and criminal law is conferred, inter alia, by two articles of the Treaty on the Functioning of the European Union (TFEU). The EU's legislative competence for a Directive laying down minimum rights in criminal proceedings is set out in Art 82(2) (b) TFEU. Minimum rules concerning the rights of individuals in criminal proceedings may be adopted by means of directives, to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. While Article 82 (2) (b) TFEU makes explicit reference to directives, this legal basis would indeed also allow for adopting any less intrusive measures according to the principle the larger contains the lesser[119]. Art 82(2) (b) TFEU provides the legal basis for legislation applicable not only to cross-border criminal proceedings (i.e. proceedings with a link to another MS or a third country) but also to domestic cases as a precise, *ex ante* categorisation of criminal proceedings as cross-border or domestic is impossible in relation to a significant number of cases.

This initiative will apply to all criminal proceedings irrespective of whether they present a cross-border element or not. The reason for this is that both the policy objectives as described below can only be met if minimum rules apply to all criminal proceedings. In order to improve mutual trust and thus judicial cooperation, judicial authorities need to be aware that sufficiently high standards apply across the board in the jurisdictions of other Member States. If Member States were at liberty to apply lower standards to purely domestic proceedings, the requisite of mutual trust between judicial authorities could not be boosted.

As concerns the need to safeguard the fundamental rights of citizens, the enactment of minimum rules for cross-border proceedings only, far from addressing the problem, would create two different classes of defendants in criminal proceedings, one with more rights than the other; this distinction, made on the basis of the cross-border nature of the procedure, would lead to unreasonable differentiation and would eventually be detrimental to the protection of fundamental rights. In addition, when the matter is linked to EU law, the Charter guarantees rights to everyone suspected of a criminal offence, whether involved in cross-border or purely national proceedings.

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118 In Finland, for instance, main changes to the legislation concern the right of suspects and defendants to have an assistant present during the proceedings. In addition, the new law has provisions on the right to translation of documents as well as more specific guidance about interviewing and delaying the interview of a suspect who is intoxicated or mentally disturbed. The new Law on coercive acts will enter into force on 1.1.2014. In Belgium, some of the envisaged reforms aim to prolong special educative measures until the age of 23 for young adults. See External Study, Chapter 2.9.2, p.57

119 Denmark, Ireland and the UK do not take part in the adoption of measures in the justice field (Protocols 21 and 22 to the TFEU). However, Ireland and the UK have the possibility to opt in.

Additionally, it must be noted that the cross-border nature of any given proceedings is difficult to define and can appear at any point of time throughout the various stages of criminal proceedings, at which stage the application of specific provisions dealing with cross-border situations might not be possible anymore or would make the proceedings much more complex. Moreover, even after criminal proceedings have concluded with a final judgment imposing a sentence on the defendant by the courts of his Member State of nationality, such a case could still turn into a cross-border case necessitating judicial cooperation between Member States where the convicted person moves (or flees) to another Member State prior to having served his sentence in full. An EAW might thus have to be issued for achieving the return of that person (or the enforcement of a financial penalty sought by the court which had imposed the penalty). Thus, it is essential for the promotion of mutual trust to ensure that measures strengthening minimum fair trial rights apply to suspects and accused persons in *all* criminal proceedings throughout the EU and not just those proceedings which present a cross-border aspect at their outset.

4.5.2. Subsidiarity: Why is the EU better placed to take action than Member States?

It is considered that there is a need for EU action based on the following factors:

(1) The EU is establishing its own, unique system of judicial cooperation based on the principle of mutual recognition throughout the EU. Such a system calls for a guarantee of uniform standards of fundamental procedural rights protection in the EU. A lack of common standards reduces confidence in the judicial systems of the Member States, which in turn impedes the effective operation and application of the principle of mutual recognition of judicial decisions and consequently the strengthening of the European area of freedom, security and justice. Given the current diversity of existing national legislation in this area and Member State action based primarily on varying internal priorities, it is unlikely that Member States acting individually would be able to establish common standards of rights with regard to children/vulnerable persons.

(2) Those common standards have to be implemented in particular when dealing with the most fragile part of citizens facing criminal justice (i.e. children) mostly because they face a higher risk of discrimination or deprivation of their fundamental rights due to their lack of knowledge or ability to act with freewill. Vulnerable persons have specific needs that need to be respected and a comprehensive level of protection across Member States can only be ensured by action at EU level.

(3) In the EU people are constantly travelling and moving across borders. Around 11.3 million Europeans reside permanently outside their home country, 10% of Europeans have lived and worked abroad during a period of their lives and 13% have gone abroad for education and training. These numbers show the importance of ensuring proper, effective action on the rights of those who get involved in criminal proceedings, in their own country of while travelling or living abroad. The EU must ensure that suspects and accused persons, although they may not be fully aware of various specific aspects of the procedure, should be protected by minimum safeguards across the EU.

(4) Also, children and other vulnerable persons can be involved (as any other offender) in criminal proceedings outside their own Member State. Situations occur where they are prosecuted during a stay, journey or after returning home and subject to pre-trial detention following the issuance of a European Arrest Warrant. In addition to the complexity of criminal proceedings and the differences with regard to the legal culture, languages and other elements, the vulnerability of such persons is increased when they are separated from their

natural surroundings. This cross-border dimension constitutes another factor for the need to tackle procedural safeguards of these suspects or accused persons at EU level.

(5) The ECHR already sets European-wide fair trial standards but due to the absence of any effective enforcement mechanisms a sufficient and consistent level of compliance by its signatory States, including EU Member States, cannot be guaranteed. Moreover, the lack of enforceability of International Conventions addressing children and disabled persons, which the Union has ratified, render a coherent EU wide application of such standards unlikely.

(6) The Directives 2010/64/EU of 20 October 2010 on the right to interpretation and 2012/13/EU of 22 May 2013 on the right to information in criminal proceedings as well as Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer provide provisions dedicated to some vulnerable persons. Following their adoption, it is essential to achieve an overall protection of children and vulnerable adults with a specifically dedicated instrument in order to complete the *acquis*.

5. OBJECTIVES

The policy objectives of introducing special safeguards for children and vulnerable adults suspected and accused in criminal proceedings in the EU are as follows:

Objectives:	
General:	▪ An effective standard of protection of fundamental procedural rights for vulnerable persons suspected or accused in criminal proceedings will be guaranteed. ▪ Mutual trust will be enhanced thus facilitating mutual recognition of judgments and judicial decisions in the EU and improving judicial cooperation in the EU.
Specific:	▪ **A:** The vulnerability of persons suspected or accused in criminal proceedings is adequately assessed at the very beginning and throughout the criminal proceedings. ▪ **B:** Vulnerable suspected or accused persons are duly assisted in criminal proceedings and have access to a lawyer in order to allow them to understand and effectively participate in the criminal proceedings. ▪ **C:** Vulnerable persons, in particular children, have a set of adequate procedural safeguards taking into account their special needs at all stages of the criminal proceedings (e.g. police interviews, detention, court hearings).
Operational:	▪ **A.1**: Appropriate assessment mechanisms for children and vulnerable adults are put in place from the very beginning of the criminal proceedings starting with their first contact with law enforcement or judicial authorities. ▪ **B.1:** Children and vulnerable adults will be duly assisted by parents, legal representatives or a person of trust during the proceedings. ▪ **B.2:** Children and vulnerable adults will benefit from mandatory access to a lawyer from the very beginning of the criminal proceedings in order to enable them to effectively participate in the proceedings.

	▪ **C.1:** Children and vulnerable adults will receive appropriate safeguards taking into account their specific needs at the various stages of criminal proceedings (e.g. medical examination, police interviews, detention and court hearings).

The present initiative forms part of a package of measures for improving mutual trust and enhancing the level of protection of suspects or accused persons in criminal proceedings. Only once all the measures envisaged in the Stockholm Programme are in place, it will be possible to achieve the general objective. The following options are assessed against the specific and operational objectives.

6. POLICY OPTIONS

The policy options for addressing the problems as defined in *Section 6.2* of this Impact Assessment, in line with the objectives as established in *Section 5,* are set out below. In accordance with the Communication from the Commission on the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union[120], this impact assessment examines the impact on fundamental rights of the options proposed.

All the policy options are intended to operate in the framework of the Roadmap measures and have the same scope of application. In previous measures, *suspected or accused persons* have consistently been used as the category of persons falling within the personal scope of the action. This encompasses all people (including children) who are involved in criminal proceedings, against whom a suspicion that they have committed a criminal offence exists, irrespective of the terms used in domestic law. The personal scope also covers persons subject to EAW proceedings. The temporal scope for the other fair trial instruments is "*from the time a person is made aware that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings*", the latter term being understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

6.1. Discarded Options

Certain policy options were discarded at an early stage of the proceedings. In particular:

(a) *To define vulnerable adults:* The introduction of a definition of vulnerable adults was discarded as not feasible. As set out already above, stakeholders have indicated at various occasions that it is very difficult, if not impossible, to find an overall definition of vulnerability. Such a definition would necessarily be very broad (in order to cover all potential groups of vulnerable persons[121]) and could therefore turn out to be a "catch-all" provision with little substance and without real added value. Moreover, stakeholders have stressed the risk of stigmatisation resulting from such a definition.

(b) *To harmonise rules on the age of criminal responsibility*: Rules on the age of criminal responsibility for children were discarded. This is the age when a child becomes criminally responsible for his/her actions. From this age onwards, a child can be prosecuted for any criminal offence. Below this age a child is deemed incapable of having committed a criminal offence. Although the age of criminal responsibility varies considerably between Member

120 http://ec.europa.eu/justice/news/intro/doc/com_2010_573_4_en.pdf

121 Very heterogeneous groups of vulnerable persons could theoretically be covered: Children, foreigners, persons with mental, emotional and learning problems, individuals with physical impairments and those suffering from drug or alcohol abuse. It could even cover pregnant women or go as far as to label all people from difficult socio-economic backgrounds as vulnerable.

States[122], it became clear from the discussions in the expert meetings that there would be no consensus to legislate in this area. In addition, this is a matter of substantive criminal law which would go beyond the current legal basis of Article 82(2) (b) TFEU (relating to criminal procedural law).

(c) *To establish harmonised rules on juvenile justice systems*: Measures aimed at achieving full harmonisation were discarded. Such measures (e.g. the establishment of youth courts, rules on diversion[123], specific sanctions for children which exist in several Member States) would lead to substantial changes of criminal systems in Member States and go clearly beyond the setting of minimum rules. They would not be covered by the legal basis of Article 82(2) (b) TFEU.

(d) *To establish a specific age assessment mechanism*: Although the determination of the exact age of a child is essential in criminal law, research evidence shows that all Member States foresee already that determination. Given that no particular problems have been identified in this respect and taking into account the principle of subsidiarity, no EU action is needed. A separate screening mechanism at the police station to assess the general mental and physical condition of the child and the appropriateness of any measures taken or envisaged against the child was discarded as disproportionate.

6.2. Overview of the policy options

We have considered four main policy options: retention of the *status quo* (Option 1) and three other policy options. The retention of *status quo* would involve taking no action at EU level, while the other three policy options will improve, to a different extent, the protection of vulnerable persons that are suspected or accused in criminal proceedings across Europe. The three options range from low-medium-high level of obligation.

Options 3 and 4 could take the form of either a directive or a recommendation. Elements of both options may be combined.

Option 1 Status quo	**Retention of the status quo**. No action taken at EU level.
Option 2 **Low level of obligation**	**Non-legislative action (soft law)** that supports the protection of the rights of vulnerable persons suspected or accused in criminal proceedings through, for example, monitoring and evaluation, training and good practice examples dissemination.
Option 3 **Medium level of obligation**	**Option 3** sets **minimum rules applying the ECtHR *acquis* and pertinent aspects of relevant international provisions** on procedural safeguards for the protection of vulnerable persons suspected or accused in criminal proceedings.

[122] The age of criminal responsibility ranges between 8 years (Scotland), 10 years (England and Wales), 12 years (NL, PT), 14 years (e.g. AT, BG, CY, EE, ES, DE, HU, IT, LV, LT, SI), 15 years (CZ, DK, FI, SK, SE) or 18 years (BE). In some MS there is no determined age of criminal responsibility (e.g. FR, MT, PL). See External Study, Annex 2, Table A1.1 and Minutes of experts meeting, *Annex II*.

[123] Diversion programs offer the opportunity to suspects to avoid prosecution by fulfilling various requirements (e.g. restitution to victims, completion of community service hours, education avoiding situations for a specified period in the future that may lead to committing a similar offence).

Option 4 **High level of obligation**	**Option 4** is the **most ambitious and prescriptive option** which goes **beyond Option 3 with regard to certain safeguards** such as the assessment of vulnerability, medical examination for vulnerable adults, police interviews, court hearings and detention.

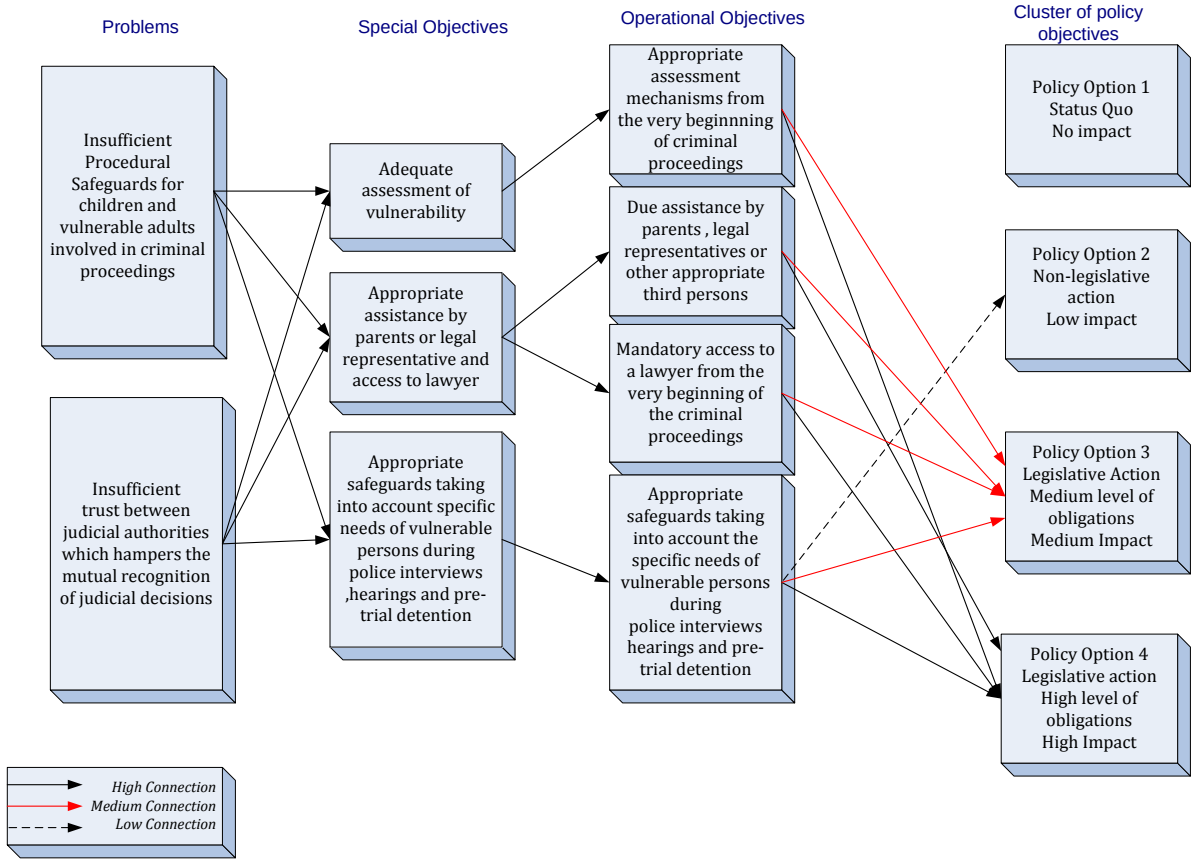


Figure: Relation between problems, objectives and policy options

6.3. Detailed description of the options

(1) Policy Option 1, the *status quo*, has been presented in the baseline scenario (see above, Section 4.4).

(2) Policy Option 2 (*non-legislative action*) consists of three elements:

a) Monitoring and evaluation of the treatment of children and vulnerable adults

The European Commission would collect information on the existing rules and their practical application concerning the rights of vulnerable suspected or accused persons in criminal proceedings. This would be done either by a future EU monitoring and evaluation body (e.g. in the style of the European Juvenile Justice Observatory[124]), charged with monitoring the implementation of procedural rights in criminal proceedings for all vulnerable groups in criminal proceedings or through the commissioning of independent studies. This policy option could be based on Article 70 TFEU which calls for a further strengthening of the evaluation of the implementation of EU policies, in particular in order to facilitate full application of the principle of mutual recognition. The monitoring and evaluation activities would primarily

[124] http://www.oejj.org

focus, for instance, on mapping existing provisions and practices, measuring the "efficiency" of national rules and procedures and analysing their strengths and weaknesses. The information collected though one or more of the above routes would be used to prepare periodic national and EU level evaluation reports. These reports could also contain "general lessons learned". They would be disseminated to stakeholders involved at policy and implementation level and would also be published on the Commission's website.

b) Support the training of law enforcement and judicial authorities

European agencies such as the Fundamental Rights Agency would collect, analyse and disseminate tools and methods on training in relation to the fair treatment of vulnerable suspects or accused persons in criminal proceedings. This could be done through a network of experts that would collect relevant material in each Member State or would commission studies in this area. The Information collected would be widely disseminated on a dedicated website of the European Commission and through existing networks and EU dedicated agencies including the European Judicial Network, European Judicial Training Network and the European Policy College, human rights organisations and defence lawyers' representatives. Workshops and seminars would be organised and coordinated and peer review meetings with Ministries of Justice would be held. The delivery of training would remain the responsibility of Member States.

c) Dissemination of good practice examples

An expert group would be instructed to draft guidelines on good practices in relation to the protection of vulnerable persons (based on a study on good practices of EU Member States and international standards). Including non-binding policy recommendations could encourage Member States to change their rules, procedures and practices. This would involve a review of available evidence gathered through the monitoring and evaluation observatory or any other data collection and awareness raising intervention and dissemination measure established as part of this policy option. Such guidelines would then be disseminated by the European Commission.

(3) Policy Options 3 and 4 (*legal instruments*): Option 3 goes further than Option 2 by setting minimum rules applying the ECtHR *acquis* and relevant international, European and Member State legislation. Option 3 foresees a certain number of procedural safeguards for the protection of children and vulnerable adults suspected or accused in criminal proceedings and proposes a "medium" level of obligation on Member States.

Policy Option 4 imposes more ambitious rules and a "higher" level of obligation on Member States than Option 3 on certain safeguards such as the assessment of vulnerability, medical examination (for vulnerable adults), police interviews, court hearings and detention.

Options 3 and 4 correspond to relevant international standards laid down in the UN CRC and UN CRPD as well as (non-binding) recommendations and guidelines, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the 2007 UN General Comment N°10 on children's rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), the UN Rules for the Protection of Juveniles deprived of their liberty ("Havana Rules") and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines") *(A correlation table is included in Annex IV).*

The foreseen safeguards have been carefully chosen taking into account the main problems identified above *(for more details, see above, Section 4.2 on specific problems*). They have been discussed in several expert meetings with Member States and stakeholders and

recognised as the most important minimum rules to ensure the right to a fair trial of children and vulnerable adults within the EU. They interact with each other (e.g. the parents/legal representatives who will be informed and present at the police station or the lawyer who will be mandatory have the right to ask for medical examination of the child or vulnerable adult) and are necessary to provide an overall protection of vulnerable persons throughout the various stages of the criminal proceedings (from the stage of police interview until court hearing and possible detention).

The following two tables provide a comparison and detailed description of the different measures proposed in Options 3 and 4. A distinction is made between **children (Table 1)** and **vulnerable adults (Table 2)** suspected and accused in criminal proceedings.

Training for professionals (including law enforcement and judicial authorities, not however, lawyers) **is** considered as a **flanking measure**. It is not explicitly set out in the tables below. The expected impact of training and, in particular, the costs of training are taken into account in the impact analysis of the different options *(for more details see Section 7).*

Table 1: Special safeguards for Children

Measure (+ operational objectives)[125]	**Policy Option 3** **Medium level**	**Policy Option 4** **High level**
1. Assessment of vulnerability *(corresponds to operational objective A 1)*	MS required to put a specific and more systematic procedure or screening mechanism in place to ascertain the basic needs of the suspected or accused child (at the beginning but possibly also at the later stages of the proceedings if needed).	Idem + In-depth assessment of the level of the child's maturity and ability to effectively participate in criminal proceedings. Indivudal assessment of economic and social background. The extent of assessment would depend on the gravity of the alleged offence.
2. Assistance by the child's parents or a person of trust *(corresponds to operational objective B 1)*	MS required to ensure information of the parents or person of trust on the rights[126] and charges concerning the suspected or accused child and their adequate assistance. MS required to request the physical presence of the child's parents or person of trust at the police station (but not during police interviews) and in court unless it would be contrary to the best interests of the child.	Idem
3. Medical Assistance *(operat. obj. A 1 and C 1)*	MS required to provide medical assistance to children upon request by the child, parents, person of trust of the lawyer.	Idem
4. Access to a lawyer *(corresponds to operational*	MS required to ensure mandatory access to a lawyer for all children during the entire proceeding (subject to national legal aid schemes – cost of	Idem

125 These measures correspond to relevant EU and international legal instruments (binding and non-binding). For further details, *see Table, Annex IV*

126 The holder of parental responsibility should receive the information on the rights of the child and about the accusation in accordance with the Directive 2012/13/EU. In addition, the holder of parental responsibility should also be provided with the information on the rights set out by this initiative (e.g. mandatory access to a lawyer, right to medical examination etc.).

objective B 2)	compulsory assistance will not be dealt with by this measure).	
5. Special provisions on conducting police interviews *(corresponds to operational objective C 1)*	MS to ensure that interviews are conducted by specially trained professionnals.	Idem + MS required to audio-video record police interviews. MS to ensure protection of privacy rules.
6. Special provisions on court hearings *(corresponds to operat. object. C 1)*	MS required to ensure that appropriate privacy protection rules for children are respected in court (including the protection of the name and the image of the child, possiility of 'in camera' hearings).	MS required to ensure that court hearings are conducted by specially trained judges, with respect of appropriate privacy protection rules.)
7. Specific rules related to detention *(corresponds to operational objectives C 1)*	MS required to ensure that pre-trial detention may only be imposed on children as a measure of last resort and after having considered all alternatives measures to detention (limited in time, exceptional and reviewed on a regular basis). Limitation with regard to age and maximum length should be envisaged. MS to ensure that minors are kept separately from adults[127].	Idem + The placement of the minor would be ordered by a specialized judge. Access to educational facilities should be provided.

[127] This does not imply the construction of separate prisons for children but the re-organisation of existing detention facilities with a separation between children and adult detainees;

Table 2 – Special safeguards for vulnerable adults

Measure (+ operational objective)	**Policy option 3** **Medium Level**	**Policy Option 4** **High level**
1. Assessment of vulnerable persons *(corresponds to operational objective A 1)*	MS required to introduce a specific and more systematic screening procedure to identify persons that cannot sufficiently understand or follow the criminal procedure. MS required to ensure that law enforcement authorities in contact with potentially vulnerable persons check and assess the vulnerability and the needs of the person (at the beginning but also possibly at later stages of the proceedings if needed).	Idem + MS required to ensure in-depth assessment of vulnerable persons by an independent medical professional and to identify the needs of the vulnerable persons. MS required to consider as vulnerable persons individuals who cannot understand or follow the criminal procedure due to mental impairment or physical disabilities (presumption of vulnerability).
2. Assistance by legal representative or a person of trust *(corresponds to operational objective B.1)*	MS required to ensure information of the legal representative or a person of trust on the rights and charges and adequate assistance unless it would be contrary to the best interest of the vulnerable person. MS required to request the physical presence of the legal representative/person of trust, unless it would be contrary to the best interest of the vulnerable person.	Idem
3. Medical assistance *(corresponds to operational objectives A 1 and C1)*	MS are required to provide medical and other relevant professional assistance to vulnerable persons. The type of assistance is left to the discretion of MS (mostly by generalist practitioners).	MS required to provide medical and other relevant professional assistance to vulnerable persons (by a specialised expert) upon request of the person, legal representative or other appropriate adult from the outset of the deprivation of liberty and as deemed necessary at later stages.
4. Access to a lawyer *(corresponds to operational objective B 2)*	Mandatory access to a lawyer for all persons declared vulnerable during the entire proceeding.	Idem
5. Special provision on conducting police interviews *(corresponds to operational objective C 1)*	MS required to ensure that interviews are conducted by specially trained professionals.	Idem + MS required to audio-video record police interviews. MS are required to respect the protection of privacy rules.
6. Special provision on court hearing *(corresponds to operational objective*	MS required to ensure that appropriate privacy protection rules for vulnerable adults are respected in court (including the protection of the	MS required to ensure that hearings are conducted by specially

C1)	name and the image of the person, prevention of public dissemination of information).	trained judges, with respect of appropriate privacy protection rules.
7. Special rules related to detention *(corresponds to operational objective C1)*	MS required to ensure that the detention is proportionate, that vulnerable persons receive medical attention when necessary and that they are detained separately from other detainees[128].	Idem

[128] This does not imply the construction of separate prisons for vulnerable adults but the re-organisation of existing detention facilities with a separation of vulnerable adults from other detainees.

7. IMPACT ANALYSIS OF THE OPTIONS

The impact analysis relies on in-depth analysis of the respective national legislation in EU Member States in order to assess the consequences of each parameter of each option.

At an early stage of the analysis it was concluded that, although the need to ensure a sufficient protection of **vulnerable adults** involved in criminal proceedings has been clearly demonstrated in this Impact Assessment (*see above, Section 4*) and is also recognised by stakeholders *(for more details see Annex II*), the difficulty to determine an overarching definition, and therefore the scope of application of the initiative *(ratione personae),* as well as the existence of fewer relevant international standards and provisions, ruled out taking legally-binding action in relation to safeguards for vulnerable adults. The assessment below in relation to vulnerable adults therefore assumes that action under options 3 and 4 would take the form of a **Recommendation**.

For **children**, however, no such difficulties in reaching a satisfactory definition arise, and so the assessment of options 3 and 4 assumes that intervention would take the form of a **legally-binding Directive.**

Unit costs for phone calls, medical examination, police officer wages, social worker wages are estimated on the basis of EUROSTAT data, when available, or estimations made in the External Study. Whereas it was originally intended to base the estimates on the costs of safeguards on the use of national data on population affected and the relative costs per Member State (taking into account national wages), this approach has not been followed (except legal aid) because of certain incoherencies and gaps of national data. The reasons are set out in detail (*in Annex VII).*

As mandatory access to a lawyer has the most important cost implications, detailed calculations per Member States taking into account the exact figures of the affected population have been carried out to provide the most accurate figures. The assumptions made in the context of this Impact Assessment are in line with the Impact Assessment on legal aid (for costs of emergency defence and legal aid by case of each affected Member State). It takes also into account the level of legal aid in those Member States and assumes the impact of the future Directive on access to a lawyer to estimate precisely the potentially affected population (*for more details on costs see Annex VII).*

The options are therefore assessed on the basis of extrapolations and on the basis of effectiveness in achieving the specific and operational objectives in largely qualitative terms using input from stakeholders and in terms of potential cost savings and efficiency gains in criminal proceedings.

Policy option 1 – Retention of the status quo

Expected Impact	
Effectiveness in meeting objectives	**None:** As international instruments are not uniformly implemented by Member States, the level of protection of vulnerable suspects or accused persons, resulting from the substantially diverging standards, remains inadequate at present, although it may improve in the long term as a result of progressive compliance with the ECtHR relevant jurisprudence by an increasing number of Member States.
Political Feasibility	N/A

Impact on fundamental rights	**Low:** Under this option, access of vulnerable suspects or accused persons to specific safeguards designed to meet their needs will continue to be protected at the Member States level. Their fundamental rights will continue to be protected in a different manner according to each national system. The Charter of Fundamental Rights will be applied only when EU law is involved, for example under the regime of the European Arrest Warrant.
Financial and economic impact	**Low:** There are no immediate new financial burdens associated with this option. However, this option will not lead to a reduction of the costs to Member States' law enforcement budget and costs to individual suspects or accused persons incurred by appeals, aborted prosecutions and protracted judicial litigation in Member States where vulnerable suspects or accused persons have not been provided with adequate safeguards at a decisive stage of criminal proceedings. Given the increase in applications to the ECtHR, costs for Member States linked with damages awarded to individuals are likely to augment.
Social Impact	**Very limited**: The social impact of this option will be very limited. It is rather expected that in many Member States vulnerable persons suspected or accused in criminal proceedings will continue to suffer from insufficient safeguards granted to them.
Impact on domestic justice systems	**Very limited**: Domestic justice systems may naturally evolve towards more convergence in the light of ECtHR jurisprudence but there is no guarantee that this will happen in the short to medium term. In fact, the need to implement certain ECtHR rulings may even increase the existing divergence, as Member States tend to interpret ECtHR pronouncements in different ways.

Policy Option 2: Non-legislative measures that support the protection of children and other vulnerable suspected or accused persons through monitoring and evaluation, training and good practice examples disseminated

Expected Impact	
Effectiveness in meeting objectives	**Low:** Member States are not obliged to implement non-binding guidelines. The risk is high that in particular those Member States which currently do not comply with minimum international and ECtHR standards will not fully implement the guidelines. Moreover, the added value of these measures to the existing system of CPT (European Committee for the Prevention of Torture) or CRC (Committee on the rights of the child) visits and reports at least where arrested or detained suspects are concerned, is rather limited.
Political Feasibility	**High:** Member States will have no particular obligations except certain reporting tasks. This option should therefore not experience significant objections.
Impact on fundamental rights	**Limited:** The impact of this option will depend to a large extent on how Member States would implement the non-binding guidelines or recommendations. However, consisting mainly of soft-law measures and given the overall situation as regards the lack of possibilities to enforce those rights, this positive impact will remain limited.
Financial and economic impact	**Low/Medium:** The financial or administrative burden resulting from this option will depend on the level of Member States' implementation of the guidelines and recommendations. The total maximum financial costs are estimated to be approximately **€20.2 million**. These costs include the amount of **€18.6 million** for the training of police officers and judges in the EU. They have been established on the basis that 12.5% of the police and judge population would be trained in the first year. They are based on the costs of external legal experts providing the training and of the opportunity costs of

	attendance for police officers and judges/prosecutors. Other costs (e.g. travel and other mission expenses) are not included. This amount corresponds to the training costs foreseen in Option 4. The additional amount of **€1.6 million** has been taken into account to cover the costs of a study on best practices, guidelines, cost of online platforms, workshops, seminars, and peer review meetings (based on lump sums; *for more details see Annex VIII*).
Social Impact	**Limited:** The social impact will be positive but limited. Regular monitoring, evaluation and training activities would improve on a long-term the protection of vulnerable persons suspected and accused in criminal proceedings.
Impact on domestic justice systems	**Limited:** The overall impact on domestic justice systems will be limited since the non-binding nature of this policy option may not yield significant results. Legislative reforms will not be imposed when needed, but left to national legislators. Guidelines and recommendations may help the judiciary to interpret domestic provisions in compliance with the ECHR, but it is unlikely that the effect would be more significant than the effect of ECtHR rulings alone.

Policy Option 3: Medium level of obligation
(1) Children (Directive)

Expected Impact	
Effectiveness in meeting objectives	**Medium:** Policy Option 3 will introduce safeguards which incorporate ECtHR jurisprudence and pertinent aspects of relevant international provisions for children into the EU legislative framework. This policy option is therefore likely to have a positive impact with regard to the achievement of the general objectives of the measure(s) covering special safeguards for children. By setting minimum standards in compliance with international law in relation to the assistance by parents or persons of trust, access to a lawyer, medical assistance, police interviews, pre-trial detention as well as at the hearing, variations in the application of the existing legal framework will be reduced and mutual trust improved. More specifically, areas where policy option 3 would have a clear impact are: - With regard to the assessment and assistance of children by parents, safeguards would be made more specific and cater for the lack of precision of international and European law in this area. They would forsee a specific and more systematic check and assessment of potential vulnerabilities of children at the beginning of criminal proceedings (and possibly at later stages of the proceedings). Moreover, the holder of parental responsibility would be informed about the rights and charges related to the child and asked to be present at the police station to better assist and support the child. - Medical assistance would be available upon request by the child, parent, a person of trust or the lawyer. - Access to a lawyer: going beyond the measures foreseen by the Draft Directive on access to lawyer, this policy option would make legal defence mandatory from the beginning of the proceedings without any possibility for the child to waive this right; - Detention in accordance with international recommendations on juvenile justice, children would be kept separately from adult detainees. Detention would be limited in time and considered as a measure of last resort; - The protection of rules on privacy (including the name and image of the child, prevention of public dissemination of information, possibility of 'in camera' hearings) should be ensured; - MS would be encouraged to ensure training for professionals in contact with

<table>
<tr><td></td><td>vulnerable persons, including police officers and judicial authorities.

The foreseen safeguards will significantly improve mutual trust and cooperation.

However, this policy option will have a limited impact with regard to the strengthening of certain measures for children and thereby achieving the specific and operational objectives for these measures. The most telling example concerns the assessment of children which would ensure a first assessment or screening mechanism by law enforcement officers but no in-depth assessment of the child's maturity and capacity to effectively participate in criminal proceedings would be ensured. Other examples relate to the conducting of police interviews (no recording of the interview foreseen) or court hearings where the safeguards provided for by option 3 are much more limited than the safeguards provided for by option 4.</td></tr>
<tr><td>Political Feasibility</td><td>Medium: Given that this policy option foresees certain obligations on Member States and involves corresponding costs, negotiation and implementation will entail discussions, in particular with those Member States which have the lowest standards in place.</td></tr>
<tr><td>Impact on fundamental rights</td><td>Positive Impact: This policy option will have positive impact on fundamental rights

- More specifically, the obligation of Member States to ensure adequate information and assistance by parents or a person of trust will contribute to the right to a fair trial.

- Mandatory access to a lawyer will have a significant impact on the rights of defence of children. It will be the most effective safeguard to ensure that children’s rights to a fair trial will be respected.

- Certain limited safeguards with regard to police interviews, court hearings and detention would enhance the fair trial rights, the right to liberty and security and the right to non-discrimination. They would also provide protection against ill-treatment.</td></tr>
<tr><td>Financial and economic impact

(For more details on cost calculations, see Annex VIII +IX)</td><td>Medium: Total costs are expected to be in the medium range of the four options. Almost all costs will have to be borne by public administrations on both national and local level. Costs on measures foreseen in Option 3 which are negligible or amount to 0 are not set out in further detail below[129].

The costs do not take into account possible cost savings resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, or aborted prosecutions due to breaches of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and also to the reduction of custodial measures. In the long term, the financial impact estimated below should gradually decrease as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

<table>
<tr><th></th><th>Total EU cost (Min. / Millions of Euros)</th></tr>
<tr><td>Information/Assistance by parents/person of trust</td><td>3.6</td></tr>
<tr><td>Medical assistance</td><td>2.3</td></tr>
<tr><td>Mandatory access to a lawyer</td><td>93</td></tr>
<tr><td>Detention</td><td>1.2</td></tr>
<tr><td>Total</td><td>100.1</td></tr>
</table>
</td></tr>
</table>

	Information/Assistance by parents or persons of trust The costs are estimated to be **€3.6 million**. Member States would be required to bear the cost of information (i.e. the cost of police officers arranging telephone calls at arrest stage for the population of children under consideration). All Member States affected. **Medical assistance** The costs are estimated to be **€2.3 million**. The costs include the health care costs provided throughout the criminal proceedings. This policy proposal would only generate additional costs to those Member States which do not formally guarantee the right to medical assistance for suspected and accused persons: EE, IT, LT. **Mandatory access to a lawyer** The **costs** are estimated to be **€93 million**. The costs for mandatory access to a lawyer are calculated on the basis of the national average cost of legal aid in each affected Member State from the beginning of criminal proceedings until its end[130] (with regard to the vulnerable population in the countries affected). The costs for mandatory access to a lawyer are governed by national law, including legal aid schemes. If mandatory access to a lawyer is introduced in a Member State that does not foresee this measure, it is assumed that the costs will be borne by the national legal aid budget, which however could be subject to a means test. A detailed analysis of legal measures and costs related to legal aid is subject to a separate Impact Assessment on legal aid. The following MS do not provide for mandatory legal defence for children: CY, IE, LU, UK. Some MS provide for mandatory legal defence upon decision by the competent judge: DE, FI, SE. In SI, NL and FR mandatory defence is foreseen for the proceedings before the court but not before the police. In AT mandatory access to a lawyer is foreseen except minor offences. **Detention** The **costs** are estimated to be **€1.2 million**. These costs include the re-organisation of detention facilities to allow separate detention of children and adult detainees. Member States affected: BG, CY, CZ, EL. The amount does not account for the cost savings with regard to alternative measures to detention (e.g. release and monitoring). There should not be additional costs with regard to alternative measures (such as reporting obligations to competent authorities, restrictions of contacts with specific persons, undergoing of therapeutic treatment or participation in educational measures) as such measures should already by available in Member States in accordance with the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention[131].
Social Impact	**Positive impact:** This policy option will ensure a minimum level of protection of the procedural rights of children suspected and accused and thereby improve their individual situation as well as the situation of family members, thus contributing to their integration into society, labour market and the economy. Certain minimum safeguards with regard to the identification, assessment, and legal advice will strengthen the individual's rights in criminal proceedings. Moreover, the obligation that children would be detained separately from other detainees would have a positive impact on the protection against ill-treatment or abuse. It could also help to

	reduce some of the socioeconomic impact of excessive pre-trial detention by thoroughly examining alternatives to detention and making pre-trial detention only a measure of last resort. It will also avoid possible desocialisation and in some cases victimisation.
Impact on domestic justice systems	This policy option would have **positive impact** on Member States judicial systems as it would increase legal certainty by introducing commonly agreed minimum standards as regards the protection of vulnerable suspects and accused persons in all EU Member States. In addition, it would have some positive impact on domestic justice in the sense that better assistance, mandatory access to a lawyer and training of professionals would lead to a reduction of lengthy trials or the frequency of appeals. It leaves room for flexibility as it sets out generally worded obligations and thus ensures respect for legal tradition and culture as provided for in Article 82 TFEU.

2) Adults (Recommendation)

Expected Impact	
Effectiveness in meeting objectives	**Medium:** Policy Option 3 will introduce safeguards which incorporate ECtHR jurisprudence and pertinent aspects of relevant international provisions into the EU legislative framework for vulnerable adults. Assuming Member States will implement the Recommendation, this policy option is likely to have a positive impact with regard to the achievement of the general objectives of the measure(s) covering special safeguards for vulnerable adults. By setting minimum standards in compliance with international law in relation to the assistance by legal representatives or a person of trust, access to a lawyer, medical assistance, police interviews, pre-trial detention as well as during the hearing, variations in the application of the existing legal framework will be reduced and mutual trust improved. More specifically, areas where policy option 3 would have a clear impact are: - Assessment of vulnerable adults: Member States would need to ensure that law enforcement authorities in contact with vulnerable persons assess the vulnerability and the needs of the person (a specific and more systematic procedure or screening mechanism should be put into place). This should be done at the beginning of the criminal proceedings (and at later stages of the proceedings if necessary). - Assistance of vulnerable adults: the legal representative or a person of trust would be informed on the rights and charges concerning the vulnerable adult and could adequately assist the vulnerable person. Moreover, their presence at the police station or court hearing should be ensured. - Access to a lawyer: going beyond the measures foreseen by the Draft Directive on access to lawyer, this policy option would make the access to a lawyer mandatory from the beginning of the proceedings without any possibility to waive this right. - MS would be encouraged to ensure training for professionals in contact with vulnerable adults; - Detention: vulnerable adults should be kept separately from other detainees. Detention would be limited in time and considered as a measure of last resort. Moreover, a vulnerable adult should have access to medical assistance when necessary. - The protection of rules on privacy (including the name and image of the person, prevention of public dissemination of information) should be ensured. - The foreseen safeguards will significantly improve mutual trust and cooperation. However, this policy option will have a **limited impact** with regard to the strengthening of certain measures for vulnerable adults and thereby achieving the specific and operational objectives for these measures. The most telling example concerns the assessment of vulnerable adults which would ensure a first assessment or screening mechanism of vulnerable persons by law enforcement officers but no in-depth assessment of the person's capacity to effectively participate in criminal proceedings would be ensured. Other examples relate to the conducting of police interviews (no recording of the interview foreseen) or court hearings where the safeguards provided for by option 3 are much more limited than the safeguards provided for by option 4. Finally it should be highlighted that the fact that no common definition of vulnerale adults will be introduced, the definition of vulnerable groups will continue to vary between Member States and will have a certain negative impact on the efficiency of such a measure.
Political	**Medium:** Given that this policy option seeks to establish minimum standards above the levels currently applicable in Member States, it will involve corresponding costs

<table>
<tr><td>Feasibility</td><td>for a number of them. Negotiation and implementation will entail discussions, in particular with those Member States which have lower standards in place.</td></tr>
<tr><td>Impact on fundamental rights</td><td>Positive Impact: This policy option will have positive impact on fundamental rights

- More specifically, the recommendation to Member States to ensure adequate information and assistance by legal representatives or a person of trust will contribute to the right to a fair trial.

- Mandatory access to a lawyer will have a significant impact on the rights of defence of vulnerable adults. It will be the most effective safeguard to ensure that vulnerable persons are not subject to coercion by police or investigating authorities.

- Certain safeguards with regard to police interviews, court hearings and detention would enhance the fair trial rights, the right to liberty and security and the right to non-discrimination. They would also provide protection against ill-treatment. However, the impact of this option will depend on how Member States implement the Recommendation. Certain improvements to the rights of defence and the right to a fair trial are cumulative, but the absence of any method of enforcement might result in only a variable improvement in the Member States.</td></tr>
<tr><td>Financial and economic impact
(For more details on cost calculations, see Annex VIII +IX)</td><td>Medium: The financial or administrative burden resulting from this option will depend on the level of Member States' implementation of all or some of the provisions of the Recommendation.

Should all Member States comply with the Recommendation, total costs are expected to be in the medium range of the four options. Almost all costs will have to be borne by public administrations on both national and local level. Costs on measures which are negligible or amount to 0 are not set out in further detail below[132].

The costs do not take into account possible cost savings resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, aborted prosecutions due to breach of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and also to the reduction of custodial measures. In the long term, the financial impact estimated below should gradually decrease as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

<table>
<tr><th></th><th>Total EU cost (Min.)
(Millions of Euros)</th><th>Total EU cost (Max.)
(Millions of Euros)</th><th></th></tr>
<tr><td>Information/Assistance by legal representatives/persons of trust</td><td>0.3</td><td>0.6</td><td></td></tr>
<tr><td>Medical assistance</td><td>1.5</td><td>3</td><td></td></tr>
<tr><td>Mandatory access to a lawyer</td><td>22.7</td><td>45.5</td><td></td></tr>
<tr><td>Detention</td><td>15.8</td><td>23.7</td><td></td></tr>
<tr><td>Total</td><td>40.3</td><td>72.8</td><td></td></tr>
</table>

<table>
<tr><td>Information/Assistance by legal representative or a person of trust</td></tr>
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</table>

	The costs are estimated to range from **€0.3 million to 0.6 million**. Member States would be required to bear the cost of information (i.e. the cost of police officers arranging telephone calls at arrest stage for the population of vulnerable adults under consideration. All Member States affected. **Medical assistance** The costs are estimated to range from **€1.5 million to 3 million**. The costs include the health care costs provided throughout the criminal proceedings. This policy proposal would only generate additional costs to those Member States which do not formally guarantee the right to medical assistance for suspected and accused persons: EE, IT, LT. **Mandatory access to a lawyer** The **costs** are estimated to range from **€22.7 million to 45.5 million**. The costs for mandatory access to a lawyer are calculated on the basis of the national average cost of legal aid in each affected Member State from the beginning of criminal proceedings until its end[133] (with regard to the vulnerable population in the countries affected). The costs for mandatory access to a lawyer are governed by national law, including legal aid schemes. If mandatory access to a lawyer is introduced in a Member State that does not foresee this measure, it is assumed that the costs will be borne by the national legal aid budget, which however could be subject to a means test. A detailed analysis of legal measures and costs related to legal aid is subject to a separate Impact Assessment on legal aid. Affected MS: BE, DK, IE, UK. **Detention** The **costs** are estimated to range from **€15.8 to 23.7 million.** These costs include the re-organisation of detention facilities to allow separate detention of vulnerable adults from other detainees. The amount does not account for the cost savings with regard to alternative measures to detention (e.g. release and monitoring). The costs mainly include the provision of separate detention and health-care costs. The amount does not account for potential cost savings with regard to alternative measures to detention. Member States affected: all.
Social Impact	**Positive impact:** If properly implemented by Member States, this policy option will ensure a minimum level of protection of the procedural rights of vulnerable persons suspected or accused and thereby improve their individual situation as well as the situation of family members, thus contributing to their integration into society, labour market and the economy. Certain minimum safeguards with regard to the identification, assessment, medical assistance and legal advice will strengthen the individual's right in criminal proceedings. Moreover, the recommendation that vulnerable adults should be detained separately from other detainees would have a positive impact on the protection against ill-treatment or abuse. It could also help to reduce some of the socioeconomic impact of excessive pre-trial detention by thoroughly examining alternatives to detention and making pre-trial detention only a measure of last resort.
Impact on domestic justice systems	This policy option would have **positive impact** on Member States judicial systems as it would increase legal certainty by introducing commonly agreed minimum standards as regards the protection of vulnerable adults in all EU Member States. In addition, it would have some positive impact on domestic justice in the sense that better assessment, assistance, mandatory access to a lawyer would lead to a reduction of lengthy trials or the frequency of appeals.

Policy Option 4: High level of obligation

(1) Children (Directive)

Expected Impact	
Effectiveness in meeting objectives	**High:** Policy Option 4 imposes more ambitious rules and a "higher" level of obligation on Member States than Option 3 on certain safeguards such as the assessment of vulnerability, police interviews, court hearings and detention. Thereby, policy option 4 is likely to: • Have the highest possible impact with regard to the attainment of the general and specific objectives of the measures covering special safeguards for children suspected or accused in criminal proceedings; • Ensure an optimum level of protection of the procedural rights in criminal proceedings of children through the establishment of highest standards on necessary and sufficient safeguards; • Significantly improve mutual trust and cooperation. This will be achieved by (1) strengthening the existing legal framework in line with non-binding provisions and good practices in EU Member States and (2) by introducing more specific safeguards for children in cases where international and European standards are not sufficiently prescriptive (e.g. police interviews, court hearings, pre-trial detention and remedies). More specifically, in addition to the safeguards already foreseen by option 3, policy option 4 would have a significant higher impact on the procedural safeguards with regard to the following areas: - An in-depth assessment of vulnerability: an in-depth assessment of the level of the child's maturity and ability to effectively participate in criminal proceedings, his or her mental and physical disabilities would help to detect appropriately children's vulnerabilities. Moreover, a situational analysis would be obligatory. The extent of assessment would of course depend on the severity of the crime. - Police questioning, the interview will be audio and video-recorded. This is very likely to ensure that the procedural rights of children will be respected and that they are not subject to ill-treatment or abuse. - The placement of a child in pre-trial detention should be ordered by a specialised judge. Access to educational facilities for children should be provided. - Court hearings should be conducted by specialised judges. Appropriate privacy protection rules need to be ensured.
Political Feasibility	**Low - Medium:** Given the number of obligations imposed on Member States and the costs involved, negotiation and implementation will entail severe discussion, in particular with those Member States which have the lowest standards in place and on the issue of discarding evidence obtained in breach of rights. Nevertheless, Member States overall supported this initiative during the experts meetings.
Impact on fundamental rights	**Positive:** This policy option would have a very positive impact on the fundamental rights of children according to the Charter, especially the right to a fair trial (Article 47) and the right to liberty (Article 6). It sets out a common high standard and would lead to a significant improvement of a number of rights set out above: • An in-depth assessment of vulnerability of children and medical assistance would allow to address their specific needs. • The rights of defence of the child will be considerably strengthened by several specific safeguards with regard to police interviews, detention and court hearings.

	• The right to human dignity and right to the integrity of the person would be strengthened by obligatory rules on training for all professionals in contact with vulnerable persons.
Financial and economic impact ***(For more details on cost calculations, see Annex VIII + IX)***	**High:** Total costs are expected to be the highest of the four options. Almost all costs will have to be borne by public administrations on both a national and local level. Costs on measures foreseen in Option 4 which are negligible or amount to 0 are not set out in further detail below[134]. The costs do not take into account possible cost savings resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, aborted prosecutions due to breach of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and reduction of custodial measures. In the long term, the financial impact estimated below should gradually reduce as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

	Minimum **Total EU cost** **(Millions of Euros)**
Assessment of vulnerability	34.8
Assistance by parents or a person of trust *(The costs are identical with option 3).*	3.6
Medical assistance *(The costs are identical with option 3).*	2.3
Mandatory access to a lawyer *The costs are identical with option 3).*	93
Police Interviews	1.3
Detention	29.2
Training	18.6
Total	**164.2** **182.8 (training costs incl.)**

Assessment of vulnerability and situational analysis The **costs** are estimated to be **€34.8**

The calculation of the costs is based on in-depth assessment and situational analysis by various stakeholders (e.g. police, prosecutors, social experts, medical experts).

All Member States would be at least partly affected as they foresee only a case-by-

	case assessment (LT does not foresee any assessment mechanism). **Medical assistance** The **costs** are estimated to be **€2.3 million.** The costs include the health care costs provided throughout the proceedings. The Member States affected are EE, IT, LT. **Police Interviews** The **costs** are estimated to be **€1.3 million.** The additional costs introduced by this policy proposal consist of the usage costs of the video and audio recording equipment (It is assumed that 24 MS have video recording facilities in place following the implementation of the Victims' Directive)[135]. It would affect a majority of MS: AT, BG, CY, CZ, DE, DK, EE, ES, EL, HU, IE, LI, LU, MT, PL, PT, RO, SK, SI, SE and UK (partly). During the expert meetings, several Member States were in favour of video or audio recording. However, some raised, cost issues. In this respect, it should be noted, that the Directive 2012/29/EU on the protection of victims of crime[136] provides such a safeguard for all interviews with a child victim[137]. It can be assumed that the same recording facilities at police stations which need to be installed in the course of the implementation of this Directive[138] could be also used for interviewing suspects and accused children. The financial impact of this safeguard will therefore be limited. **Detention** The **costs** are estimated to be to **€29.2 million.** The costs consist in particular of enhanced prison facilities for children to cater for educational needs. Enhancing prison facilities to cater for educational needs of children would affect the following Member States: BG, CY, CZ, FR, LV, PL, RO. **Training** The **costs** are estimated to be **€18.6 million.** These costs include the training of police officers and judges in the EU. They have been established on the basis that 12.5% of the police and judge population would be trained in the first year. They are based on the costs of external legal experts providing the training and of the opportunity costs of attendance for police officers and judges/prosecutors. Other costs (e.g. travel and other mission expenses are not included). They are the same as the training costs of policy option 2[139]. **Cost savings** will be possible because of **synergies with training foreseen** in the context of the proposed measures on Legal Aid and the implementation of the Directives 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information.
Social Impact	**Positive:** Clearly enhanced standards as regards the procedural safeguards for children would prevent discrimination and promote fair conditions in judicial proceedings, thus significantly improving their individual situation (including in most cases the situation of family members). According to the UNDP, pre-trial detention affects not just the individuals detained, but their families, communities and even countries in general. Regulating conditions of pre-trial detention and, most importantly, providing access to educational facilities would lead to a better (re-) integration of children into society, labour market and economy. This policy proposal is also likely to have a positive impact on social security systems (e.g. reduced costs to welfare state) as it could help reducing some of the socio-economic

	impact of excessive pre-trial detention.
Impact on domestic justice systems	This policy option will have a **very significant impact** on Member States judicial systems as all Member States would be obliged to introduce certain changes to their national criminal procedural laws. It would have positive impact on domestic justice in the sense that specific training of professionals would lead to a reduction of lengthy trials or the frequency of appeals. Finally, this option will also significantly enhance judicial cooperation as variations between Member States in the way certain rights are conveyed to children will decrease.

(2) Vulnerable Adults (Recommendation)

Expected Impact	
Effectiveness in meeting objectives	**High:** Policy Option 4 imposes more ambitious rules and a "higher" level of obligation on Member States than Option 3 on certain safeguards such as the assessment of vulnerability, police interviews, court hearings and detention. Assuming that Member States will implement the Recommendation, policy option 4 is likely to: • Have the highest possible impact with regard to the attainment of the general and specific objectives of the measures covering special safeguards for vulnerable adults suspected or accused in criminal proceedings; • Ensure an optimum level of protection of the procedural rights in criminal proceedings of vulnerable adults through the establishment of highest standards on necessary and sufficient safeguards; • Significantly improve mutual trust and cooperation. This will be achieved by (1) strengthening the existing legal framework in line with non-binding provisions and good practices in EU Member States and (2) by introducing more specific safeguards for vulnerable adults in cases where international and European standards are not sufficiently prescriptive (e.g. police interviews, court hearings, pre-trial detention and remedies). More specifically, certain areas where this policy option would have a significant impact on the procedural safeguards: • An in-depth assessment of vulnerability: specific safeguards such as the expertise by an independent medical expert would be introduced to assess the vulnerability of adults and to identify the specific needs of such a person. These safeguards should be in place from the outset of the proceedings. • Medical assistance: Vulnerable adults would receive medical assistance adapted to their particular needs and their vulnerability from the outset of deprivation of liberty and as deemed necessary in later stages. This proposal would ensure that vulnerable adults would receive assistance in line with their vulnerability. • During police questioning, the interview will be audio and video-recorded. This is very likely to ensure that the rights of vulnerable persons will be respected and that they are not subject to ill-treatment or abuse. • The placement of vulnerable adults in pre-trial detention should be proportionate. Vulnerable adults should be held separately from other detainees and should have access to recreational activities. • Court hearings should be conducted by specialised judges and in a manner which takes into account the specific needs of the vulnerable person. Appropriate privacy protection rules need to be ensured. However, it should be highlighted that the fact that no common definition of

<table>
<tr><td></td><td>vulnerale adults will be introduced, the definition of vulnerable groups will continue to vary between Member States and will have a certain negative impact on the efficiency of such a measure.</td></tr>
<tr><td>Political Feasibility</td><td>Medium: Given that this policy option seeks to establish more ambitious rules above the level currently applicable in Member States, it will involve corresponding costs for them. The implementation may entail discussions, in particular with those Member States which have the lowest standards in place.</td></tr>
<tr><td>Impact on fundamental rights</td><td>Positive: If implemented by Member States, this policy option will have a very positive impact on the fundamental rights of vulnerable adults according to the Charter, especially the right to a fair trial (Article 47) and the right to liberty (Article 6). It sets out a common high standard and would lead to a significant improvement of a number of rights set out above:
An in-depth assessment and medical assistance to suspected and accused vulnerable adults would allow to address their specific needs.
The rights of people with disabilities will be considerably strengthened by several specific safeguards with regard to police interviews, detention and court hearings.
The right to human dignity and the right to the integrity of the person would be strengthened by obligatory rules on training for all professionals in contact with vulnerable persons.</td></tr>
<tr><td>Financial and economic impact
(For more details on cost calculations, see Annex VIII + IX)</td><td>High: The financial or administrative burden resulting from this option will depend on the level of Member States' implementation of all or some of the provisions of the Recommendation.

Should all Member States comply with the Recommendation, total costs are expected to be the highest of the four options. Almost all costs will have to be borne by public administrations on both a national and local level. Costs on measures foreseen in Option 4 which are negligible or amount to 0 are not set out in further detail below[140].

The costs do not take into account possible cost savings resulting from a reduction in current costs of ECtHR and domestic appeals, re-trials, financial compensation, aborted prosecutions due to breach of suspects' fair trial rights. In particular, mandatory access to a lawyer will lead to improved legal defence thereby reducing the repetition of interrogations and contributing to the streamlining of investigations and hearings and reduction of custodial measures. In the long term, the financial impact estimated below should gradually reduce as procedural safeguards for vulnerable persons would be improved and remedies for breaches of fair trial rights would be less used.

<table>
<tr><th></th><th>Minimum
Total EU cost
(Millions of Euros)</th><th>Maximum
Total EU cost
(Millions of Euros)</th><th></th></tr>
<tr><td>In-depth assessment of vulnerability</td><td>23.8</td><td>47.2</td><td></td></tr>
<tr><td>Assistance by legal representatives/person of trust
(The costs are identical with option 3)</td><td>0.3</td><td>0.6</td><td></td></tr>
<tr><td>Medical assistance</td><td>7.7</td><td>15.4</td><td></td></tr>
</table>
</td></tr>
</table>

Mandatory access to a lawyer *(The costs are identical with option 3)*	22.7	45.5
Police Interviews	0.6	1.2
Detention	79.3	119
Training	18.6	18.6
Total	**134.4** **153 [training costs incl.]**	**228.9** **247.5 [training incl.]**

Assessment of vulnerability

The **costs** are estimated to range from **€23.8 million to 47.2 million**.

The calculation of the costs is based on screening mechanisms, in-depth assessment and situational analysis by various stakeholders (e.g. police, prosecutors, social experts, medical experts). All Member States would be at least partly affected as they foresee only a case-by-case assessment (LT does not foresee any assessment mechanism).

Medical assistance

The **costs** are estimated to range from **€7.7 million to 15.4 million**.

The medical assistance would be adapted to the particular needs and the vulnerability of the person concerned. The additional costs include the costs of medical experts in the Member States under consideration (i.e. all Member States except FI, NL, PL, SE). Medical assistance would be provided at arrest and trial stage.

Police Interviews

The **costs** are estimated to range from **€0.6 million to 1.2 million**.

The additional costs introduced by this policy proposal consist of the usage costs of the video and audio recording equipment (It is assumed that 24 MS have video recording facilities in place following the implementation of the Victims' Directive)[141]. It would affect a majority of MS: AT, BG, CY, CZ, DE, DK, EE, ES, EL, HU, IE, LI, LU, MT, PL, PT, RO, SK, SI, SE and UK (partly).

Detention

The **costs** are estimated to range from **€79.3 million to 119 million**.

Costs include medical expertise and recreational activities for the vulnerable population. Diverting vulnerable adults out of the judicial system is considered cost neutral for Member States. This policy proposal would affect all Member States.

Training

The **costs** are estimated to be **€18.6 million.**

These costs include the training of police officers and judges in the EU. They have been established on the basis that 12.5% of the police and judge population would be trained in the first year. They are based on the costs of external legal experts

	providing the training and of the opportunity costs of attendance for police officers and judges/prosecutors. Other costs (e.g. travel and other mission expenses are not included). They are the same as the training costs of policy option 2[142]. Cost savings might be possible because of synergies with training foreseen in the context of the proposed measures on Legal Aid and the implementation of the Directives 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information.
Social Impact	**Positive:** Clearly enhanced standards as regards the procedural safeguards for vulnerable adults would prevent discrimination and promote fair conditions in judicial proceedings, thus significantly improving their individual situation (including in most cases the situation of family members). According to the UNDP, pre-trial detention affects not just the individuals detained, but their families, communities and even countries in general. Regulating conditions of pre-trial detention and providing access to educational facilities would lead to a better (re-) integration of children into society, labour market and economy. If implemented by Member States, this policy proposal is also likely to have a positive impact on social security systems (e.g. reduced costs to welfare state) as it could help reducing some of the socio-economic impact of excessive pre-trial detention.
Impact on domestic justice systems	If properly implemented by Member States, this policy option will have a **very significant impact** on Member States judicial systems as all Member States would need to introduce certain changes to their national criminal procedural laws. It would have positive impact on domestic justice in the sense that specific training of professionals would lead to a reduction of lengthy trials or the frequency of appeals. Finally, this option will also significantly enhance judicial cooperation as variations between Member States in the way certain rights are conveyed to vulnerable suspects and accused persons will decrease.

8. COMPARATIVE ASSESSMENT OF THE POLICY OPTIONS

If Policy Option 1 (*status quo*) is pursued the risk of children and vulnerable adults not being granted adequate safeguards to properly exercise their procedural rights would continue. Although highly feasible, Policy option 1 (*status quo*) does not meet the identified objectives and is therefore not further considered.

The measures envisaged within Policy Option 2 are likely to contribute to the objectives of an EU intervention in the field, but only to a limited extent. They are likely to have an impact on raising the awareness of stakeholders on the specific needs of vulnerable suspects and offenders. However, Policy Option 2 is unlikely to markedly affect the application and enforcement of existing common standards, nor to improve the coherence of national legislation and consistency between Member States. In these circumstances mutual trust cannot be assured. Therefore Policy Option 2 does not fulfil all the objectives.

The legislative actions within Policy Options 3 and 4 are likely to contribute more effectively to the objectives of an EU intervention in the field. They would contribute (to varying degrees) to the identification of the need for protection of children and vulnerable suspected or accused adults: the creation of minimum standards for the protection of children and vulnerable adults in cases where international and European standards are not sufficiently prescriptive; the reduction of the variation in the application of international and EU legislation at Member States level.

Overall, Policy Option 4 is the most likely to meet all the objectives and to meet them to the greatest extent. However, it is the most ambitious and costly one providing Member States with the least amount of flexibility.

9. THE PREFERRED OPTION

9.1. Children

The assessment has led to the selection of a preferred option for children in the form of a Directive which combines elements from Option 3 and Option 4.

By the introduction of safeguards for children from the very beginning of the proceedings until the trial stage, the preferred option will significantly contribute to the achievement of the general objectives. More specifically, the implementation of the preferred option would help achieving the following results:

Adoption of a Directive (*operational objectives referred to in brackets):*

1. Assessment of vulnerability: Option 4[143]

By ensuring that children would be subject to an enhanced vulnerability assessment *("in-depth assessment*"), it is likely that vulnerabilities will be adequately identified in the course of the proceedings. Cases related to minor offences would be excluded *(A 1).*

2. Assistance by the parents: Option 3[144]

The obligation that the parentsare informed about rights and charges in an appropriate manner and that they are asked to be present at the police station, will ensure due information and assistance of the child throughout the proceedings *(B 1).*

3. Medical Assistance: Option 3[145]

The provision of medical assistance (upon request) from the very beginning of the

proceedings will contribute to ensure a proper assessment of vulnerabilities as well as protection from ill-treatment or abuse *(A 1 and C 1)*.

4. Mandatory access to a lawyer: Option 3[146]

Mandatory access to a lawyer from the very beginning and throughout the proceedings will ensure appropriate legal assistance from the very beginning of the proceedings without the possibility of children to waive this right ignoring or underestimating the consequences of such a waiver (B 2).

5. Police interviews: Option 4[147]

The obligation to record police interviews will ensure appropriate safeguards against any ill-treatment, coercion or other possible abuse. *(C 1).*

6. Court hearings: Option 4[148]

Special provisions with regard to court hearings (e.g. judges specially trained, appropriate rules on the protection of privacy) will ensure that the specific needs of children will be taken into account. *(C 1).*

7. Detention: Option 3[149]

All alternative measures to pre-trial detention will be taken whenever it's in the best interests of the child. (Pre-trial) Detention will be considered as a measure of last resort and for the shortest possible time. Separate detention from adult detainees will enhance the level of protection. *(C 1).*

As a flanking measure, high level of training of professionals in contact with children and vulnerable adults will ensure an appropriate knowledge of specific needs and vulnerabilities of children.

	Total annual costs (Millions of Euros)
Assessment of vulnerability	34.8
Assistance by parents or a person of trust	3.6
Medical Assistance	2.3
Mandatory access to a lawyer	93
Police Interviews	1.3
Detention	1.2
Training	18.6
Total	***136.2*** ***154.8 [training costs incl]***

In terms of fundamental rights, the preferred policy option will have an overall very positive impact. The rights to a fair trial, to information and legal advice, protection against ill-treatment will be significantly enhanced *(for more details see above, Impact analysis of Policy Options 3 and 4, Section 7)*. The social impact will be overall very positive as the individual situations (including in most cases the situation of family members) will be improved (e.g. assessment, information, assistance). Moreover, limitation of pre-trial detention will reduce costs and facilitate reintegration into society.

The preferred option has a clear EU added value. It builds on and reinforces minimum standards based on the ECtHR acquis and international standards with regard to procedural safeguards of children. It will lead to more ambitious standards in several areas (e.g. mandatory access to a lawyer, assessment of vulneraility and medical assistance, police interviews, court hearings, detention). It will thereby raise the standards on procedural rights of children involved in criminal proceedings in the Member States and will ensure a level playing field across the EU. This will also have a positive impact on mutual trust between judicial authorities and strengthen the functioning of mutual recognition instruments in the EU.

9.2. Vulnerable Adults

The assessment has led to the selection of a preferred option which will take the form of a Recommendation and which combines elements from Option 3 and Option 4.

By the introduction of safeguards for vulnerable adults from the very beginning of the proceedings until the trial stage, the preferred option will significantly contribute to the achievement of the general objectives (under the assumption that the Recommendation is implemented by Member States).

Adoption of a Recommendation (*operational objectives referred to in brackets):*

1. Assessment of vulnerability: Option 4

By ensuring that potentially vulnerable adults will be subject to an in-depth vulnerability assessment by an independent medical expert upon arrest and at later stages, it is likely that vulnerabilities will be identified at the beginning (or at least early stage) of the proceedings *(A 1).*

2. Assistance by legal representative or a person of trust: Option 3[150]

The obligation that the legal representative or a person of trust or an appropriate third person are informed about rights and charges in an appropriate manner and that they are asked to be present at the police station, will ensure due information and assistance of the vulnerable adult throughout the proceedings *(B 1).*

3 Medical Assistance: Option 4

The provision of medical assistance for vulnerable adults (upon request and adapted to the needs of the person concerned) will contribute to ensure proper medical care of the person as well as protection from ill-treatment or abuse *(A 1 and C 1).*

4. Mandatory access to a lawyer: Option 3[151]

Mandatory access to a lawyer for a vulnerable adult who is unable to understand and follow the proceedings will ensure appropriate legal assistance from the very beginning of the proceedings until its end without the possibility of the vulnerable adult to waive this right ignoring or underestimating the consequences of such a waiver (B 2).

5. Police interviews: Option 4[152]

The obligation to record police interviews will ensure appropriate safeguards against any ill-treatment, coercion or other possible abuse. *(C 1).*

6. Court hearings: Option 3[153]

Special provisions with regard to court hearings and the protection of privacy rules will ensure that the specific needs of vulnerable persons will be taken into account. *(C 1)*

7. Detention: Option 3[154]

(Pre-trial) Detention should be considered as a measure of last resort, proportionate and taking place under conditions suited to the needs of the vulnerable adult *(C 1).*

As a flanking measure, high level of training of professionals in contact with children and vulnerable adults will ensure an appropriate knowledge of specific needs and vulnerabilities of children.

	Total annual costs (Min.) (Millions of Euros)	**Total annual costs (Max.) (Millions of Euros)**
Assessment of vulnerability	23.8	47.2
Assistance by a legal representative or a person of trust	0.3	0.6

Medical Assistance	7.7	15.4
Mandatory access to a lawyer	22.7	45.5
Police Interviews	0.6	1.2
Detention	15.8	23.7
Training	18.6	18.6
Total	***70.9***	***133.6***
	89.5 [training incl.]	***152.2 [training incl.]***

In terms of fundamental rights, the preferred policy option will have an overall very positive impact. The rights to a fair trial, to information and legal advice, protection against ill-treatment will be significantly enhanced *(for more details see above, Impact analysis of Policy Options 3 and 4, Section 7)*. The social impact will be overall very positive as the individual situations (including in most cases the situation of family members) will be improved (e.g. assessment, information, assistance). Moreover, limitation of pre-trial detention will reduce costs and facilitate reintegration into society.

The preferred option has a clear EU added value. If the Recommendation is implemented by Member States, it will reinforce minimum standards based on the ECtHR acquis and international standards with regard to procedural safeguards of vulnerable adults. Going beyond, it will lead to more ambitious standards in several areas (e.g. access to a lawyer, assessment and medical assistance, protection of privacy rules, detention; etc.). It will thereby raise the standards on procedural rights of vulnerable adults involved in criminal proceedings in the Member States and will ensure a level playing field across the EU. This will also enhance mutual trust between judicial authorities and strengthen the functioning of mutual recognition instruments in the EU.

10. TRANSPOSITION, MONITORING AND EVALUATION

In relation to children, the timeframe for transposition of the Directive by Member States will be two years from its entry into force. As the Directive would create only a comparatively limited number of obligations on Member States (taking into account the assessment of political feasibility above) which, to some extent, mirror existing obligations resulting from the ECHR, the case-law of the ECtHR and international standards or already exist in a number of Member States, it is expected that a two-year deadline would provide Member States with sufficient time to effect necessary changes to their respective national laws and practice[155]. The Commission will assist Member States and competent national authorities in the transposition of the Directive. Planned measures taken by the Commission aimed at countering any potential risks to implementation in time would be identified in an Implementation Plan accompanying the proposal for the Directives.

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights envisaged in the Directive are complied with in practice as well as in legislation. The Directive would stipulate that Member States should report on the effective implementation of legislative or non-legislative measures based on the nature of the proposed changes.

A legislative instrument (Directive) opens the possibility of EU enforcement mechanisms under Articles 258 and 259 of the TFEU and also of preliminary rulings under Article 267 of the TFEU. This is also an important element to be taken into account as it ensures the effective transposition and implementation of the provisions laid down in that legislative instrument, if necessary with the intervention of the Court of Justice of the European Union. This represents an important stepforward compared to the protection offered by the ECtHR.

As regards vulnerable adults, the Commission would assess the implementation of the Recommendation 3 to 4 years from the publication at the latest[156]. In this context, the Commission should assess also whether further measures to strengthen the procedural safeguards foreseen in the Recommendation should be proposed.

Data provided by Eurostat, Eurobarometer and the Council of Europe will enable the formation of a useful baseline for monitoring the situation. Besides quantitative data provided by Member States, other possible sources of qualitative information on legislative and practical compliance will be gathered from the Justice Forum, the CPT[157], the ECtHR, the European Network of Councils for the Judiciary and national and European Bar Associations. The EC is also monitoring a project on collecting information on children and justice. Such instrument would provide a large series of data.

Member States should be encouraged to collect relevant data to assist in this process as there is currently a lack of reliable empirical data.

Moreover, the Commission envisages carrying out a specific empirical study with emphasis on data collection 3-5 years into the application of each instrument of the Roadmap. In order to gain in-depth quantitative and qualitative insights into the effectiveness of the proposal on children, such a study will analyse the following indicators:

- The number of children benefitting from an in-depth assessment of vulnerability in comparison to the total number of children suspected or accused in criminal proceedings;
- The number of children benefitting from medical assistance in police custody compared with the total number of children in detention;

- The number of children questioned by police where audio-visual recording was used in comparison to the total number of children questioned by police;
- The number of children placed in pre-trial detention in comparison with the total number of children suspected or accused in criminal proceedings.

As regards the envisaged Recommendation for vulnerable adults, the following indicators could be used:

- The number of vulnerable adults benefitting from an in-depth assessment of vulnerability in comparison to the total number of suspected or accused persons in criminal proceedings;
- The number of vulnerable adults benefitting from medical assistance in police custody compared with the total number of adults questioned by police;
- The number of vulnerable adults questioned by police where audio-visual recording was used in comparison to the total number of all suspected or accused persons questioned by police;
- The number of vulnerable adults placed in pre-trial detention in comparison with the total number of all suspected or accused persons in criminal proceedings.

These monitoring indicators would be used to evaluate the progress made towards the achievement of the special and operational objectives of each of the envisaged measures (as set out above in *Section 5*). The higher the numbers of children or vulnerable adults concerned, the higher would be the impact of the measures.

As regards indicators for quality, complaints by suspected or accused children and vulnerable adults regarding insufficient assessment of age and vulnerability, insufficient medical assistance, no or late access to a lawyer, insufficient information of parents or persons of trust, no audio or video recording of police interviews, non-respect of privacy rules, ill-treatment in detention should be used.

All the data collected would enable the Commission to evaluate the actual compliance in Member States more robustly than using the means hitherto available. With this current procedural rights package the Commission has achieved the main Roadmap Measures and it will be essential to evaluate the efficiency of the Roadmap as a whole.

Annex

Annex I

The Implementation of the Roadmap – Specific provisions with regard to vulnerable persons

As called for in the 2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, it is important that special attention is shown to suspected or accused persons who are vulnerable (i.e. who cannot understand or follow the context or the meaning of proceedings, owing, for example, to their age, mental or physical condition), in order to safeguard the fairness of proceedings.

A number of measures have already been adopted or are under negotiation, which are related to the Roadmap and provide specific provisions dedicated to vulnerable persons (such as persons with disabilities).

In particular, Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings provides in Article 2.3 that: "The right to interpretation (…) includes appropriate assistance for persons with hearing or speech impediments" and in Article 2.4 that: "Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter." Recital 27 of this Directive outlines that: "The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of any physical impairment which affect their ability to communicate effectively, underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that such persons are able to exercise effectively the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to follow the proceedings and to make themselves understood, and by taking appropriate steps to ensure those rights are guaranteed."

Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings provides in Article 3.2 that: "Member States shall ensure that the information provided (…) shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons." Recital 26 explains that: "When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition."

Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to havea third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty contains a number of relevant provisions.

In relation to children Article 5.2 of the Directive states that: "If the suspect or accused person is a child, Member States shall ensure that the holder of the parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child." Even though temporal derogations may be foreseen in Member States' legislation when this is justified, in the light of the particular circumstances of the case, for compelling reasons (an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person or an urgent need to prevent

a situation where there could be a substantial jeopardy to criminal proceedings, Article 5.3), Article 5.4 clarifies that "when Member States temporarily derogate from the application of the right set out in paragraph 2, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child." Article 6 contains a right of the suspect or accused person to communicate, while deprived of liberty, with third persons. Recital 55 outlines in relation to children that: "This Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children. The Directive ensures that suspects and accused persons, including children, should be provided with adequate information to understand the consequences of waiving a right under this Directive and that the waiver should be given voluntarily and unequivocally. The holder of the parental responsibility of a suspect or accused child should be notified as soon as possible of his deprivation of liberty and the reasons pertaining thereto. If providing such information to the holder of the parental responsibility of the child is contrary to the best interests of the child, another suitable adult such as a relative should be informed instead. This should be without prejudice to provisions of national law which require that any specified authorities, institutions or individuals, in particular those which are responsible for the protection or welfare of children, should be informed of the deprivation of liberty of a child. Member States should refrain from limiting or deferring the exercise of the right to communicate with a third party in respect of suspected or accused children, who are deprived of liberty, save in the most exceptional circumstances. Where a deferral is applied the child should nonetheless not be held incommunicado, but be permitted to communicate with, for example, an institution or individual responsible for the protection or welfare of children."

Concerning vulnerable persons in general the Directive foresees in its Article 13 (vulnerable persons) that: "Member States shall ensure that in the application of this Directive the particular needs of vulnerable suspects and vulnerable accused persons are taken into account." The related Recital 51 outlines: "The duty of care towards suspected or accused persons who are in a potentially weak position underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore facilitate that such persons are able to exercise effectively the rights provided for in this Directive, for example by taking into account any potential vulnerability that affects their ability to exercise the right of access to a lawyer and to communicate with a third party, and by taking appropriate steps to ensure those rights are guaranteed."

The Directive foresees in its Article 9 the possibility to waive the right of access to a lawyer under certain conditions. In this context Recital 39 explains that: "Suspects or accused person should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving it. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition."

More generally Recital 52 outlines that: "This Directive upholds the fundamental rights and principles recognised by the Charter, 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 right of defence. This Directive should be implemented according to these rights and principles."

All these provisions in EU legislation which is already adopted or in the course of being agreed will undoubtedly have the effect of strengthening the rights of suspects and accused persons who are vulnerable. However they will not address all their specific needs and do not provide sufficient guarantees to ensure that vulnerable persons can effectively exercise their rights.

Annex II

Overview of stakeholder views on key elements of the proposed measures

This Overview has been established on the basis of several expert meetings which have taken place and on the basis of written statements or reports by stakeholders[158]

1. Children

General support for measures on children	***Member States:*** Member States generally supported specific measures for children. Most Member States consider that children should be dealt with separately from adults (ES, FR, SK, EE, FI, IT, LV, LT); some underlined nevertheless that the protection needs are similar (UK). Several Member States suggested that the Council of Europe Recommendations, the Beijing Rules and other relevant standards should be used as a basis for any proposed measures (DE). ***Stakeholders:*** Strong support for specific measures on children from stakeholders: e.g. ECBA, Fair Trials International, Council of Europe; International Association of Youth and Family.
Age	***Member States:*** General agreement by Member States that children are vulnerable "*per se*" Whereas some Member States argued in favour of setting an age for criminal responsibility of children, several other MS were concerned with this issue and considered that this should not be dealt with in the context of this initiative (e.g. DE, NL, EE). ***Stakeholders:*** Stakeholders underlined that children should be defined as persons under the age of 18 in accordance with the UN CRC. All children should be considered as vulnerable (e.g. ECBA).
Medical assistance	Medical assistance should be available upon request or ordered if certain indications. The eExtent of this measure should be reflected upon (FR).
Information and assistance by parents or a person of trust	***Member States:*** Several Member States underlined the importance of appropriate and rapid information of parents (AT, CZ, DE, MT, SI, SK). The issue of whether parents should be present at police interviews was

	considered as controversial (e.g. FR against, IE in favour). ***Stakeholders:*** Strong support of appropriate information by Council of Europe and stakeholders, e.g. ECBA[159]
Mandatory access to a lawyer	***Member States:*** Many Member States support idea of mandatory access to a lawyer (AT, FI, NL, SE, EE, IT, LV). Some Member States raised the issue of minor offences and that these should be exempted (AT, DE). Most Member States agreed that legal aid should be dealt with in the context of a separate measure. ***Stakeholders:*** Strong support by Council of Europe and considered as one of the "core measures" for the protection of children and vulnerable adults by stakeholders, e.g. ECBA[160]. It should be provided at the earliest opportunity and right at the start of the investigation.
Police interviews	***Member States:*** Strong support from certain Member States (FR, IE, UK), other Member States consider it as a possible solution (IT, EE, PL). One Member State expressed itself against (DE). ***Stakeholders:*** Stakeholders consider the recording of interviews as an additional safeguard. Yet, other measures as mandatory access to a lawyer or information of parents is considered as a priority.
Detention	***Member States:*** Several Member States underlined that they have separate prisons for children (EE, FR, LV, PL). Member States generally felt that children should be kept separately from adults in detention centres, prisons, court rooms (CZ). ***Stakeholders:*** Stakeholders underlined that children are seldom taken into custody in most jurisdictions. However, special efforts must be undertaken to avoid pre-trial detention for children. Separate detention from adults should be foreseen in accordance with international recommendations.
Courts	***Member States:*** Whereas some Member States are in favour of specialised courts and judges (DE, FR, UK), other Member States are opposed to the idea of setting up special courts (FI, SE). Certain raised the financial and

	organisational effort (SI). The idea of having specially trained judges was considered as a possible solution (AT, BE, PL, CZ, SE). Some Member States underlined the importance of the protection of privacy rules (BE, FR) and in camera rulings (DE, IE, SI). ***Stakeholders:*** The need of specialised judges was underlined (e.gg. IAYF). The Council of Europe underlined the importance of specialised courts. Proceedings should be adapted to the needs of children. They should be able to understand what's going on in front of the court.
Training	***Member States:*** Many Member States stressed the importance of specialist training for legal professionals, including judges, magistrates and lawyers on how to deal with children. ***Stakeholders:*** Stakeholders stronlgy supported specialised training for judges, prosetutors and police. They also underlined the need for regular updates (e.g. IAYF).

2. Vulnerable adults

General support for measures on vulnerable adults	***Member States:*** Generally supported by Member States (but more limited than with regard to measures for children given in particular the lack of definition). ***Stakeholders:*** Support from stakeholders: e.g. ECBA[161]: "*We wish to make it clear that procedural safeguards adapted to the different needs of other vulnerable suspects are no less important than those of children and minors. […] The ECBA is of the opinion that procedural safeguards in addition to those existing are necessary to protect all vulnerable people (not just minors and children) so as to satisfy the standards set in the Stockholm Programme".* *Fair Trials International[162]: "The application of special safeguards for vulnerable suspects at the earliest stage of criminal proceedings is essential to ensure that these suspects understand what their rights are and how to exercise them.*
Definition of vulnerable persons - Assessment of vulnerability	***Member States:*** Many Member States do not have a definition of vulnerable persons in their national law and argued that a standard definition would be difficult to agree on (EL, FR, IE, PL, SE). The risk of stigmatisation should be avoided (DE). MS generally agreed on the need to assess vulnerability (by expert) who

	should establish whether the person can understand and follow the proceedings or not (FR); it should be judges to decide on the basis of medical expertise who is vulnerable (MT). Competent authorities should check whether assessment is required (DE). ***Stakeholders:*** Stakeholders referred to the difficulty to define vulnerable persons. Certain groups of vulnerables could be rather easily defined whereas for others it would not be obvious. It was underlined that it would be very difficult to come up with an overall definition (e.g. ECBA).
Medical assistance	***Member States:*** Some Member States consider that the medical assistance differs according to the individual situation of the person concerned (FR). Medical care should be provided if needed. ***Stakeholders:*** Stakeholders underlined the need for an appropriate assessment and assistance by medical or social experts (e.g. ECBA).
Information and Assistance by legal representative	***Member States:*** Vulnerable adults should have the right to assistance by legal representative (CZ, ES, FR). ***Stakeholders:*** The need for adequate information of the legal representative or a person of trust was recognised.
Access to a lawyer	***Member States:*** Member States see need for mandatory access to a lawyer for vulnerable persons if they are unable to understand and follow the proceedings (FI, NL, LV, PL). ***Stakeholders:*** Access to a lawyer was considered as one of the "core measures" by stakeholders for the protection of vulnerable adults, e.g. ECBA[163].
Police interviews	***Member States:*** Several Member States foresee already audio-video recording of interviews (e.g. FR, IT, UK), in other MS it may be ordered if necessary (CZ, FI, HU, LV). ***Stakeholders:*** Similar as with regard to children, stakeholders consider the recording of interviews as an additional safeguard. Yet, other measures as

	mandatory access to a lawyer are considered as a priority.
Courts	***Member States:*** Several Member States were not in favour of having specialised courts for vulnerable adults (BE, CZ; PL). ***Stakeholders:*** Stakeholders did not communicate to the Commission any particular views on this issue.
Training	***Member States:*** Specific training for judges or specialisation of judges dealing with vulnerable adults should be considered (BE, PL). ***Stakeholders:*** Stakeholders supported specialised training for judges, prosetutors and police (e.g. IAYF).

EUROPEAN CRIMINAL BAR ASSOCIATION - MEASURE E [164]

1. The ECBA has become the pre-eminent independent organisation of specialist defence practitioners in all Council of Europe Countries. Its aim is to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons in criminal proceedings throughout Europe, and ensure that those rights are considered and respected. You will find more information on the ECBA on www.ecba.org.

2. The ECBA is not a political body, but an institution of legal practitioners who are able to provide legal expertise and practical experience nationally and transnationally on most issues of criminal and procedural law throughout Europe.

3. This draft paper contains the ECBA's main recommendations to the Commission on Measure E of the Stockholm programme for the appropriate rights and treatment of vulnerable Suspects.

4. As the ECBA pointed out in its News Letter (Issue 26) on Measure E: "The idea is to draft the ECBA's Cornerstones of special safeguards for suspected or accused persons who are vulnerable. This would support the the political EU decision makers at EC, EP and the Council to come to appropriate conclusions on how to protect vulnerable suspects in addition to the general rights and safeguards in criminal proceedings".

5. In this draft the ECBA wishes to concentrate on the most obvious group to be defined as vulnerable and that is persons not of full age, i.e. Children and Minors. When discussing Measure E we take it for granted that Measures A to D and F will form part of the EU Directives to the Member States. None of them can work effectively without the others.

6. We wish to make it clear that procedural safeguards adapted to the different needs of other vulnerable suspects are no less important than those of Children and Minors. Within the ECBA there is considerable experience of criminal cases throughout Europe. It is clear from that experience that vulnerable suspects who have reached full age also run the risk of mistakes being made in the early phases of an investigation which can undermine a fair trial. The ECBA is of the opinion that procedural safeguards in addition to those covered by Measures A to D and F are necessary to protect all vulnerable people (not just Minors and Children) so as to satisfy the standards set in the Stockholm Programme.

7. Unfortunately, in the time allowed, it has not yet been possible for our organisation specifically to analyse or define the safeguards necessary for other vulnerable persons apart from Children and Minors. And even in regard to suspects who are Children and Minors our proposals set out herein are only examples, rather than a full list of procedural safeguards.

8. Of course, all suspects, vulnerable or not, should have such rights as the right to an interpreter, a lawyer, legal aid, to communicate with a friend or relative, right of waiver of a lawyer in some circumstances, right of silence, right to information and to be cautioned, right to legal privilege and confidentiality, etc. These Cornerstones are part of the criminal procedure in the jurisdiction of the EU. They are also part of the ECHR and the jurisprudence of the ECtHR. They present an essential part of the legal base for the work on EU Directives to the Member States in accordance with the Stockholm Programme. All Cornerstones are part of an integral whole. One cannot abandon one without risk to the others.
9. However, suspects who are not ordinary but are vulnerable demand special treatment, and it is that with which Measure E is concerned and which the ECBA wishes to address.

10. It is very difficult to define "vulnerable" except in relation to Children and Minors who can be identified by their age.

A. Children and Minors.

11. We define persons under the age of 18 as children or minors, which is almost universally accepted for this group in Europe and in the UN Convention.

12. Members of the ECBA are practitioners who as defenders certainly meet children and minors as suspects in many cases. There is no doubt that there are problems concerning such suspects in the criminal process from the beginning of the pre-trial investigation through all the procedural stages. These problems can endanger a fair trial if not dealt with in a well- informed manner.

13. We wish to highlight certain principles within the cornerstones which specifically apply to Children and Minors.

(a) On arrest they must be able to understand what is happening.

(b) They must be able to contact a parent, member of their family or friend, or some appropriate adult, such as a Probation Officer or Social Worker, who is allowed to be present during any police interview from the start of the proceedings and be able at any time to interpret or explain anything not understood.

(c) There must be a mandatory right to a lawyer from the start of proceedings. They must not be able to waive that right unless their waiver is verified by an appropriate adult who is present and able to confirm the waiver as genuine. (N.B. in some petty cases (where custody is not at risk) there may be teenagers who do not want anyone to know of their arrest, and perhaps they should be allowed waiver without assistance).

(d) They must have the right to legal aid good enough to enable them to prepare and implement their defence.

(e) They must be cautioned as to their rights, including the right to silence.

(f) In communication with their lawyer they must have the right to the privilege of confidentiality and non-disclosure.
14. These principles are already a part of criminal procedure in many EU jurisdictions. Nevertheless, it is the experience of the ECBA that mistakes are made which sometimes lead to catastrophic miscarriages of justice. These experiences demonstrate the need to strengthen the safeguards in question.

B. Examples of what causes mistakes to be made in the pre-trial situation with Children or Minor Suspects.

15. It is clear that a person under the age of 18 generally has not yet a complete education in the modern school-systems in Europe. It is also clear that a child is still maturing through most of his years as a teenager. Most minors are dependent on their families - economically and in many other respects - to such an extent that it must be taken into consideration if he embarks on anti-social behaviour leading him to become a suspect in a criminal investigation.

16. The ECBA has experience of several cases in most of the European jurisdictions where a minor is under pressure from, for example, his parents or other older relatives to own up to crimes for which he is not fully responsible. The motive may have been that there would be perceived a better outcome if the minor takes the legal blame instead of the grown-ups in his family. (Hogsby - Case in Sweden recently).

17. There are also cases where a minor falsely takes all the responsibility when it comes to organised crimes or persons in or around gangs. The child might believe he will gain some advantage within the organisation or is under such pressure or even extortion to help older criminals mislead the police.

18. In most jurisdictions a minor suspect is seldom taken into custody and restricted from contact with his family and/or friends. That is, of course, the practice in most, if not all, jurisdictions. However, it may make it easier for somebody who wants to exercise unlawful power over the Child or Minor.

C. Additional safeguards needed

19. A Child or Minor who is a suspect in a police investigation must be assured of receiving legal advice before any questioning by the police. By appointing an experienced lawyer early to defend the suspect, he will probably be more able to answer questions during the course of the investigation in a more meaningful way.

He can then possibly work out for himself whether or not he has been involved in the commission of a criminal offence, once he understands the limits of the law.

He can also learn to differentiate between what he has done and what the police suspect, in the sense that what they suspect he has done would amount to a crime, but what he has in fact done would not, or would amount to a lesser crime.

He will then be able to consider whether he should use his right not to incriminate himself and, if so, how he should act. It must be said that it can be intellectually highly demanding for any suspect to make the right decision in this regard.

He can then consider what stance he should take on whether to exercise his right to remain silent and what consequences might follow.

He can analyse with his lawyer the consequences of the steps he decides to take during the investigation. For a child, as for an adult, who is under investigation it is of the utmost importance to have adequate time and the facilities for the preparation of his defence.

20. Looked at in the way expressed above it is of great importance that every child is given the opportunity, the time, the resources etc. to have personal contact with his defender/lawyer at the same time as he is presented by the police with the information that he is suspected of a crime.

21. European lawyers with most experience in defending suspects under the age of 18 say that such clients, after having spoken to their lawyer, whose advice they might value higher than that of the inquiring policeman, often come to the conclusion that they should accept the situation and recognise what they have done. In many of those cases, the advice of the lawyer has simplified and shortened the investigative procedure, often making it possible not to keep the youngster under arrest. Obviously good legal advice differs from case to case according to its merits. The age and vulnerability of the client is obviously of paramount importance.

22. Thus, it should be mandatory that a defence lawyer is provided at the earliest opportunity and right at the start of the investigation. Obviously, the defender may have to be paid by the State under its Legal Aid Rules and there have to be the resources to meet the Child or Minor's needs in each investigation.

23. For a lawyer to take on a new case at short notice should be a lawyer's responsibility in every jurisdiction. Bar Associations in all Jurisdictions will probably have to organise a list of lawyers willing to take that responsibility. There are already such regional "lists" in many European Member States.

D. Other vulnerable Suspects

24. Of course, apart from Children and Minors, there are very many vulnerable suspects who deserve special safeguards, and those suspects are not always easy to identify. It is obvious that those suspects are very difficult to define and the ECBA's work on that is only just starting. Accordingly we have dealt specifically so far with those who can be defined by their date of birth, i.e Children and Minors.

25. We agree with what Fair Trials International concluded in paragraph 38 of their August 2012 Report on Vulnerable Suspects, that "The application of Special Safeguards for vulnerable suspects at the earliest stage of criminal proceedings is essential to ensure that these suspects understand what their rights are and how to exercise them. If people do not understand the proceedings because their vulnerability is not identified or because special safeguards are not in place, then this leads to a serious inequality of arms, undermining the chances of receiving a fair trial".

26. Other vulnerable suspects, apart from Children and Minors, may be just as vulnerable, if not more so. For example, a 25-year old with a mental age of a 14 year-old.

27. It is obvious that, if someone who is not yet 18 warrants special safeguards, so then does a person over 18 who is just as vulnerable in fact, if not in age. This demonstrates just how difficult it is to define a vulnerable person, so as to decide who deserves special safeguards.

28. Of course, apart from minors, others can easily be identified as vulnerable, such as illiterates, the visually impaired, the deaf, the dumb, some addicts, those conspicuously physically disabled , or those who cannot speak the language of or understand an interviewer.

29. Other groups are also vulnerable for physical or mental reasons which are not obvious, and would not be recognised as vulnerable without expert medical or sociological assistance, nor by the police, unless highly trained.

30. The ECBA would suggest that the only way to be able to get anywhere near the task of identifying all vulnerable suspects as soon as possible after arrest, is to ensure that all suspects are provided with a competent lawyer (with legal aid if necessary) at the very outset of the investigation, who would be sufficiently competent to address what is necessary to be done in relation to obtaining expert advice or intervention relating to his client's physical or mental condition.

31. Of course, lawyers can be fooled, but it would be a start.

32. Several ECBA members, for example, have had the experience of representing "serial confessors", who confess to serious crimes which they have not committed, in order to please or to seek attention, or many other causes. In many of these cases, the Police and Courts have been fooled, leading to, sometimes sensational, miscarriages of justice.

33. The above is just a brief summary of a very real problem in relation to genuinely vulnerable suspects, whom it is difficult to define. The ECBA is eager to research this further, but time constraints have made it impossible to deal with it as yet. We have simply presented starting points.

34. Everyone who has had experience in criminal investigation knows of vulnerable suspects who, even if not Children or Minors, have some deviation in their personality or in the way they live which causes the police to check them more often than others as suspects of crime. It is clear from experience that there are characters and personalities of huge diversity, making it even more difficult to define who might need special safeguards under Measure E. That, however, should not prevent us from trying to find a solution which could result in an Equality of Arms.

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Annex III

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Annex IV

Relevant International Legal Framework

1. General Rules

Relevant provisions of the Charter of Fundamental Rights of the European Union are Article 47 (Right to a fair trial), Article 3 (Right to the integrity of the person), Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment), Article 7 (Respect for private and family life), Article 21 (Non-discrimination based on ground of disability), Article 24 (The rights of the child) and Article 27 (Integration of persons with disabilities).

The most relevant Articles of the European Convention on Human Rights (ECHR) are Article 3 on the prohibition of inhuman or degrading treatment and Article 6 on the right to a fair trial.

2. Specific rules with regard to children

The UN Convention on the Rights of the Child (UN CRC), which entered into force on 2 September 1990 and is binding upon Member States, has developed into a world-wide legal framework for the enhancement of the rights of minors in general.

Two Articles are relevant with regard to children suspected in criminal proceedings: Article 1, which provides a definition of a child ("A child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.") and Article 40, which focuses on juvenile justice. The latter article provides minors suspected or accused of a criminal offence, with the right to "fair treatment" in the criminal justice system, including a series of minimum procedural safeguards (e.g. right to information, right to a fair hearing, right to appeal, right to interpretation and right to have privacy rules respected).

Other instruments with regard to children suspected in criminal proceedings provide useful guidance but are non-binding upon Member States. The Council of Europe guidelines on child friendly justice refer to the participation of children, including the right of all children to be informed their rights (III. A. 1.), the best interest of the child, which should be a primary consideration in all matters involving and affecting children (III. B.), and to the absence of torture or inhuman or degrading treatment or punishment (III. C. 2.). The right of the child and of its parents to be informed and advised is outlined in guideline IV.A. 1. Furthermore there are guidelines on privacy, training, a multidisciplinary approach, deprivation of liberty, children and police and child-friendly justice during judicial proceedings.

The Beijing Rules for the Administration of Juvenile Justice adopted on 29 November 1985 also underline the importance of the well-being and best interest of the juvenile. They provide with guidance in relation to the information of parents and guardians within the shortest time possible and their participation (rule 10 and 15.2), legal advice (rule 15.1), privacy (rule 8), specialisation and training of police and other personnel dealing with juvenile cases (rule 12 and 22), and in relation to detention (rule 13).

3. Specific rules with regard to vulnerable adults

The framework for the protection of vulnerable adults is primarily governed by the 2008 UN Convention on the Rights of Persons with Disabilities. The EU became party to this Convention in January 2011. All Member States signed it, not all Member States have ratified it by now. The provisions in relation to the protection of vulnerable adults are quite general concerning the rights of these persons in criminal proceedings. Articles 12 and 13 related to equal recognition before the law and access to justice contain principles concerning the

effective role of persons with disabilities in legal proceedings and support they may require in exercising their legal capacity.

Proposed Measures for children and vulnerable adultsCorresponding EU and international legal instruments (*binding and non-binding*)	
1. Assessment of age and vulnerability	Pt.39 UN CRC Comment N°10
2. Assistance by the child's parents or a person of trust	Article 3 Directive 2012/13/EU; Article 5(2) Draft Directive on access to a lawyer; Article 40.2.b ii UN CRC; Pt.14 CoE Rec(2008)11;Pts. 7.1, 10.1, 15 Beijing Rules; Pt. 1-5, Pt. 58 GL of the CoE on child-friendly justice; Pt.53 UN CRC Comment N°10
3. Medical Assistance	Article 4(2) c Directive 2012/13/EU Article 19 UN CRC, Pts.11-13 GL of the CoE on child-friendly justice
4. Access to a lawyer	Article 3 of Draft Directive on access to a lawyer; Pt.120 CoE Rec.(2008)11; Article 40.2 b iii UN CRC; Pts. 7.1, 15 Beijing Rules; Pts. 37-43 GL of the CoE on child-friendly justice; Pt.49 UN CRC Comment N°10
5.Special provisions on conducting police interviews	Pts.27-33 and 54-59 GL of the CoE on child-friendly justice
6. Special provisions on court hearings	Article 40.2.iii, v and vii UN CRC; Pt.16 CoE Rec(2008)11; Pts. 6-10, 61-63 GL of the CoE on child-friendly justice; Pts.64-65 UN CRC Comment N°10
7. Specific rules related to detention	Article 40.3b UN CRC, Pts.10, 108-113 CoE Rec(2008)11; Pts.13, 26.5 Beijing Rules; Pt.46 Riyadh Guidelines; Pt.19-20, 31-32 GL of the CoE on child-friendly justice; Pt. 81 UN CRC Comment N°10

Proposed Measures for vulnerable adults: mainly relating to Articles 12 and 13 of UN Convention on the rights of persons with disabilities providing rather general provisions on the rights of persons with disabilities in criminal proceedings.

Annex V

Case-law of the ECtHR related to children and other vulnerable persons

Effective participation in criminal proceedings

Adults

Stanford v UK, ECtHR 23 February 1994, App No. 16757/90

The applicant complained that he could not hear the proceedings at his trial for sexual assault of a young girl due to the acoustics in the courtroom. He claimed a violation of Article 6 (1) of the ECHR (fair trial) on the grounds that he was unable hear and to check for himself which matters of evidence were consistent or inconsistent with written statements against him. The Court recalled that Article 6 ECHR, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. In general this includes, inter alia, not only his right to be present, but also to hear and follow the proceedings. However, neither the applicant nor his legal representatives sought to bring his hearing difficulties to the attention of the trial judge and tests found the acoustics in the courtroom to be satisfactory. The applicant was also represented by counsel who could have brought to his attention any points which arose out of the evidence. The Court concluded that there had been no breach of Article 6.

Timergaliyev v. Russia, ECtHR 14 October 2008, App. No. 40631/0

The applicant was convicted and sentenced to 18 years in prison for murder following an arson attack on his mother's apartment. He appealed, complaining that he had been ill-treated by the police, that he was not adequately represented by his lawyer at trial and had not been able to hear the proceedings as he was half-deaf, which he had indicated during the proceedings. The applicant claimed a violation of Article 6.1 (right to a fair trial) and 6.3(c) (right to legal assistance), arguing that he had not been provided with a hearing aid, that his State-appointed counsel had been ineffective and that he had had no legal assistance at his appeal hearing.

Article 6.1 and 6.3(c): The ECtHR recalled that the right of an accused under Article 6 to effective participation in his or her criminal trial generally includes not only the right to be present, but also to hear and follow the proceedings. "Effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. The defendant should be able, *inter alia*, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence. The Court held that the appeal court was put on clear notice that the applicant had hearing difficulties. It also noted that the applicant had received an 18 year prison sentence and that his appeal was based on points of fact and of law. In such circumstances the appeal court was bound out of fairness to take additional steps, before examining the case, to reassure itself that the applicant's hearing impairment would not prejudice his effective participation in the appeal hearing. The court did not take any such steps and proceeded with the hearing without requesting a medical opinion as to whether the applicant's impairment allowed him to hear the proceedings or considering the possibility of providing a hearing aid. Furthermore, given that the applicant's hearing impairment undermined his ability to participate effectively in the proceedings, the interests of justice demanded that he should have had the benefit of legal representation during the proceedings before the appeal court. In this case, the ultimate guardian of the fairness of the proceedings

was the judge, who, when confronted with the lawyers' failure to appear, was required under domestic law to appoint counsel for an accused who was incapable of defending himself on account of a physical impairment. There had therefore been a violation of Article 6.1 taken in conjunction with Article 6.3(c) ECHR

Children

S.C. v. The United Kingdom, ECtHR 10 November 2004, App No. 60958/00

The applicant was an 11-year-old boy who was convicted of attempted robbery. The boy had a low IQ for his age and his social worker, who was present at the trial, stated that he seemed confused by the proceedings of the court and was unable to understand his subsequent conviction and sentencing. The applicant claimed that, due to his youth and low intellectual ability, he was unable to participate effectively in his trial, contrary to Article 6.1 (fair hearing). The ECtHR specified that "effective participation" presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence. The Court held that the applicant had not understood the proceedings or the consequences of being convicted and therefore had not been able to participate effectively in his trial. The Court considered that, when the decision is taken to deal with a child, such as the applicant, who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings, it is essential that he be tried by a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly. It ruled that there had been a violation of Article 6 (1).

T. v. The United Kingdom ECtHR 16 December 1999, App. No 24724/94

The applicants were accused of the abduction and murder of a two-year-old boy. They were ten years old at the time of the offence, and eleven at the time of their trial, which took place in public in the Crown Court and attracted high levels of press and public interest. They complained of breaches of Article 6.1 (fair hearing) as the conduct of their trial was not suited to their young age and had prevented them from participating effectively in it. The ECtHR held that it was essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings. In respect of a young child charged with a grave offence attracting high levels of media and public interest, this can mean that it is necessary to conduct the hearing in private, so as to reduce as far as possible the child's feelings of intimidation and inhibition. It was not sufficient for the purposes of Article 6.1 that the applicants were represented by skilled lawyers in view of the circumstances of the trial and the children's immaturity and disturbed emotional state. There had therefore been a violation of Article 6.1.

Panovits v. Cyprus, ECtHR 11 March 2009, App no. 4268/04

The applicant, aged 17, was accused of murder and robbery. He complained of violations of Articles 6 (1) (fair hearing) and 6 (3)(c) ECHR (legal assistance) as he had been questioned without the presence of a lawyer or parent despite his young age and the confession he made without legal advice was accepted by the trial court. The ECtHR noted that the right of an

accused minor to effective participation in his criminal trial requires that he be dealt with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him or her, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent. This means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said by the arresting officer and during his questioning by the police.

Guvec v. Turkey, ECtHR , 20 January 2009, App. No. 70337/01

The applicant was a 15 year old boy detained in an adult prison for five years for his alleged membership of an illegal association. He was arrested and questioned without the presence of a lawyer, charged with a crime carrying the death penalty and tried by the State Security Courts rather than the Juvenile Courts. He was remanded in custody and could not have open visits with his family. Neither the applicant nor his lawyer were present at half of his trial hearings and attended none of his appeal hearings. The court was informed that the applicant was suffering from psychiatric illness, had attempted suicide and had been transferred to a psychiatric hospital, but it still refused to release him for medical treatment. He was subsequently convicted of a lesser charge and sentenced to 8 years and 4 months imprisonment. The applicant alleged a violation of Article 3 (prohibition of inhuman or degrading treatment), Articles 5 (right to liberty and security) and 6 (right to a fair trial). On Article 6, the ECtHR considered that the applicant's young age, the seriousness of the offences with which he was charged, the seemingly contradictory allegations levelled against him by the police and a prosecution witness, the manifest failure of his lawyer to represent him properly and, finally, his many absences from the hearings, should have led the trial court to consider that the applicant urgently required adequate legal representation. Indeed, an accused is entitled to have a lawyer assigned by the court of its own motion "when the interests of justice so require". The shortcomings highlighted above, including in particular the *de facto* lack of legal assistance for most of the proceedings, exacerbated the consequences of the applicant's inability to participate effectively in his trial and infringed his right to due process. There was thus a violation of Article 6.

Right to be informed on rights and charges

Adults

Vaudelle v. France, ECtHR 30 January 2001, App. No. 35683/97

The application concerned an alleged violation of defence rights in criminal proceedings brought against the applicant for sexual assault of minors. Owing to a medically certified mental impairment, the applicant had been placed under his son's supervision as he required representation and assistance in the conduct of civil matters. The applicant was sent a summons to attend the trial by registered letter. Even though the applicant did not appear at his trial, he was later sentenced by the court to imprisonment and probation, and ordered to pay damages to the victims. The applicant claimed that the fact the summons to attend the trial and notification of the judgment were sent to him only and not to his supervisor had prevented him from exercising his defence rights under Article 6.1 (right to a fair hearing) and Art. 6.3(a) (right to be informed in detail of the nature of the accusation) ECHR.

Article 6.1 and 6.3: The ECtHR held that, in view of the seriousness of the allegations against he applicant, the fact that he was liable for a custodial sentence, that the Criminal Court had

been informed he was under supervision, that sentence had been passed in his absence and without his legal representation and that the psychiatric report ordered by the prosecution had never been presented, it was bound out of fairness to take additional steps before trying the case to ensure that the applicant effectively enjoyed the rights guaranteed to him by Article 6 of the Convention. Furthermore, the Court held that it is important for the accused to be present in person at first instance, and pointed out that under Article 6.3(c) ECHR the accused is entitled to have a lawyer assigned by the court of its own motion "when the interests of justice so require". In addition, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves. The Court ruled that the French authorities had indeed violated Article 6 of the Convention in that they had failed to ensure that the applicant could understand the criminal proceedings, inform him in an appropriate manner of the accusation against him, and grant him a fair trial.

Children

Panovits v. Cyprus, ECtHR 11 March 2009, App no. 4268/04

(See above)

The applicant, aged 17, was accused of murder and robbery offences. He complained that he had not been informed of his right to a lawyer prior to being questioned by police and had not had adequate opportunity to find a lawyer before submitting his statement. This had been particularly detrimental because he was a minor at the time and questioned without a parent in the room. He also claimed that he had not been given a fair trial by the court, given their acceptance of the confession he gave without legal advice. He argued that this violated Articles 6 (1) and 6 (3)(c) ECHR (right to a fair trial).

Article 6.1 and 6.3(c): The ECtHR noted that the right of an accused minor to effective participation in his or her criminal trial requires that he be dealt with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition and ensure that the accused minor has a broad understanding of the nature of the investigation, of what is at stake for him or her, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent. This means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said by the arresting officer and during his questioning by the police. On the subject of waiver of the applicant's right to a lawyer, the Court further considered that given the vulnerability of an accused minor and the imbalance of power to which he is subjected by the very nature of criminal proceedings, a waiver by him or on his behalf of an important right under Article 6 can only be accepted where it is expressed in an unequivocal manner after the authorities have taken all reasonable steps to ensure that he or she is fully aware of his rights of defence and can appreciate, as far as possible, the consequence of his conduct. The Court considered that it was unlikely, given the applicant's age, that he was aware that he was entitled to legal representation before making any statement to the police. Moreover, given the lack of assistance by a lawyer or his guardian, it was also unlikely that he could reasonably appreciate the consequences of his proceeding to be questioned without the assistance of a lawyer in criminal proceedings concerning the investigation of a murder. The Court concluded that there had been a violation of Article 6.3 (c) in conjunction with Article 6.1 of the Convention on account of the lack of legal assistance to the applicant in the initial stages of police questioning.

Adamkiewicz v. Poland, ECtHR, 02 March 2010, 54729/00

The applicant, then a minor aged 10, was arrested at home and taken to a police station for questioning in connection with the murder of another boy. He was questioned for 5 hours in the presence of a psychologist and confessed to the murder. Relying on Article 6, the applicant complained of the restrictions placed on the exercise of his defence rights during the investigation and of the fact that the statements he had made then to the police had been admitted at the trial.

Article 6: The ECtHR reiterated the rule that where the case concerned a minor, the courts were required to act in accordance with the principle that the best interests of the child should be protected, having regard to his or her age, level of maturity and intellectual and emotional capacities, and taking steps to promote the child's ability to participate in the proceedings. The applicant had not been informed by his lawyer of his right to remain silent until six weeks after the proceedings had begun and he had been placed in a children's home, after several unsuccessful attempts by his lawyer to meet him. The authorities had therefore obtained his incriminating admissions before he had even been informed of that right. Given his age, it could not be asserted that Mr Adamkiewicz knew of his right to seek legal representation and of the consequences of his failure to do so, whereas it was crucial for him, isolated in a children's home as he had been during the decisive period of the investigation, to have broad access to a lawyer from the very beginning of the proceedings. The Court therefore held that the considerable restrictions on the applicant's defence rights had amounted to a violation of Article 6.3(c) taken in conjunction with Article 6.1.

Legal assistance

Adults

Todorov v Ukraine, ECtHR 12 January 2012, App. No. 16717/05

The applicant, a police officer, was accused of armed robbery and participation in a criminal association. He signed a waiver of his right to legal representation and confessed while being interviewed in custody. The applicant suffered from a skin disease and eye cataracts and requested several times during his detention awaiting trial to be allowed access to treatment, which was denied. He was convicted and sentenced to seven years' imprisonment. While in prison, his condition deteriorated and doctors on several occasions recommended that he be operated on. However, due to a lack of facilities at the prison the applicant did not receive adequate medical care and lost his eyesight completely. He complained to the ECtHR of violations of Article 3 (inhuman and degrading treatment), Article 5.3 (trial within a reasonable time), Article 6.1, 6.2 and 6.3(c) (fair trial, legal assistance).

Article 3: The ECtHR found that the authorities did not do what could reasonably be expected of them to address the deterioration of the applicant’s health and his loss of eyesight. As a result he was subjected to inhuman and degrading treatment and there was a violation of Article 3 of the Convention.

Article 5.3: The Court held that the applicant's pre-trial detention had been too long and that this had violated Article 5.3 of the Convention. Due to the particularly long period of the applicant’s detention and the deterioration in his health, the Court considered that exceptionally compelling reasons were needed to justify keeping him detained. The Court could not accept that the general complexity of the case and seriousness of charges against the applicant could be regarded as “sufficient” reasons for holding him in custody for over five years.

Article 6.1, 6.2 and 6.3(c): The Court also held that the criminal proceedings against the applicant were unreasonably long and had been unfair due to a lack of legal representation at the initial stage of police questioning, in violation of Article 6.1, 6.2 and 6.3(c).

Vaudelle v. France, ECtHR 30 January 2001, App. No. 35683/97

(See above)

The applicant, who had a mental impairment, was under the supervision of his son who was responsible for his affairs. The applicant was charged with sexual offences against minors and was sent a summons to attend trial. He did not appear at trial and was convicted in his absence. He complained that the fact the summons to attend the trial and notification of the judgment were sent to him only and not to his supervisor had prevented him from exercising his defence rights under Article 6.1 (right to a fair hearing) and Art. 6.3(a) (right to be informed in detail of the nature of the accusation) ECHR. The ECtHR held that, in view of the seriousness of the allegations against the applicant, the fact that he was liable for a custodial sentence, that the Criminal Court had been informed he was under supervision, that sentence had been passed in his absence and without his legal representation and that the psychiatric report ordered by the prosecution had never been presented, it was bound out of fairness to take additional steps before trying the case to ensure that the applicant effectively enjoyed the rights guaranteed to him by Article 6 of the Convention. Furthermore, the Court held that it is important for the accused to be present in person at first instance, and pointed out that under Article 6.3(c) ECHR the accused is entitled to have a lawyer assigned by the court of its own motion "when the interests of justice so require".

Megyeri v. Germany, ECtHR 12 May 1992, App No. 13770/88

The applicant was arrested for criminal acts but was not held responsible on mental health grounds and was detained in a psychiatric hospital. He requested that criminal proceedings against him be reopened. The applicant was not represented at the detention review proceedings and there was no legal provision for counsel to be assigned to detainees during such proceedings. The court declined to release him as it could not be sure that he would not continue to commit criminal acts. The applicant alleged that the failure to provide him with a lawyer constituted a violation of his rights under Article 5.4 to take proceedings challenging the lawfulness of his detention. The ECtHR held that where a person is confined in a psychiatric institution for criminal acts for which he was not responsible on account of mental illness, he should - unless there are special circumstances - receive legal assistance in subsequent review proceedings. Furthermore, it was held that persons of unsound mind were not required to seek legal representation themselves before coming before the court.

Winterwerp v. the Netherlands (1979), 24 October 1979, App. No. 6301/73

The applicant was confined to a psychiatric hospital following criminal acts. He continued to be detained at the request of his wife and doctor following yearly reviews. The applicant complained that he was never heard by the various courts or notified of the orders, that he did not receive any legal assistance and that he had no opportunity of challenging the medical reports. He claimed that this violated Article 5.4 ECHR (right to have the lawfulness of detention determined by a court). The ECtHR held that, while the judicial proceedings referred to in Article 5.4 need not always be attended by the same guarantees as those required under Article 6.1 for civil or criminal litigation, it is nonetheless is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right. Indeed, special procedural safeguards may prove called for in

order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves. As the applicant had not been able to take proceedings before a court, there had been a violation of Article 5.4 ECHR.

Children

Salduz v Turkey, ECtHR, 27 November 2008, App. No. 36391/02

The applicant, who was a minor, was taken into police custody on suspicion of having participated in an unlawful demonstration in support of an illegal organisation. He was denied legal assistance while in police custody, during which time he made a confession which he later claimed was made under duress. He was tried and found guilty by the State Security Court and sentenced to two and a half years imprisonment. He complained under Article 6 (fair trial).

Article 6: The ECtHR noted that Article 6 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right. Even when compelling reasons may exceptionally justify denial of access to a lawyer, such restriction- whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

The Court also noted that one of the specific elements of the case was the applicant's age. Having regard to a significant number of relevant international law materials concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in custody is a minor. In the present case, the restriction imposed on the right of access to a lawyer was systematic and applied to anyone held in police custody, regardless of his or her age, in connection with an offence falling under the jurisdiction of the State Security Courts. In sum, even though the applicant had the opportunity to challenge the evidence against him at the trial and subsequently on appeal, the absence of a lawyer while he was in police custody irretrievably affected his defence rights. The Court further recalled that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance

Therefore there had been a violation of Article 6.3 (c) of the Convention in conjunction with Article 6.1 in this case.

Okkali v. Turkey (application no. 52067/99)

The applicant was 12 years old and working as an apprentice in a garage when he was accused of theft and taken by his employer to the police station. He was interrogated by police officers and badly beaten. The police officers were charged with obtaining a confession by means of torture and the applicant joined as a civil party. Following their conviction, the applicant applied for damages but was refused, and he appealed to the ECtHR, relying on Article 3 of the Convention.

Article 3: The ECtHR noted first that, in spite of the legal obligations incumbent on the authorities when young offenders are arrested, the applicant was neither assigned a lawyer nor questioned by the public prosecutor. The Court further noted with regret that the domestic decisions and the Government’s observations made no mention of the particular seriousness

of the impugned acts, considering the victim's age, or of any domestic provisions relating to the protection of minors. In the light of the Court's case-law according to which children, who are particularly vulnerable to various forms of violence, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity, the authorities could have been expected to lend a certain weight to the question of the applicant's vulnerability. The Court observed, however, that not only was concern to provide extra protection to the minor in question sorely lacking throughout the proceedings, but the impunity which ensued was enough to shed doubt on the ability of the judicial machinery set in motion in this case to produce a sufficiently deterrent effect to protect anybody at all, minor or otherwise, from breaches of the absolute prohibition enshrined in Article 3.

S.C. v. The United Kingdom, ECtHR 10 November 2004, App No. 60958/00

(See above)

Effective participation includes the right to be able to follow and understand proceedings, if necessary with assistance from, for example, an interpreter, lawyer, social worker or friend.

Waiver of the right to be assisted by a lawyer

Salduz v Turkey, ECtHR, 27 November 2008, App. No. 36391/02

(See above)

The applicant, a minor, was taken into police custody on suspicion of having participated in an unlawful demonstration in support of an illegal organisation. He was denied legal assistance while in police custody, during which time he made a confession which he later claimed was made under duress. He was tried and found guilty by the State Security Court and sentenced to two and a half years imprisonment. He complained of violations of Article 6 (fair trial). The ECtHR noted that Article 6 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right. Even when compelling reasons may exceptionally justify denial of access to a lawyer, such restriction- whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The Court stressed the fundamental importance of providing minors with access to a lawyer. The Court further recalled that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Therefore there had been a violation of Article 6.3 (c) of the Convention in conjunction with Article 6.1 in this case.

Panovits v. Cyprus, ECtHR 11 March 2009, App no. 4268/04

(See above)

The Court considered that given the vulnerability of an accused minor and the imbalance of power to which he is subjected by the very nature of criminal proceedings, a waiver by him or on his behalf of an important right under Article 6, such as the right to legal assistance, can only be accepted where it is expressed in an unequivocal manner after the authorities have taken all reasonable steps to ensure that he is fully aware of his rights of defence and can appreciate, as far as possible, the consequences of his conduct. The Court considered that it was unlikely, given the applicant's age, that he was aware that he was entitled to legal representation before making any statement to the police. Moreover, given the lack of assistance by a lawyer or his guardian, it was also unlikely that he could reasonably appreciate

the consequences of his being questioned without the assistance of a lawyer in criminal proceedings concerning the investigation of a murder. The Court concluded that there had been a violation of Article 6.3 (c) in conjunction with Article 6.1 of the Convention on account of the lack of legal assistance to the applicant in the initial stages of police questioning.

Free Legal Representation

Quaranta v. Switzerland, ECtHR 24 May 1991, App. No. 12744/87

The applicant was a young Italian from an underprivileged background with a criminal record who was convicted for drugs offences. He was denied free legal assistance repeatedly during the investigation and trial, and was subsequently sentenced to 6 months imprisonment. He alleged a violation of Article 6.3(c) of the Convention (right to free legal assistance). The ECtHR Court held that there had been a violation of Article 6.3(c) for the following reasons: i) lack of sufficient means to pay for legal assistance (the applicant was on social security assistance), ii) the seriousness of the offence and related punishment (in this case up to 3 years imprisonment), iii) the complexity of the case, and iv) the personal situation of the accused (a foreigner from an underprivileged background and living on social security, without any occupational training, and with a long criminal record).

Detention Adapted to Vulnerability and medical assistance

Adults

Megyeri v. Germany, ECtHR 12 May 1992, App No. 13770/88

(See above)

The applicant had been arrested after committing criminal acts, for which he could not be held responsible on mental health grounds, and was detained in a psychiatric hospital. He requested that criminal proceedings against him be reopened and asked the court to replace the lawyer who had previously represented him. The court informed the applicant that there was no legal provision for counsel to be assigned to detainees during review proceedings. The court declined to release him as it could not be sure that he would not continue to commit criminal acts. The applicant was not represented by counsel at the proceedings. He was later placed under guardianship and subsequent requests to have his legal capacity restored were rejected because his condition had not changed. The applicant alleged that the failure to provide him with a lawyer constituted a violation of his rights under Article 5.4 to take proceedings challenging the lawfulness of his detention.

Article 5.4: The ECtHR recalled that a person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled to take proceedings "at reasonable intervals" before a court to challenge the "lawfulness" of his detention. Article 5.4 requires that the procedure followed have a judicial character and provide safeguards appropriate to the kind of deprivation of liberty in question, although proceedings need not always be attended by the same guarantees as those required under Article 6.1 for civil or criminal litigation. The Court held that where a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should - unless there are special circumstances - receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention. The importance of what is at stake for him - personal liberty - taken together with the very nature of his affliction - diminished mental capacity - compelled this conclusion.

McGlinchey v. UK, ECtHR 29 April 2003, App. No. 50390/99

The applicants were the relatives of a female prisoner who died in hospital after suffering from severe withdrawal symptoms from heroine. They claimed violations of Article 3 (prohibition on inhuman and degrading punishment) on the grounds that she did not receive adequate medical care while in prison. The ECtHR recalled that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 and that the assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance. The ECtHR found that the prison authorities had failed to adequately monitor the prisoner's weight and to take more effective steps to treat her condition. Thus, they had violated their responsibility to provide the requisite medical care for detained persons and had failed to meet the standards imposed by Article 3 of the Convention.

Price v. United Kingdom, ECtHR 10 July 2001, App. No. 33394/96

The applicant was a four-limb deficient British woman suffering from kidney problems who was detained in police custody and prison for a week for contempt of court. She complained her detention conditions were not adapted to her disability and that she was subjected to inhuman and degrading treatment in contravention of Article 3 ECHR. The ECtHR found that, although there was no evidence of any positive intention to humiliate or debase the applicant, the Court considered that to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment contrary to Article 3 of the Convention.

Vincent v. France, ECtHR 24 October 2006, App no. 6253/03

The application concerned a paraplegic prisoner who claimed that his prison accommodation was not suited to a wheelchair and that these conditions constituted degrading or inhuman treatment or punishment, contrary to Article 3 of the ECHR. The ECtHR confirmed the right of every prisoner to detention conditions in conformity with human dignity, such as to ensure that the means of execution of the measures taken do not subject the person to distress or hardship of an intensity exceeding the inevitable level of suffering inherent in detention. It added that, in addition to the health of the prisoner, his or her well-being must be adequately ensured, with due regard to the practical demands of imprisonment. Thus, a lack of medical treatment and the detention of an ill person in inadequate conditions can constitute a violation of Article 3. The Court found that although there was no positive intention to debase or humiliate the applicant, nevertheless the decision to hold him in a prison without disabled facilities that allowed him to get around independently constituted degrading treatment and a violation of Article 3.

Florea v. Romania, 14 September 2010, App. No. 37186/03

The applicant suffered from chronic hepatitis and arterial hypertension at the time of his imprisonment. He was detained for 2 or 3 years in overcrowded cells shared with other prisoners who were smokers, despite his doctor's advice to avoid smoke, and his health deteriorated as a result. The applicant complained of a violation of Article 3. The ECtHR observed that, far from depriving persons of their rights under the Convention, imprisonment

in some cases called for enhanced protection of vulnerable individuals. The State has to ensure that all prisoners were detained in conditions which respected their human dignity, that they were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised. The Court held that the applicant's detention with smokers despite his illness and the advice of his doctor, in addition to the levels of overcrowding and poor hygiene in the prison, reached the level of gravity required for a breach of Article 3.

Raffray Taddei v. France, 21 December 2010, App. No. 36435/07

A prisoner with anorexia, Munchausen's syndrome and respiratory conditions complained of the prison authorities' failure to provide her with appropriate treatment for her health problems or to release her from prison for treatment despite medical advice. The ECtHR held that there was no breach of Article 3 in relation to the applicant's respiratory problems as these had been adequately addressed by her medical care. However, the Court noted that none of the recommendations for the treatment of her anorexia and related Munchausen's syndrome had been followed. The Court concluded that the failure by the national authorities sufficiently to take into account the need for specialised care in an adapted facility, as required by the applicant's state of health, combined with her transfers, despite her particular vulnerability, and with the prolonged uncertainty following her requests for deferment, were capable of causing her distress that exceeded the unavoidable level of suffering inherent in detention. The Court therefore found a violation of Article 3.

Renolde v. France, ECtHR 16 October 2008, App No. 5608/05

The applicant's brother, who suffered from mental illness and had attempted suicide, was put in solitary confinement for assault on a prison officer. He was given psychiatric medication but there was no supervision as to whether he actually took it. He eventually committed suicide. The applicant claimed violations of Article 2 (right to life) and Article 3 (degrading or inhuman treatment or punishment) ECHR in respect of her brother's treatment. On Article 2, the ECtHR emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. In the case of mentally ill persons, regard must be had to their particular vulnerability. The Court held that in the present case there was a real risk that Mr Renolde would attempt suicide and the authorities, who were aware of that risk, should have taken steps to prevent it through proper medical provision. Furthermore, he should not have been held in solitary confinement in view of his mental state and suicide attempts. There had thus been a violation of Article 2. Regarding Article 3, The Court held that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment. Treatment of a mentally ill person may be incompatible with the standards imposed by Article 3 in the protection of human dignity, even though that person may not be able or in a position to point to any specific ill-effects. The Court considered that the penalty of solitary confinement was not compatible with the standard of treatment required in respect of a mentally ill person and constituted inhuman and degrading treatment and punishment, violating Article 3.

Keenan v. UK, ECtHR 3 April 2001, App. No. 27229/95

The applicant was the mother of a young man with psychiatric problems who committed suicide in prison after being placed in solitary confinement for assault on two prison officers. The applicant complained of violations of Article 2 (right to life) and Article 3 (inhuman and degrading treatment or punishment). On Article 2, the ECtHR found that Mr Keenan had not

been diagnosed with schizophrenia and was therefore not a manifest suicide risk and that the authorities made a reasonable response to his conduct. He was subject to daily medical supervision by the prison doctors, who found him fit for segregation. There was no reason to alert the authorities on the day of his death that he was in a disturbed state of mind rendering an attempt at suicide likely. There had therefore been no breach of Article 2. On Article 3, The Court found that there had been a lack of effective monitoring of Mr Keenan's condition and a lack of informed psychiatric input into his assessment and treatment, despite the fact he was mentally ill and at risk of suicide. The imposition on him in those circumstances of a serious disciplinary punishment was not compatible with the standard of treatment required in respect of a mentally-ill person. There had therefore been a violation of Article 3.

De Donder and De Clippel v. Belgium, 6 December 2011, App. No. 8595/06

The applicants were the parents of a young man with psychiatric problems who committed suicide in prison. There was an order to detain Mr De Clippel on the psychiatric wing of Ghent prison but he was in fact detained in an ordinary cell with others and then placed in segregation for punishment. A few days later he committed suicide. On Article 2, the Court observed that the applicant's son was doubly vulnerable to the risk of suicide as there is an elevated instance of suicide in prison and he was suffering from diagnosed schizophrenia, a mental disorder entailing a high risk of suicide. Furthermore, Mr De Clippel's violent and disturbed behaviour before and after his arrival at the prison should have aroused the authorities' attention. Furthermore, although he had not given any warning signs, the authorities should have been aware that there was a real risk that a young man suffering from mental disorders might attempt suicide while in an ordinary prison environment. Therefore there had been a violation of Article 2, and the Court held that there was no need to determine whether there had also been a violation of Article 3.

M.S. v. UK, ECtHR 3 May 2012, App. No. 24527/08

The applicant, who was suspected of assaulting his aunt, was mentally ill and detained in a police cell for over 3 days awaiting transfer to a psychiatric hospital. His mental condition rapidly deteriorated in the absence of treatment. He complained of violations of Article 3 (inhuman and degrading treatment). The ECtHR held that the applicant's initial detention was necessary in view of the danger he posed to himself and others and that the authorities had not intended to treat the applicant in a manner incompatible with Article 3. However, the applicant had been in a state of great vulnerability throughout his detention at the police station as was in dire need of appropriate psychiatric treatment. The situation had diminished excessively his fundamental human dignity and had breached Article 3.

Aerts v. Belgium, ECtHR 30 July 1998, App. No. 61/1997/845/1051

The applicant was convicted of seriously assaulting his ex-wife. He was found to be mentally ill and the Mental Health Board ordered that he be held in a social protection centre. He was kept on the psychiatric wing of an ordinary prison for 7 months pending transfer to the centre. The ECtHR held that Article 5.1 (right to liberty and security) had been breached as the prison psychiatric wing could not be regarded as an institution appropriate for the detention of persons of unsound mind in the absence of regular medical attention and a therapeutic environment. The applicant's detention was therefore unlawful. However, the Court held that the living conditions on the psychiatric wing did not seem to have had such serious effects on the applicant's mental health as would bring them within the scope of Article 3. The Court admitted that it is unreasonable to expect a severely mentally disturbed person to give a detailed or coherent description of what he has suffered during his detention. However, even

in view of this, it had still not been conclusively established that the applicant suffered treatment that could be classified as inhuman or degrading in breach of Article 3.

Rupa v. Romania, ECtHR 16 December 2008, App. No. 58478/00

The applicant suffered from long-term mental illness and was registered as disabled. He alleged that he had been ill-treated by police and held in inhuman and degrading conditions in police cells on several occasions, in violation of Article 3 (inhuman and degrading treatment or punishment). The ECtHR observed that on the occasions that the applicant was arrested, he had been physically mistreated, no efforts were made to have him medically examined despite his mental disorders and no special measures had been envisaged to avoid the risks inherent in the arrest of a person with behavioural disorders. The Court further noted that the applicant's detention in a police holding room furnished only with metal benches was manifestly unsuitable for the detention of a person with the applicant's medical problems, and that he had not undergone a medical examination. The authorities had been under an obligation to have him examined by a psychiatrist as soon as possible in order to determine whether his psychological condition was compatible with detention, and what therapeutic measures should be taken. There had therefore been a violation of Article 3.

Rivière v. France, ECtHR 11 July 1996, App. No. 33834/03

The applicant was serving a life prison sentence without parole for 15 years for murder. He applicant complained about his continued detention in prison despite his mental illness, which required treatment outside. The ECtHR noted that although the ECHR does not contain any provision specific to detained persons who are ill, this does not exclude the possibility of the detention of an ill person falling under Article 3. A lack of appropriate medical care and, more generally, the detention of an ill person in inadequate conditions, can in principle constitute treatment contrary to Article 3. The applicant's detention without appropriate medical care constituted a particularly painful experience that subjected him to a level of distress exceeding the inevitable level of suffering inherent in detention. Thus there had been a breach of Article 3.

Dybeku v. Albania, 18 December 2007, App. No. 41153/06

The applicant, a schizophrenic, was serving a life sentence for murder. He was treated as an ordinary prisoner despite his mental health problems and was not provided with the medical treatment he needed. His applications for release or transfer for treatment were denied. The applicant complained of breaches of Article 3 (inhuman or degrading treatment or punishment) and Article 6 (right to a fair trial). The ECtHR held that the applicant's treatment as an ordinary prisoner despite his mental health problems and vulnerability breached Article 3.

Papon v. France, ECtHR 7 June 2001, App. No. 64666/01

The applicant was a 90 year old man sentenced to 10 years imprisonment. He submitted that the combination of his extreme old age and his state of health meant that his detention was in breach of Article 3 of the Convention. The ECtHR noted that, while none of the provisions of the Convention expressly prohibits imprisonment beyond a certain age, under certain circumstances, the detention of an elderly person over a lengthy period might raise an issue under Article 3. Nonetheless, regard is to be had to the particular circumstances of each specific case. The Court noted that a doctor had described the applicant's overall condition as "good", his detention conditions were satisfactory and he had regular contact with friends and family. While he was not enjoying the same quality of life as he would if he were still at liberty, the Court noted that the national authorities had made as much allowance as possible for the applicant's state of health and his age. The Court concluded that, having assessed the

facts as a whole, the applicant's situation did not attain a sufficient level of severity to come within the scope of Article 3 of the Convention. Therefore there was no violation of Article 3.

Children

Guvec v. Turkey, ECtHR , 20 January 2009, App. No. 70337/01

The applicant was a 15 year old boy detained in an adult prison for five years for his alleged membership of an illegal association. He complained of violations of Article 3 (prohibition on inhuman and degrading treatment). The ECtHR held that the applicant's treatment reached the minimum level of severity to fall within the scope of Article 3 of the Convention. His detention in adult prison, coupled with a lack of legal advice and legal representation and the fact he was being tried for an offence carrying the death penalty undoubtedly caused the applicant's psychological problems, which led to his repeated attempts to take his own life. The Court considered that the national authorities were not only directly responsible for the applicant's problems, but also manifestly failed to provide adequate medical care for him and took no steps to prevent the applicant's repeated attempts to commit suicide. The Court thus held there was a violation of Article 3 of the Convention.

Nart v. Turkey, ECtHR 6 May 2008, App. No. 20817/04

The case concerned a 17 year old Turkish national arrested for armed robbery. The applicant denied the charges when questioned but was remanded in custody. He was sent to Buca prison, where he was detained with adults for 48 days pending trial. He was convicted by the Juvenile Court of robbery and sentenced to one year and 8 months imprisonment. The judgment was quashed by the Court of Cassation and sent back to the Juvenile Court for review, where it was still pending at the time of the case before the ECtHR. The applicant invoked violations of Article 5.3 and 5.4, complaining that his detention on remand exceeded the reasonable time requirement and that he had no effective remedy to challenge the lawfulness of his detention on remand.

Article 5.3 and 5.4: The ECtHR recalled that the pre-trial detention of minors should be used only as a measure of last resort; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults. The Court found that the length of the applicant's detention was not justified. Furthermore, the Court noted that he was a minor and was held with adults. In view of this, it was found that the length of the applicant's pre-trial detention contravened Article 5.3 of the Convention. There was also a violation of Article 5.4 as the applicant's objection to his detention was not properly considered by the domestic courts.

Bouamar v Belgium, ECtHR 29 February 1988, App. No. 9106/80

This case concerned the detention of a Moroccan national, a minor at the material time, living in Belgium. He had a disturbed personality and was placed in various care homes. Suspected of certain offences, the applicant was provisionally detained in Lantin remand prison on nine different occasions for up to 15 days each between January and November 1980, coming to a total of 119 days. Between these short periods of detention, the applicant was put under the supervision of his family. The authorities justified each period of detention on the grounds that no juvenile reformatory could accept the applicant due to his behaviour. The applicant submitted that the orders detaining him in the remand prison at Lantin on nine successive occasions in 1980 were contrary to Article 5.1 ECHR (right to liberty and security). Furthermore, he alleged a violation of Article 5.4 as he had not been represented by a lawyer at his trial in the Juvenile Court.

Article 5.1: The ECHR considered the detention of a minor pending the making of a court order placing the child in care permissible as long as it “furthered an educational aim” (Art 5.1(d)). At the time of the events in issue, Belgium did not have any closed institution able to accommodate highly disturbed juveniles. The detention of a young man in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training could not be regarded as furthering any educational aim. The Court accordingly concluded that the nine placement orders, taken together, were not compatible with Article 5.1(d). Their fruitless repetition had the effect of making them less and less "lawful", especially as Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him.

Article 5.4: The Court further held that the applicant should have been represented by his lawyers at the hearings before the Juvenile Court. The mere fact that the applicant - who was very young at the time - appeared in person before the court did not, in the circumstances of the case, afford him the necessary safeguards. Furthermore, the applicant's appeals to domestic courts had no practical effect. Thus, there had been a breach of Article 5.4.

Annex VI

Estimates of affected population

Table A1.1 Estimates of affected population: (Estimated) numbers of suspected and accused children through specific stages of the criminal proceedings in the EU 27 in 2008

EU jurisdiction	(Estimated) numbers of children in formal contact with the police in 2008	Estimated numbers of children detained pre- trial in 2008	Estimated numbers of children on trial in 2008
Austria	**35,912**	*200*	*12,000*
Belgium	*20,000*	*300*	*15,000*
Bulgaria	**6,316**	*200*	*11,000**
Cyprus	*1,500*	*0*	*1,000*
Czech Republic	**8,737**	*300*	*15,000**
Denmark	*10,000*	*200*	*8,000*
Estonia	**2,227**	*0*	*2,000*
Finland	**38,574**	*200*	*8,000*
France	**207,821**	*1,900*	*92,000*
Germany	**265,771**	*2,400*	*119,000*
Greece	**7,748**	*300*	*16,000**
Hungary	**13,511**	*300*	*15,000**
Ireland	*8,000*	*100*	*6,000*
Italy	**31,826**	*1700*	*86,000**
Latvia	**2,257**	*100*	*3,000*
Lithuania	**3,418**	*100*	*5,000**
Luxembourg	**2,145**	*0*	*700*
Malta	**282**	*0*	*600**
Netherlands	**84,115**	*500*	*24,000*
Poland	**52,081**	*1,100*	*55,000**
Portugal	**3,619**	*300*	*15,000**
Romania	**13,831**	*600*	*31,000**
Slovakia	**6,196**	*200*	*8,000**
Slovenia	**1,474**	*0*	*3,000**
Spain	**18,749**	*1,300*	*65,000**
Sweden	**30,286**	*300*	*13,000*
United Kingdom	**210,660**	*1,800*	*88,000*
EU total	***1,086,000***	***14,000***	***719,000***

Source: UNODC, Eurostat and ICF GHK estimates

Note 1 explaining estimates reported in the column "(Estimated) numbers of children in formal contact with the police":

- Numbers in **bold** are the numbers of children in formal contact with the police as reported by Member States to the UNODC for the year 2008. UK data come from the

Office of National statistics and refer to England and Wales only for the year 2010-2011.

- UNODC data are provided by Member States. They rely on the acceptation by Member states of the terminology used for the collection of data. As a matter of example, "in formal contact with police" has a different meaning or consequences in national criminal procedure from one State to another one.
- 2008 data has been used as Member States do not provide every year all data. 2008 is supposed to be the year with the highest number of data. In addition, trends in criminal statistics between 2008 and 2011 are not significant, except for UK where a significant decrease of juvenile offender has been recorded.
- Estimated numbers in *italics* have been calculated on the basis that 1.8 persons for every 1000 persons in the general population are children in formal contact with the police. This estimate has been calculated on the basis of statistics reported by 22 Member States to the UNDOC in 2008 on the number of children in formal contact with the police (i.e. all member States but BE, CY, DK, IE and UK).
- Estimates have been rounded up to the nearest thousand.

Note 2 explaining estimates reported in the column "Estimated numbers of children detained pre- trial in 2008":

- The estimates in these columns have been calculated on the basis that 0.029 persons per 1000 persons in the general population are children in pre-trial detention. These estimates have been calculated:
- on the basis of statistics reported by 23 Member States to the UNDOC in 2008 on the number of overall persons in pre-trial detention (i.e. all member States but BE, DK, LU and UK), and
- following the rationale that the proportion of children detained pre-trial mirrors the proportion of children in contact with the police. Hence, the basis for these estimates are the proportion of children in the overall offender population in formal contact with the police (i.e. 10%) using statistics reported by 23 Member States to the UNDOC in 2008 on the number of children in formal contact with the police (i.e. all member States but BE, CY, LU and UK).
- Estimates have been rounded up to the nearest hundred.

Note 3 explaining estimates reported in the column "Estimated numbers of children on trial in 2008":

- The estimates in these columns have been calculated on the basis that 1.4 persons for every 1000 persons in the general population are children on trial. These estimates have been calculated :
- On the basis of statistics reported by 18 Member States to the UNDOC in 2008 on the number of overall persons on trial (i.e. all member States but BE, CY, EE, EL, IE, IT, LU, ES and SE)
- following the rationale that the proportion of children on trial mirrors the proportion of children in formal contact with the police. Hence, the basis for these estimates are the proportion of children in the overall offender population in formal contact with the police (i.e. 10%) using statistics reported by 22 Member States to the UNDOC in

2008 on the number of children in formal contact with the police (i.e. all Member States but BE, CY, DK, IE and UK).

- Estimates have been rounded up to the nearest thousand.
- Note that the estimates marked with a star "*" do lead to a higher estimates of the number of children on trial than of the numbers of children in formal contact with the police. The numbers of the children in formal contact with the police as reported by the Member States to the UNODC in 2008 – see Note 1 – have been used. However, due to probable difference in definition of data collection, in several cases the numbers in contact with the police are less than the numbers prosecuted and convicted persons on a specific year. The explanation is that a child might be on trial without coming in formal contact with the police (understood as a formal arrest by police).

Table A1.2 Minimum and maximum estimates of the overall number of suspected and accused vulnerable adults through specific stages of the criminal proceedings in the EU 27 in 2008

EU jurisdiction	Estimated minimum numbers of vulnerable adults in contact with the police in 2008	Estimated maximum numbers of vulnerable adults in contact with the police in 2008	Estimated minimum numbers of vulnerable adults detained pre-trial in 2008	Estimated maximum numbers of Vulnerable adults detained pre-trial in 2008	Estimated minimum numbers of Vulnerable adults on trial in 2008	Estimated maximum numbers of Vulnerable adults on trial in 2008
Austria	*6,000*	*12,000*	500	700	*5,000*	*10,000*
Belgium	*8,000*	*15,000*	600	900	*6,000*	*12,000*
Bulgaria	*6,000*	*11,000*	400	700	*4,000*	*9,000*
Cyprus	*0*	*1,000*	0	100	*0*	*1,000*
Czech Republic	*7,000*	*15,000*	600	900	*6,000*	*12,000*
Denmark	*4,000*	*8,000*	300	500	*3,000*	*6,000*
Estonia	*1,000*	*2,000*	100	200	*1,000*	*2,000*
Finland	*4,000*	*8,000*	300	500	*3,000*	*6,000*
France	*46,000*	*92,000*	3,700	5,500	*37,000*	*74,000*
Germany	*59,000*	*119,000*	4,700	7,100	*47,000*	*95,000*
Greece	*8,000*	*16,000*	600	1,000	*6,000*	*13,000*
Hungary	*7,000*	*15,000*	600	900	*6,000*	*12,000*
Ireland	*3,000*	*6,000*	300	400	*3,000*	*5,000*
Italy	*43,000*	*86,000*	3,400	5,200	*34,000*	*69,000*
Latvia	*2,000*	*3,000*	100	200	*1,000*	*3,000*
Lithuania	*2,000*	*5,000*	200	300	*2,000*	*4,000*
Luxembourg	*0*	*1,000*	0	0	*0*	*1,000*
Malta	*0*	*1,000*	0	0	*0*	*1000*
Netherlands	*12,000*	*24,000*	900	1,400	*9,000*	*19,000*
Poland	*28,000*	*55,000*	2,200	3,300	*22,000*	*44,000*
Portugal	*8,000*	*15,000*	600	900	*6,000*	*12,000*
Romania	*16,000*	*31,000*	1,200	1,900	*12,000*	*25,000*
Slovakia	*4,000*	*8,000*	300	500	*3,000*	*6,000*

Slovenia	*1,000*	*3,000*	100	200	*1,000*	*2,000*
Spain	*33,000*	*65,000*	2,600	3,900	*26,000*	*52,000*
Sweden	*7,000*	*13,000*	500	800	*5,000*	*11,000*
United Kingdom	*44,000*	*88,000*	3,500	5,300	*35,000*	*71,000*
EU total	***358,000***	***719,000***	**29,000**	**43,000**	***287,000***	***575,000***

Source: UNODC, Eurostat and ICF GHK estimates

Note 4 explaining estimates reported on overall number of vulnerable adults in formal contact with the police:

- The estimates in the first two columns have been calculated on the basis that from 0.7 to 1.4 persons for every 1000 persons in the general population are vulnerable adults in contact with the police. These estimates have been calculated:
    - On the basis of statistics reported by 22 Member States to the UNDOC in 2008 on the number of overall persons on in contact with the police (i.e. all Member States but BE, CY, DK, IE and UK), and,
    - On minimum and maximum estimates of the proportion of vulnerable adults in contact with the police in the overall offender population ranging from 4% to 8%. These minimum and maximum estimates have been calculated on the basis of the prevalence rate of mental and physical disabilities in the general population as reported by the Eurostat Labour Force Survey. It is reasonable to assume that the proportion of vulnerable adults in the offender population is slightly higher than for the general population. The minimum proportion of adults suffering from one of those two disabilities was in Luxembourg (1.5%) and the maximum in France (6.4%).

Note 5 explaining estimates reported on overall number of vulnerable adults in pre-trial detention:

- The estimates in the third and fourth columns have been calculated on the basis that from 3.6 to 5.4 persons for every 1000 persons in the general population are vulnerable adults in pre-trial detention. These estimates have been calculated:
    - on the basis of statistics reported by 23 Member States to the UNDOC in 2008 on the number of overall persons in pre-trial detention (i.e. all member States but BE, CY, LU and UK), and
    - On minimum and maximum estimates of the proportion of vulnerable adults in the overall offender population in pre-trial detention ranging from 20% to 30%. This estimated range from 20% to 30% of the overall offender population detained at pre-trial stage has been assumed as representative of the vulnerable adult population in pre-trial detention. The estimates have been derived from available research in the UK showing a higher likelihood of vulnerable defendants to be detained pre-trial than the average offender population.

Note 6 explaining estimates reported on overall number of vulnerable adults on trial:

- The estimates in the last two columns have been calculated on the basis that from 0.6 to 1.2 persons for every 1000 persons in the general population are vulnerable adults on trial. These estimates have been calculated:

- On the basis of statistics reported by 18 Member States to the UNDOC in 2008 on the number of overall persons on trial (i.e. all member States but BE, CY, EE, EL, IE, IT, LU, ES and SE) and,
- On minimum and maximum estimates of the proportion of vulnerable adults on trial in the overall offender population from ranging from 4% to 8%. These minimum and maximum ranges have been estimated on the basis of the prevalence rate of mental and physical disabilities in the general population as reported by the Labour Force Survey. It has been assumed that the proportion of vulnerable adults in the offender population is slightly higher than for the general population. The minimum proportion of adults suffering from one of those two disabilities was in Luxembourg (1.5%) and the maximum in France (6.4%).

Annex VII
Method for estimating the cost

1. Limitations of estimating the economic costs of the safeguards using national data[171]

It was originally intended to base the estimates on the costs of safeguards on the use of national data on populations affected and the relative costs per Member State (taking into account national wages). However, this approach had to modified for the following reasons:

- The data on population did not appear to be coherent at Member State level.
- In some cases data as reported by Member States to the UNODC are missing.
- According to the data available,there are very marked variations in the rates per thousand of (potentially) affected population in each country. This is probably due to different collection methods in Member States.
- The absolute unit costs of the safeguards at national level reflect the wage rates and wealth of the respective countries. The "affordability" of the safeguards (costs relative to national wealth) will be similar unless there are very marked differences in the numbers coming into contact with the judicial process and the national dataare not a good basis for cross national comparisons.

2. Approach to estimating the economic costs of the respective safeguards:

The approach to estimating the economic costs involved 6 steps:

- The UNODC (and other) datawere used to generate EU averages (rates per thousand population) for the estimated 'max' and 'min' population saffected by each safeguard.
- An average EU level unit cost (per vulnerable person) has been estimated for each safeguard taking intco account of the time inputs of professional and the costs of this.
- Where appropriate, one-off costs have been specified for each safeguard at EU and/or national level.
- Countries which are affected by the safeguar have been identified.
- To estimate the costs of each policy option, the estimates (min and max.) of the affected population have been multiplied by the unit costs.
- Where data at the national level are considered reliable, the relevant national level estimates may be refined.

Annex VIII General Cost calculations

Policy proposal 3.1 (children and vulnerable adults) to require the assessment of vulnerability

Policy proposal 3.1 (children and vulnerable adults) has no additional costs to the baseline; all Member States meet the standard.

Policy proposal 4.1 (children and vulnerable adults) to require the assessment of vulnerability

Table B1.1 Estimated cost of policy proposal 4.1 to require the systematic assessment of vulnerability for children and vulnerable adults

EU jurisdiction	Policy proposal 4.1		
	Costs of assessments of children (000's euro)	Minimum costs of assessment of vulnerable persons (000's euro)	Maximum costs of assessments of vulnerable persons (000's euro)
Austria	825	412	819
Belgium	689	529	1,050
Bulgaria	391	379	752
Cyprus	51	39	78
Czech Republic	533	515	1,022
Denmark	354	272	539
Estonia	84	66	132
Finland	741	263	522
France	5,406	3,174	6,301
Germany	6,928	4,077	8,094
Greece	553	556	1,104
Hungary	586	498	989
Ireland	284	218	433
Italy	2,811	2,956	5,869
Latvia	121	113	224
Lithuania	181	167	331
Luxembourg	49	24	48
Malta	20	20	40
Netherlands	1,810	813	1,615
Poland	2,234	1,890	3,752
Portugal	473	526	1,045
Romania	1,047	1,067	2,119
Slovakia	300	268	532
Slovenia	100	100	198

EU jurisdiction	Policy proposal 4.1		
	Costs of assessments of children (000's euro)	Minimum costs of assessment of vulnerable persons (000's euro)	Maximum costs of assessments of vulnerable persons (000's euro)
Spain	2,061	2,245	4,458
Sweden	782	455	904
United Kingdom	5,333	2,100	4,175
EU sub-total	34,749	23,742	47,146
EU total 4.1 (min)	**58,491**		
EU total 4.1 (max)	**81,895**		

Assumptions underpinning estimates of the costs of policy proposals 4.1 for children and vulnerable adults

The costs incurred as a result of policy proposal 4.1 are due to the costs of screening mechanisms, in-depth assessments and situational analysis conducted by various stakeholders (e.g. police, prosecutors, social workers and medical experts).

The estimates of the costs of **policy proposal 4.1 (children)** is based on the following assumptions:

(b) All Member States are in scope and would be affected by the proposal as they currently conduct only a case by case assessment of vulnerability.

(c) In-depth assessment would be conducted at three points in time (arrest, pre-trial detention and trial). The repeat in-depth assessment would be to ensure that the circumstances of the suspected or accused child have not changed.

(d) It is assumed that 50% of children need an in-depth assessment of their vulnerability. The assumption cannot be based on evidence since no evidence is available due to the relative novelty of the measure. It is estimated that only the 10% of children who commit serious crimes would necessitate a full situational analysis when charged.

(e) The cost of each in-depth assessment is assumed to be € 27.5 comprising 30 minutes of medical/criminal expert with hourly rate of €55.

(f) The cost of each situational analysis is assumed to be €135 comprising 1 hour of social worker (€18/h), 30 minutes of a medical expert (€55/h) and 1 hour of legal aid lawyer (€90/h).

The estimate of the costs of **policy proposal 4.1 (vulnerable adults)** is based on the following assumptions:

(a) All Member States are in scope and would be affected by the proposal as they currently conduct only a case by case assessment of vulnerability.

(b) In-depth assessments would be conducted at three points in time (arrest, pre-trial detention and trial). The repeat in-depth assessment would be to ensure that the circumstances of the suspected or accused vulnerable adults have not changed.

(c) It is assumed that 100% of vulnerable adults would be screened; 50% would be subject to an in-depth assessment and 20% would be subject to a situational analysis. The latter would only be conducted at the trial stage for persons who are accused of committing a serious crime.

(d) The cost of each screening is assumed to be €11.25 comprising of 5 minutes of police officer (15€/h); 5 minutes of prosecutor (30€/h) and 5 minutes of legal aid lawyer (90€/h).

The 5 minutes comprise the time needed by a police officer, prosecutor or a lawyer for a first screening of the vulnerable person and communication that the person suspected or accused shows signs of vulnerability. These costs cover only the first screening. They need to be distinguished from the costs for mandatory defense which are indicated below, see tables B 1.5 and B 1.6.

The cost of each in-depth assessment is estimated to be €27.5 comprising 30 minutes of medical/criminal expert with hourly rate of €55. The cost of each situational analysis is estimated to be €135 comprising 1 hour of social worker (18€/h), 30 minutes of a medical expert (55€/h) and 1 hour of legal aid lawyer (90 €/h).

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to estimate the costs of the policy proposal 4.1 (children) are as follows:

(a) **Cost of in-depth assessment:** Medical expert fee (€55) X 30 mins [50% (all suspected and arrested children at arrest, pre-trial detention and trial stages of Member States in scope]

(b) **Cost of situational analysis:** Cost of situational analysis (€135) X 10% of all suspected and arrested children on trial of Member States in scope

The formulae used to estimate the costs of the policy proposal 4.1 (vulnerable adults) are as follows:

(a) **Cost of screening:** Unit cost of screening one suspected and accused vulnerable adult (€11.25) X Population of suspected and accused vulnerable adults at arrest, pre-trial detention and trial stage in those Member states concerned

(b) **Cost of in-depth assessment:** Medical expert fee (€27.5) X [50% (all suspected and arrested vulnerable adults at arrest, pre-trial detention and trial stages of Member States in scope]

(c) **Cost of situational analysis:** Unit cost of situational analysis (€135) X 20% of all suspected and arrested vulnerable adults at trial stage of Member States in scope

Policy proposal 3.2 (children and vulnerable adults) to require special safeguards in relation to the assistance by parents or a person of trust

Table B1.2 Estimated cost of policy proposal 3.2 to require special safeguards in relation to the assistance by parents or a person of trust

	Policy proposal 3.2		
EU jurisdiction	Costs of assistance of children (000's euro)	Minimum costs of assistance of vulnerable adults (000's euro)	Maximum costs of assistance of vulnerable adults (000's euro)
Austria	118	6	11
Belgium	63	7	14
Bulgaria	21	5	10

EU jurisdiction	Policy proposal 3.2		
	Costs of assistance of children (000's euro)	Minimum costs of assistance of vulnerable adults (000's euro)	Maximum costs of assistance of vulnerable adults (000's euro)
Cyprus	5	1	1
Czech Republic	29	7	14
Denmark	32	4	7
Estonia	7	1	2
Finland	127	4	7
France	682	43	87
Germany	872	56	111
Greece	25	8	15
Hungary	44	7	14
Ireland	26	3	6
Italy	104	40	81
Latvia	7	2	3
Lithuania	11	2	5
Luxembourg	7	0	1
Malta	1	0	1
Netherlands	276	11	22
Poland	171	26	52
Portugal	12	7	14
Romania	45	15	29
Slovakia	20	4	7
Slovenia	5	1	3
Spain	62	31	61
Sweden	99	6	12
United Kingdom	691	0	0
EU sub-total	**3,564**	**295**	**591**
EU total 3.2 (min)	**3,859**		
EU total 3.2 (max)	**4,155**		

Assumption underpinning estimates of the costs of policy proposal 3.2 for children and vulnerable adults

The costs of policy proposal 3.2 mainly comprise the cost of custody officers arranging the phone calls and asking the legal representatives or appropriate third person to come to the police station immediately.

The estimates of the costs of **policy proposal 3.2 (children)** are based on the following assumptions:

(a) All Member States are in scope and would be affected at least in part by the proposal.

(b) It is assumed that 62.5% of all minors at the arrest stage would make 1 call and 12.5% of all children in long custody would make two calls

(c) The cost of arranging one call is €3.75 comprising of 15 minutes of a police officer (15€/h)

The estimate of the costs of **policy proposal 3.2 (vulnerable adults)** is based on the following assumptions:

(a) All Member States but the UK are in scope and would be affected at least in part by the proposal.

(b) 25% of all vulnerable adults at arrest stage would make 1 call

(c) The cost of arranging one call is €3.75 comprising of 15 minutes of a police officer (15 € hourly cost)

Detailed calculations for estimating the costs implications of the legislative policy proposal 3.2

The formulae used to estimate policy proposal 3.2 (children) are as follows:

(a) **Cost of arranging one call =** Police officer hourly wage (€15/h) x 15 mins X 62.5% of all children at arrest stage in the Member States concerned + Police officer hourly wage (€15/h) x 15 mins X 2 calls X 12.5% of all minors at arrest stage in the Member States concerned (i.e. long custody)

The formulae used to calculate policy proposal 3.2 (vulnerable adults) are as follows:

(b) Cost of arranging one call = Police officer hourly wage (€15/h) x 15 mins X 25% of all vulnerable adults in the Member States concerned

Policy proposal 3.3 (children and vulnerable adults) to require medical assistance for children and vulnerable adults

Table B1.3 Estimated cost of policy proposals 3.3 to require medical assistance for children and vulnerable adults

EU jurisdiction	Policy proposal 3.3		
	Costs of medical assistance for children (000's euro)	Minimum costs of medical assistance for vulnerable adults (000's euro)	Maximum costs of medical assistance for vulnerable adults (000's euro)
Austria	0	0	0
Belgium	0	0	0
Bulgaria	0	0	0
Cyprus	0	0	0
Czech Republic	0	0	0
Denmark	0	0	0
Estonia	73	30	61
Finland	0	0	0
France	0	0	0
Germany	0	0	0

EU jurisdiction	Policy proposal 3.3		
	Costs of medical assistance for children (000's euro)	Minimum costs of medical assistance for vulnerable adults (000's euro)	Maximum costs of medical assistance for vulnerable adults (000's euro)
Greece	0	0	0
Hungary	0	0	0
Ireland	0	0	0
Italy	2,063	1,356	2,712
Latvia	0	0	0
Lithuania	145	77	153
Luxembourg	0	0	0
Malta	0	0	0
Netherlands	0	0	0
Poland	0	0	0
Portugal	0	0	0
Romania	0	0	0
Slovakia	0	0	0
Slovenia	0	0	0
Spain	0	0	0
Sweden	0	0	0
United Kingdom	0	0	0
EU sub-total	2,281	1,463	2,926
EU total 3.2 (min)	**3,744**		
EU total 3.2 (max)	**5,207**		

Assumption underpinning estimates of the costs of policy proposals 3.3 for children and vulnerable adults

The costs brought by policy proposals 3.3 and 4.3 include the medical assistance (upon request by children and vulnerable adults or their legal representatives.

The estimate of the costs of **policy proposal 3.3 (children)** is based on the following assumptions:

(a) Estonia, Italy and Lithuania are in scope; all other Member States meet the standard.

(b) The costs brought by this policy proposal include the provision of medical assistance to 50% of children upon request by them and/or their parents or a person of trust. Medical assistance could be provided at arrest and trial stage[172].

(c) The cost of medical assistance per person is estimated to be €35 lump sum fee corresponding to a non-specialised general practitioner[173].

The estimate of the costs of **policy proposal 3.3 (vulnerable adults)** is based on the following assumptions:

(a) Estonia, Italy and Lithuania are in scope; all other Member States meet the standard.

(b) The costs brought by this policy proposal include the provision of medical assistance upon request to 50% of vulnerable adults. Medical assistance could be provided in two points in time (arrest and trial stage).

(c) The cost of medical assistance per person is estimated to be €35 lump sum fee corresponding to a non-specialised general practitioner[174].

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 3.3 (children) are as follows:

(a) **Cost of medical assistance:** €35 lump sum fee for a non-specialised general practitioner or doctor X 50% of all minors at arrest and trial stage in the Member States concerned

The formulae used to calculate policy proposal 3.3 (vulnerable adults) are as follows:

(a) **Cost of medical assistance:** €35 lump sum fee for a non-specialised general practitioner or doctor X 50% of overall number of vulnerable adults benefit from safeguard at arrest stage, prosecution stage and trial stage in the Member States concerned

Policy proposal 4.3 (vulnerable adults) to require medical assistance

Table B1.4 Estimated cost of policy proposal 4.3 to require medical assistance for vulnerable adults

EU jurisdiction	Policy proposal 4.3	
	Minimum costs of medical assistance for vulnerable adults (000's euro)	Maximum costs of medical assistance for vulnerable adults (000's euro)
Austria	149	297
Belgium	191	381
Bulgaria	137	273
Cyprus	14	28
Czech Republic	185	371
Denmark	98	196
Estonia	24	48
Finland	-	-
France	1,144	2,287
Germany	1,469	2,938
Greece	200	401
Hungary	179	359
Ireland	79	157
Italy	1,065	2,131
Latvia	41	81
Lithuania	60	120
Luxembourg	9	17

EU jurisdiction	Policy proposal 4.3	
	Minimum costs of medical assistance for vulnerable adults (000's euro)	Maximum costs of medical assistance for vulnerable adults (000's euro)
Malta	7	15
Netherlands	-	-
Poland	-	-
Portugal	190	379
Romania	385	769
Slovakia	97	193
Slovenia	36	72
Spain	809	1,618
Sweden	-	-
United Kingdom	1,093	2,187
EU total 3.2	**7,660**	**15,320**

Assumption underpinning estimates of the costs of policy proposal 4.3 for vulnerable adults

The costs brought by policy proposal 4.3 include the medical assistance (upon request by children and vulnerable adults or their legal representatives.

The estimate of the costs of **policy proposal 4.3 (vulnerable adults)** is based on the following assumptions:

(a) All Member States but Finland, Netherland, Poland, and Sweden are in scope.

(b) The costs brought by this policy proposal include the provision of medical assistance upon request to 50% of vulnerable adults. Medical assistance could be provided in two points in time (arrest and trial stage)[175].

(c) The cost of medical assistance per person is estimated to be €27.5 comprising 30 mins of a medical expert (€55/h).

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 4.3 (vulnerable adults) are as follows:

(a) **Cost of medical assistance:** €27.5 fee for 30 mins of a medical expert X 50% of overall number of vulnerable adults benefit from safeguard at arrest stage, prosecution stage and trial stage in the Member States concerned[176].

Policy proposal 3.4 (children and vulnerable adults) to require access to a lawyer

Table B1.5 Estimated cost of policy proposals 3.4 to require access to a lawyer for children

EU jurisdiction	Policy proposal 3.4 Costs of mandatory access to a lawyer for children (000's euro)
Austria	2,522

EU jurisdiction	Policy proposal 3.4
	Costs of mandatory access to a lawyer for children (000's euro)
Belgium	0
Bulgaria	0
Cyprus	3
Czech Republic	0
Denmark	0
Estonia	0
Finland	2.677
France	11,862
Germany	27.451
Greece	0
Hungary	0
Ireland	0.977
Italy	0
Latvia	0
Lithuania	0
Luxembourg	110
Malta	0
Netherlands	1,139
Poland	0
Portugal	0
Romania	0
Slovakia	0
Slovenia	3
Spain	0
Sweden	6.366
United Kingdom	39.883
EU sub-total	92.996
EU total 3.4	**92.996**

Assumption underpinning estimates of the costs of policy proposal 3.4 for children

The costs brought by this policy proposal include the provision of legal aid to eligible minors and vulnerable adults if defence became mandatory.

The estimate of the costs of **policy proposal 3.4 (children)** is based on the following assumptions:

(a) Austria, Cyprus, Finland, France, Germany, Ireland, Luxembourg, Netherlands Slovenia, Sweden and the United Kingdom are totally or partly in scope; all other Member States meet the standard.

(b) In France, Netherlands and Slovenia additional costs apply only at the arrest stage. In France, additional costs would apply to only 16 and 17 year olds upon arrest who are estimated to be 60% of all arrested children.

(c) The percentages of children that receive legal aid in those countries are provided in the legal aid Impact Assessment and are based on figures provided in the CEPEJ report. The percentages of children eligible to receive benefit from this option are assumed to be 50% of all the children that do not have already access to a lawyer due to the impact foreseen by the implementation of the draft Directive on access to a lawyer. The maximum of children that not receive already legal assistance is the difference between the total population and the population of children that receive legal aid.

(d) The costs of emergency legal aid at the arrest stage and of legal aid at trial stage are provided in the legal aid Impact Assessment.

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 3.4 (children and vulnerable adults) are as follows:

(a) **Cost of legal aid:** ((number of children in formal contact with the police – number of children on trial) X emergency legal aid cost (100% - number of children subject to legal aid) / 2 + (number of children on trial X legal aid cost)) X (100% - % of suspected and accused persons receiving legal aid in the Member State)/2

Policy proposal 3.4 (vulnerable adults) to require access to a lawyer

Table B1.6 Estimated cost of policy proposal 3.4 to require access to a lawyer for vulnerable adults

EU jurisdiction	Policy proposal 3.4	
	Minimum costs of mandatory access to a lawyer for vulnerable adults (000's euro)	Maximum costs of mandatory access to a lawyer for vulnerable adults (000's euro)
Austria	0	0
Belgium	74	296
Bulgaria	0	0
Cyprus	1	2
Czech Republic	0	0
Denmark	3,897	7,794
Estonia	0	0
Finland	0	0
France	0	0
Germany	0	0
Greece	0	0
Hungary	0	0
Ireland	391	782
Italy	0	0

EU jurisdiction	Policy proposal 3.4	
	Minimum costs of mandatory access to a lawyer for vulnerable adults (000's euro)	Maximum costs of mandatory access to a lawyer for vulnerable adults (000's euro)
Latvia	0	0
Lithuania	0	0
Luxembourg	0	0
Malta	0	0
Netherlands	0	0
Poland	0	0
Portugal	0	0
Romania	0	0
Slovakia	0	0
Slovenia	0	0
Spain	0	0
Sweden	0	0
United Kingdom	18.303	36.606
EU total 3.4	**22.666**	**45.481**

Assumption underpinning estimates of the costs of policy proposal 3.4 for vulnerable adults

The costs brought by this policy proposal include the provision of legal aid to eligible minors and vulnerable adults if defence became mandatory.

The estimate of the costs of **policy proposal 3.4 (vulnerable adults)** is based on the following assumptions:

(a) Belgium, Cyprus, Denmark, Ireland and the United Kingdom are in scope; all other Member States meet the standard.

(b) In Belgium additional costs apply only at the arrest stage. In the other four countries, additional costs would apply both upon arrest and at trial.

(c) The percentages of vulnerable adults that receive legal aid in those countries are provided in the legal aid Impact Assessment and are based on figures provided in the CEPEJ report. In Belgium and Denmark where data were not available an assumption was made that 50% of vulnerable adults would be eligible to receive legal aid. The percentages of vulnerable persons eligible to receive benefit from this option are assumed to be 50% of all the children that do not have already access to a lawyer due to the impact foreseen by the implementation of the draft Directive on access to a lawyer. The maximum of vulnerable persons that not receive already legal assistance is the difference between the total population and the population of children that receive legal aid.

(d) The costs of emergency legal aid at arrest stage and of legal aid at trial stage are provided in the Impact Assessment on Legal Aid. [*These costs represent the cost of providing emergency legal aid for suspected and accused persons deprived of liberty in countries where it does not exist and in a number of countries where there is evidence that it is not properly working or where the first interrogation can take*

place before there is access to legal aid minus the costs savings because of an appreciated fall in pre-trial detention with 20 %. The sum has also been deducted with the sums which will be recovered from the suspected and accused persons who to ultimately not fulfil the eligibility test.]

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 3.4 (vulnerable adults) are as follows:

- **Cost of legal aid:** ((number of vulnerable adults in formal contact with the police – number of vulnerable adults on trial) X (100% - number of vulnerable persons subject to legal aid) / 2 X emergency legal aid cost + (number of vulnerable adults on trial X legal aid cost)) X (100% - % of suspected and accused persons receiving legal aid in the Member State)/2%.

Policy proposal 3.5 to require special safeguards for children and vulnerable adults during police interviews

Policy proposal 3.5 does not have additional costs; for training costs see below Table B1.8.

Policy proposal 4.5 to require special safeguards for children and vulnerable adults during police interviews

Table B1.7 Estimated cost of policy proposal 4.5 to require special safeguards for children and vulnerable adults during police interviews

EU jurisdiction	Policy proposal 4.5		
	Costs for children (000's euro)	Minimum costs of for vulnerable adults (000's euro)	Maximum costs for vulnerable adultss (000's euro)
Austria	99	17	33
Belgium	53	21	42
Bulgaria	0	0	0
Cyprus	4	2	3
Czech Republic	24	21	41
Denmark	27	11	22
Estonia	6	3	5
Finland	0	0	0
France	0	0	0
Germany	731	163	326
Greece	21	22	45
Hungary	37	20	40
Ireland	22	9	17
Italy	0	0	0
Latvia	6	5	9
Lithuania	9	7	13
Luxembourg	6	1	2

EU jurisdiction	Policy proposal 4.5		
	Costs for children (000's euro)	Minimum costs of for vulnerable adults (000's euro)	Maximum costs for vulnerable adultss (000's euro)
Malta	1	1	2
Netherlands	0	0	0
Poland	143	76	151
Portugal	10	21	42
Romania	38	43	85
Slovakia	17	11	21
Slovenia	4	4	8
Spain	52	90	180
Sweden	83	18	36
United Kingdom	0	0	0
EU sub-total	1394	563	1126
EU total 3.2 (min)	**1,957**		
EU total 3.2 (max)	**2,520**		

Assumption underpinning estimates of the costs of policy proposal 4.5 for children and vulnerable adults

The additional costs introduced by **policy proposal 4.5 (children and vulnerable adults)** consist of usage cost of the video and audio recording equipment.

The estimate of the costs of **policy proposal 4.5 (children and vulnerable adults)** is based on the following assumptions:

(a) All Member States but Bulgaria, Finland, France, Italy, Netherlands and United Kingdom are in scope.

(b) All Member States but 3 have already audio-video hardware for collecting testimony of victims (source IA on victims). The implementation of the Directive on the rights of victims will ensure that all Member States will make available and in use of the required hardware.

(c) Member State will only have to ensure that hardware is available both for victims and suspects and accused persons that are vulnerable.

(d) All children at arrest stage would be affected by the policy proposal.

(e) The cost of video recording is estimated to be €2.75 per session comprising of 10 mins of a police officer (for set up, recording and archiving) and 10% of additional cost to reflect usage costs of the equipment.

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 4.5 (children) are as follows:

(a) **Cost of video recording:** €2.75 per recording session X all minors at arrest stage in the Member States in scope

The formulae used to calculate policy proposal 4.5 (vulnerable adults) are as follows:

(a) **Cost of video recording:** €2.75 per recording session X all vulnerable adults at arrest stage in the Member States in scope

Policy proposal 3.6 and 4.6 to require special safeguards for children and vulnerable adults during the trial

These policy proposals do not have additional costs to the baseline for children or vulnerable adults.

Policy proposal 3.7 to require special safeguards in pre-trial detention for children and vulnerable adults

Table B1.9 Estimated cost of policy proposal 3.7 to require special safeguards in pre-trial detention for children and vulnerable adults

EU jurisdiction	Policy proposal 3.7		
	Costs for children (000's euro)	Minimum costs for vulnerable adults(000's euro)	Maximum costs for vulnerable adults (000's euro)
Austria	0	263	394
Belgium	0	337	506
Bulgaria	302	241	362
Cyprus	31	25	37
Czech Republic	410	328	492
Denmark	0	173	260
Estonia	0	42	64
Finland	0	168	251
France	0	2,023	3,034
Germany	0	2,598	3,898
Greece	443	366	549
Hungary	0	317	476
Ireland	0	139	209
Italy	0	1,944	2,917
Latvia	0	72	108
Lithuania	0	110	165
Luxembourg	0	15	23
Malta	0	13	19
Netherlands	0	518	778
Poland	0	1,205	1,807
Portugal	0	336	503
Romania	0	680	1,021
Slovakia	0	171	256
Slovenia	0	64	95

EU jurisdiction	Policy proposal 3.7		
	Costs for children (000's euro)	Minimum costs for vulnerable adults(000's euro)	Maximum costs for vulnerable adults (000's euro)
Spain	0	1,431	2,147
Sweden	0	290	435
United Kingdom	0	1,934	2,901
EU sub-total	1,186	15,803	23,705
EU total 3.2 (min)	**16,989**		
EU total 3.2 (max)	**24,891**		

Assumption underpinning estimates of the costs of policy proposal 3.8 for children and vulnerable adults

The costs of **policy proposal 3.7 (children)** refer to the re-organisation of detention facilities to ensure separate detention of children from adult detainees in EU Member States.

The calculation of the costs of **policy proposal 3.7 (children)** is based on the following assumptions:

(a) Bulgaria, Cyprus, Czech Republic and Greece are in scope.

(b) All children in pre-trial detention are affected by the measure.

(c) The cost does not take into account potential cost savings with regard to alternative measures of detention (e.g. release and monitoring). Evidence of cost savings related to alternatives show that the potential costs savings from such measures can represent up to 80% of the costs of pre-trial detention.

The costs of **policy proposal 3.7 (vulnerable adults)** mainly include the re-organisation pof detention facilities to ensure separate detention of vulnerable adults from other detaineeds. The amount does not account for potential cost savings with regard to alternative measures to detention.

The estimate of the costs of **policy proposal 3.7 (vulnerable adults)** is based on the following assumptions:

(a) All Member States are affected when calculating costs for separate detention facilities for vulnerable adults

(b) Italy, Greece and Lithuania are in scope when calculating costs for medical assistance from a GP in pre-trial detention.

(c) All vulnerable adults in pre-trial detention are affected by the safeguard of separate detention and 50% by medical assistance.

(d) Additional costs of separate detention facilities are estimated to be €5479 per inmate per year. The assumption is that vulnerable adults spend an average of a year in pre-trial detention. Separate detention facilities for vulnerable adults cost 12.5% than normal detention facilities. The costs are calculated pro-rata of the annual costs and pro-rata of the additional costs of accommodating vulnerable person.

(e) Cost of medical assistance is estimated to be €35 lump sum fee per vulnerable adult corresponding to a non-specialised general practitioner / doctor.

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 3.7 (children) are as follows:

(a) **Additional cost of separate detention facilities**: €5479 per inmate per year X 3 months X 100% of children in pre-trial detention in the Member States concerned.

The formulae used to calculate policy proposal 3.7 (vulnerable adults) are as follows:

(a) Additional cost of separate i detention facilities: €5479 per inmate per year X a year in pre-trial detention X 10% of vulnerable adults in pre-trial detention (suffering for multiple vulnerabilities) in the Member States concerned

(b) Cost of medical assistance: €35 lump sum fee per vulnerable adult corresponding to a non-specialised general practitioner or doctor X 50% of the vulnerable adult population detained at pre-trial stage

Policy proposal 4.7 to require special safeguards in pre-trial detention for children and vulnerable adults

Table B1.10 Estimated cost of policy proposal 4.7 to require special safeguards in pre-trial detention for children and vulnerable adults

EU jurisdiction	Policy proposal 4.7		
	Costs for children (000's euro)	Minimum costs for vulnerable adults (000's euro)	Maximum costs for vulnerable adults (000's euro)
Austria	0	1,328	1,991
Belgium	0	1,702	2,554
Bulgaria	2,415	1,219	1,829
Cyprus	249	126	189
Czech Republic	3,281	1,657	2,485
Denmark	0	874	1,311
Estonia	0	214	321
Finland	0	838	1,256
France	0	10,216	15,324
Germany	0	13,122	19,683
Greece	3,544	1,790	2,685
Hungary	0	1,603	2,405
Ireland	0	702	1,054
Italy	0	9,515	14,273
Latvia	718	362	544
Lithuania	0	537	806
Luxembourg	0	77	116
Malta	130	65	98
Netherlands	0	2,592	3,888
Poland	12,046	6,023	9,034

EU jurisdiction	Policy proposal 4.7		
	Costs for children (000's euro)	Minimum costs for vulnerable adults (000's euro)	Maximum costs for vulnerable adults (000's euro)
Portugal	0	1,695	2,542
Romania	6,804	3,436	5,154
Slovakia	0	862	1,293
Slovenia	0	321	481
Spain	0	7,227	10,841
Sweden	0	1,451	2,177
United Kingdom	0	9,766	14,650
EU sub-total	29,186	79,322	118,983
EU total 3.2 (min)	**108,508**		
EU total 3.2 (max)	**148,169**		

Assumption underpinning estimates of the costs of policy proposal 4.7 for children and vulnerable adults

The costs of **policy proposal 4.7 (children)** consist in particular of enhanced prison facilities for children to cater for educational needs.
The estimate of the costs of **policy proposal 4.7 (children)** is based on the following assumptions:

(a) Bulgaria, Cyprus, Czech Republic, Greece, Latvia, Malta, Poland, Romania are in scope.

(b) The affected population includes all children in pre-trial detention.

(c) Additional costs of enhanced facilities consist of €43,835 per inmate per year. The assumption is that children spend an average of 3 months in pre-trial detention. Enhanced facilities for children cost 100% more than normal prisoner quarters. The costs are calculated pro-rata of the annual costs and pro-rata of the additional costs of accommodating children.

The costs of **policy proposal 4.7 (vulnerable adults)** include medical expertise and recreational activities for the vulnerable population. Diverting vulnerable adults out of the judicial system is considered cost neutral for Member States.

The estimate of the costs of **policy proposal 4.7 (vulnerable adults)** is based on the following assumptions:

(a) All Member States but Finland, Netherland, Poland and Sweden for safeguard on medical expert only.

(b) The affected population includes all vulnerable in pre-trial detention and 50% benefiting from medical assistance in detention twice during the detention period.

(c) Additional costs of enhanced facilities are estimated to be €10,959 per inmate per year. The first assumption is that vulnerable adults spend an average of 12 months in pre-trial detention. The second assumption is that enhanced facilities for vulnerable adults cost 25% more than normal prisoner quarters. The costs are calculated pro-rata

of the annual costs and pro-rata of the additional costs of accommodating vulnerable persons.

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate policy proposal 4.7 (children) are as follows:

(a) **Additional cost of enhanced facilities:** €43,835 per inmate per year X 3 months X 100% of children in pre-trial detention in the Member States concerned.

The formulae used to calculate policy proposal 4.7 (vulnerable adults) are as follows:

(a) **Additional cost of separate detention facilities:** €10,959 per inmate per year X a year in pre-trial detention X 25% of vulnerable adults in pre-trial detention (suffering for multiple vulnerabilities) in the Member States concerned

(b) **Cost of medical assistance:** €27.5 hourly fee of a medical expert X 30 min X 50% of the vulnerable adult population detained at pre-trial stage in the Member States concerned

Specific training for professionals in contact with children and vulnerable adults *(training considered as a flanking measure)*

Table B1.11 Estimated cost of specific training for professionals in contact with children and vulnerable adults

EU jurisdiction	Policy proposal
	Total Cost per Member State (000's euro)
Austria	222
Belgium	318
Bulgaria	282
Cyprus	44
Czech Republic	351
Denmark	90
Estonia	27
Finland	69
France (metropolitan)	1,904
Germany	2.064
Greece	424
Hungary	281
Ireland	121
Italy	2,703
Latvia	71
Lithuania	92
Luxembourg	13
Malta	16
Netherlands	296
Poland	839

EU jurisdiction	Policy proposal
	Total Cost per Member State (000's euro)
Portugal	430
Romania	420
Slovakia	118
Slovenia	65
Spain	1,868
Sweden	153
UK Total	1,372
EU Total	€ 18,617

Assumption underpinning estimates of the costs for children and vulnerable adults

The estimate of the costs of **(children and vulnerable adults)** is based on the following assumptions:

(a) All Member States are in scope.

(b) The costs have been established on the basis that 12.5% of police officers, judges and prosecutors would be trained in the first year.

(c) The external legal experts providing the training would receive 100 EUR per hour of training. In this framework, it is assumed that each training package would involve 15 police officers, judges and prosecutors for 12 hours maximum in Member States that do not have specialised training around the need of vulnerable defendant.

(d) To calculate the eligible population of policeman 2008 Eurostat data were used for all countries but for Italy where 2006 data were used.

(e) To calculate the eligible population of judges and prosecutors CEPEJ data were used for all Member States but Germany (for judges) and Cyprus and Germany (for prosecutors). The Cypriot and German data were extrapolated from the average number of prosecutors per 1000 of population in the EU and rounded up to the next 10th for Cyprus and 1000 for Germany.

Detailed calculations for estimating the costs implications of the legislative policy proposals

The formulae used to calculate this proposal (children and vulnerable adults) are as follows:

(a) Cost of The external legal experts providing the training outside their working time = 12 hours X 1 legal expert hourly wage (€100) X number of training session

(b) **Number of training sessions for policemen =** Number of policemen in Member States X 12.5% / 15 (15 attendees per training session)

(c) **Number of training sessions for judges and prosecutors =** Number of judges and prosecutors in Member States X 12.5% / 15 (15 attendees per training session)

Annex IX Cost assessment per Member State

Total Costs per Member State (Euro)	Option 3		
	children	adult	
		4%	8%
Austria	2.640.000	269.000	406.000
Belgium	63.000	418.000	816.000
Bulgaria	323.000	247.000	373.000
Cyprus	39.000	27.000	41.000
Czech Republic	439.000	335.000	506.000
Denmark	32.000	4.074.000	8.061.000
Estonia	80.000	74.000	126.000
Finland	2.804.000	171.000	258.000
France	12.544.000	2.066.000	3.121.000
Germany	28.324.000	2.654.000	4.009.000
Greece	468.000	373.000	564.000
Hungary	44.000	324.000	490.000
Ireland	1.004.000	533.000	997.000
Italy	2.168.000	3.341.000	5.709.000
Latvia	7.000	73.000	111.000
Lithuania	156.000	189.000	322.000
Luxembourg	117.000	16.000	24.000
Malta	1.000	13.000	20.000
Netherlands	1.415.000	530.000	800.000
Poland	171.000	1.230.000	1.858.000
Portugal	12.000	343.000	518.000
Romania	45.000	695.000	1.050.000
Slovakia	20.000	174.000	263.000
Slovenia	8.000	65.000	98.000
Spain	62.000	1.462.000	2.208.000
Sweden	6.465.000	296.000	448.000
United Kingdom	40.575.000	20.237.000	39.508.000
Total	100.027.000	40.229.000	72.703.000

Total costs per Member State[177] (Euro)	Option 4		
	children	adults	
		4%	8%
Austria	3.564.000	1.911.000	3.152.000
Belgium	805.000	2.524.000	4.338.000
Bulgaria	2.826.000	1.740.000	2.865.000
Cyprus	312.000	182.000	301.000
Czech Republic	3.867.000	2.385.000	3.934.000
Denmark	413.000	5.155.000	9.869.000
Estonia	170.000	308.000	508.000
Finland	3.546.000	1.104.000	1.785.000
France	17.949.000	14.576.000	23.999.000
Germany	35.982.000	18.887.000	31.153.000
Greece	4.143.000	2.576.000	4.249.000
Hungary	667.000	2.308.000	3.806.000
Ireland	1.310.000	1.402.000	2.450.000
Italy	4.979.000	13.577.000	22.354.000
Latvia	852.000	522.000	860.000
Lithuania	346.000	773.000	1.276.000
Luxembourg	172.000	111.000	183.000
Malta	152.000	94.000	155.000
Netherlands	3.225.000	3.417.000	5.526.000
Poland	14.594.000	8.014.000	12.990.000
Portugal	494.000	2.439.000	4.023.000
Romania	7.934.000	4.945.000	8.157.000
Slovakia	337.000	1.241.000	2.046.000
Slovenia	112.000	462.000	762.000
Spain	2.174.000	10.402.000	17.158.000
Sweden	7.330.000	1.931.000	3.129.000
United Kingdom	45.907.000	31.263.000	57.618.000
Total	164.162.000	134.250.000	228.648.000

Total costs per	Preferred option

Member State[178] (Euro)	children	adults	
		4%	8%
Austria	3.564.000	847.000	1.397.000
Belgium	802.000	1.159.000	2.289.000
Bulgaria	714.000	762.000	1.554.000
Cyprus	94.000	82.000	149.000
Czech Republic	996.000	1.056.000	1.940.000
Denmark	413.000	4.455.000	8.818.000
Estonia	170.000	136.000	251.000
Finland	3.545.000	435.000	780.000
France	17.950.000	6.384.000	11.709.000
Germany	35.982.000	8.363.000	15.367.000
Greece	1.042.000	1.152.000	2.114.000
Hungary	667.000	1.021.000	1.878.000
Ireland	1.309.000	839.000	1.424.000
Italy	4.978.000	6.005.000	10.998.000
Latvia	134.000	233.000	425.000
Lithuania	346.000	346.000	634.000
Luxembourg	172.000	49.000	91.000
Malta	22.000	41.000	77.000
Netherlands	3.225.000	1.342.000	2415.000
Poland	2.548.000	3.197.000	5.762.000
Portugal	495.000	1.080.000	1.983.000
Romania	1.130.000	2.190.000	4.023.000
Slovakia	337.000	551.000	1.009.000
Slovenia	112.000	205.000	376.000
Spain	2.175.000	4.606.000	8.464.000
Sweden	7.330.000	769.000	1.387.000
United Kingdom	45.907.000	23.430.000	45.869.000
Total	136.170.000	70.729.000	133.369.000

Annex X Number of affected children and vulnerable persons for each option

EU jurisdiction	Option 3 – costs (000's euros) / children						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	0	118	0	2,522	0	0	0
Belgium	0	63	0	0	0	0	0
Bulgaria	0	21	0	0	0	0	302
Cyprus	0	5	0	3	0	0	31
Czech Republic	0	29	0	0	0	0	410
Denmark	0	32	0	0	0	0	0
Estonia	0	7	73	0	0	0	0
Finland	0	127	0	2.677	0	0	0
France	0	682	0	11,862	0	0	0
Germany	0	872	0	27.451	0	0	0
Greece	0	25	0	0	0	0	443
Hungary	0	44	0	0	0	0	0
Ireland	0	26	0	0.977	0	0	0
Italy	0	104	2,063	0	0	0	0
Latvia	0	7	0	0	0	0	0
Lithuania	0	11	145	0	0	0	0
Luxembourg	0	7	0	110	0	0	0
Malta	0	1	0	0	0	0	0
Netherlands	0	276	0	1,139	0	0	0
Poland	0	171	0	0	0	0	0
Portugal	0	12	0	0	0	0	0
Romania	0	45	0	0	0	0	0
Slovakia	0	20	0	0	0	0	0
Slovenia	0	5	0	3	0	0	0
Spain	0	62	0	0	0	0	0
Sweden	0	99	0	6.366	0	0	0
United Kingdom	0	691	0	39.883	0	0	0
EU total	**0**	**3,564**	**2,281**	**92.996**	**0**	**0**	**1,186**

EU jurisdiction	Option 3 – number of children affected						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	*0*	*35,912*	*0*	*35,912*	*0*	*0*	*0*
Belgium	*0*	*20,000*	*0*	*0*	*0*	*0*	*0*
Bulgaria	*0*	*6,316*	*0*	*0*	*0*	*0*	*200*
Cyprus	*0*	*1,500*	*0*	*1,500*	*0*	*0*	*0*
Czech Republic	*0*	*8,737*	*0*	*0*	*0*	*0*	*300*
Denmark	*0*	*10,000*	*0*	*0*	*0*	*0*	*0*
Estonia	*0*	*2,227*	*2,227*	*0*	*0*	*0*	*0*
Finland	*0*	*38,574*	*0*	*38,574*	*0*	*0*	*0*
France	*0*	*207,821*	*0*	*207,821*	*0*	*0*	*0*
Germany	*0*	*265,771*	*0*	*265,771*	*0*	*0*	*0*
Greece	*0*	*7,748*	*0*	*0*	*0*	*0*	*300*
Hungary	*0*	*13,511*	*0*	*0*	*0*	*0*	*0*
Ireland	*0*	*8,000*	*0*	*8,000*	*0*	*0*	*0*
Italy	*0*	*31,826*	*31,826*	*0*	*0*	*0*	*0*
Latvia	*0*	*2,257*	*0*	*0*	*0*	*0*	*0*
Lithuania	*0*	*3,418*	*3,418*	*0*	*0*	*0*	*0*
Luxembourg	*0*	*2,145*	*0*	*2,145*	*0*	*0*	*0*
Malta	*0*	*282*	*0*	*0*	*0*	*0*	*0*
Netherlands	*0*	*84,115*	*0*	*84,115*	*0*	*0*	*0*
Poland	*0*	*52,081*	*0*	*0*	*0*	*0*	*0*
Portugal	*0*	*3,619*	*0*	*0*	*0*	*0*	*0*
Romania	*0*	*13,831*	*0*	*0*	*0*	*0*	*0*
Slovakia	*0*	*6,196*	*0*	*0*	*0*	*0*	*0*
Slovenia	*0*	*1,474*	*0*	*1,474*	*0*	*0*	*0*
Spain	*0*	*18,749*	*0*	*0*	*0*	*0*	*0*
Sweden	*0*	*30,286*	*0*	*30,286*	*0*	*0*	*0*
United Kingdom	*0*	*210,660*	*0*	*210,660*	*0*	*0*	*0*
EU total	***0***	***1,086,000***	***37,471***	***88,6258***	***0***	***0***	***800***

EU jurisdiction	Option 3 – costs (000's euros)/ vulnerable adults						
	Assessment of vulnerability	Assistance by legal representative or person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	0	6-11	0	0	0	0	263-394
Belgium	0	714	0	74-296	0	0	337-506
Bulgaria	0	5-10	0	0	0	0	241-362
Cyprus	0	1	0	1-2	0	0	25-37
Czech Republic	0	7-14	0	0	0	0	328-492
Denmark	0	4-7	0	3,897-7,794	0	0	173-260
Estonia	0	1-2	30-61	0	0	0	42-64
Finland	0	4-7	0	0	0	0	168-251
France	0	43-87	0	0	0	0	2,023-3,034
Germany	0	56-111	0	0	0	0	2,598-3,898
Greece	0	8-15	0	0	0	0	366-549
Hungary	0	7-14	0	0	0	0	317-476
Ireland	0	3-6	0	391-782	0	0	139-209
Italy	0	40-81	1,356-2,712	0	0	0	1,944-2,917
Latvia	0	2-3	0	0	0	0	72-108
Lithuania	0	2-5	77-153	0	0	0	110-165
Luxembourg	0	0-1	0	0	0	0	15-23
Malta	0	0-1	0	0	0	0	13-19
Netherlands	0	11-22	0	0	0	0	518-778
Poland	0	26-52	0	0	0	0	1,205-1,807
Portugal	0	7-14	0	0	0	0	336-503
Romania	0	15-29	0	0	0	0	680-1,021
Slovakia	0	4-7	0	0	0	0	171-256
Slovenia	0	1-3	0	0	0	0	64-95
Spain	0	31-61	0	0	0	0	1,431-2,147
Sweden	0	6-12	0	0	0	0	290-435
United Kingdom	0	0	0	18.303-36.606	0	0	1,934-2,901
EU total	**0**	**295-591**	**1,463-2,926**	**22,666-45,481**	**0**	**0**	**15,803-23,705**

EU jurisdiction	Option 4 – number of children affected						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	*35,912*	*35,912*	*0*	*35,912*	*35,912*	*12,000*	*0*
Belgium	*20,000*	*20,000*	*0*	*0*	*20,000*	*0*	*0*
Bulgaria	*6,316*	*6,316*	*0*	*0*	*0*	*0*	*200*
Cyprus	*1,500*	*1,500*	*0*	*1,500*	*1,500*	*0*	*0*
Czech Republic	*8,737*	*8,737*	*0*	*0*	*8,737*	*0*	*300*
Denmark	*10,000*	*10,000*	*0*	*0*	*10,000*	*8,000*	*0*
Estonia	*2,227*	*2,227*	*2,227*	*0*	*2,227*	*2,000*	*0*
Finland	*38,574*	*38,574*	*0*	*38,574*	*0*	*8,000*	*0*
France	*207,821*	*207,821*	*0*	*207,821*	*0*	*0*	*0*
Germany	*265,771*	*265,771*	*0*	*265,771*	*265,771*	*0*	*0*
Greece	*7,748*	*7,748*	*0*	*0*	*7,748*	*0*	*300*
Hungary	*13,511*	*13,511*	*0*	*0*	*13,511*	*0*	*0*
Ireland	*8,000*	*8,000*	*0*	*8,000*	*8,000*	*0*	*0*
Italy	*31,826*	*31,826*	*31,826*	*0*	*0*	*0*	*0*
Latvia	*2,257*	*2,257*	*0*	*0*	*2,257*	*3,000*	*100*
Lithuania	*3,418*	*3,418*	*3,418*	*0*	*3,418*	*5,000*	*0*
Luxembourg	*2,145*	*2,145*	*0*	*2,145*	*2,145*	*0*	*0*
Malta	*282*	*282*	*0*	*0*	*282*	*600*	*0*
Netherlands	*84,115*	*84,115*	*0*	*84,115*	*0*	*0*	*0*
Poland	*52,081*	*52,081*	*0*	*0*	*52,081*	*0*	*1,100*
Portugal	*3,619*	*3,619*	*0*	*0*	*3,619*	*0*	*0*
Romania	*13,831*	*13,831*	*0*	*0*	*13,831*	*0*	*600*
Slovakia	*6,196*	*6,196*	*0*	*0*	*6,196*	*8,000*	*0*
Slovenia	*1,474*	*1,474*	*0*	*1,474*	*1,474*	*0*	*0*
Spain	*18,749*	*18,749*	*0*	*0*	*18,749*	*0*	*0*
Sweden	*30,286*	*30,286*	*0*	*30,286*	*30,286*	*13,000*	*0*
United Kingdom	*210,660*	*210,660*	*0*	*210,660*	*0*	*0*	*0*
EU total	***1,086,000***	***1,086,000***	***37,471***	***886,258***	***506,688***	***59,600***	***26,000***

EU jurisdiction	Option 4 – costs (000's euros) / children						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	825	118	0	2,522	99	0	0
Belgium	689	63	0	0	53	0	0
Bulgaria	391	21	0	0	0	0	2,415
Cyprus	51	5	0	3	4	0	249
Czech Republic	533	29	0	0	24	0	3,281
Denmark	354	32	0	0	27	0	0
Estonia	84	7	73	0	6	0	0
Finland	741	127	0	2.677	0	0	0
France	5,406	682	0	11,862	0	0	0
Germany	6,928	872	0	27.451	731	0	0
Greece	553	25	0	0	21	0	3,544
Hungary	586	44	0	0	37	0	0
Ireland	284	26	0	0.977	22	0	0
Italy	2,811	104	2,063	0	0	0	0
Latvia	121	7	0	0	6	0	718
Lithuania	181	11	145	0	9	0	0
Luxembourg	49	7	0	110	6	0	0
Malta	20	1	0	0	1	0	130
Netherlands	1,810	276	0	1,139	0	0	0
Poland	2,234	171	0	0	143	0	12,046
Portugal	473	12	0	0	10	0	0
Romania	1,047	45	0	0	38	0	6,804
Slovakia	300	20	0	0	17	0	0
Slovenia	100	5	0	3	4	0	0
Spain	2,061	62	0	0	52	0	0
Sweden	782	99	0	6.366	83	0	0
United Kingdom	5,333	691	0	39.883	0	0	0
EU total	**34,749**	**3,564**	**2,281**	**92.996**	**1394**	**0**	**29,186**

EU jurisdiction	Option 4 – number / vulnerable persons						
	Assessment of vulnerability	Assistance by legal representative or person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	*6,000-12,000*	*6,000-12,000*	*6,000-12,000*	*0*	*6,000-12,000*	*0*	*500-700*
Belgium	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*0*	*600-900*
Bulgaria	*6,000-11,000*	*6,000-11,000*	*6,000-11,000*	*0*	*0*	*0*	*400-700*
Cyprus	*0-1,000*	*0-1,000*	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-100*
Czech Republic	*7,000-15,000*	*7,000-15,000*	*7,000-15,000*	*0*	*7,000-15,000*	*0*	*600-900*
Denmark	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*0*	*300-500*
Estonia	*1,000-2,000*	*1,000-2,000*	*1,000-2,000*	*0*	*1,000-2,000*	*0*	*100-200*
Finland	*4,000-8,000*	*4,000-8,000*	*0*	*0*	*0*	*0*	*300-500*
France	*46,000-92,000*	*46,000-92,000*	*46,000-92,000*	*0*	*0*	*0*	*3,700-5,500*
Germany	*59,000-119,000*	*59,000-119,000*	*59,000-119,000*	*0*	*59,000-119,000*	*0*	*4,700-7,100*
Greece	*8,000-16,000*	*8,000-16,000*	*8,000-16,000*	*0*	*8,000-16,000*	*0*	*600-1,000*
Hungary	*7,000-15,000*	*7,000-15,000*	*7,000-15,000*	*0*	*7,000-15,000*	*0*	*600-900*
Ireland	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*0*	*300-400*
Italy	*43,000-86,000*	*43,000-86,000*	*43,000-86,000*	*0*	*0*	*0*	*3,400-5,200*
Latvia	*2,000-3,000*	*2,000-3,000*	*2,000-3,000*	*0*	*2,000-3,000*	*0*	*100-200*
Lithuania	*2,000-5,000*	*2,000-5,000*	*2,000-5,000*	*0*	*2,000-5,000*	*0*	*200-300*
Luxembourg	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-1,000*	*0*	*0*
Malta	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-1,000*	*0*	*0*
Netherlands	*12,000-24,000*	*12,000-24,000*	*0*	*0*	*0*	*0*	*900-1,400*
Poland	*28,000-55,000*	*28,000-55,000*	*0*	*0*	*28,000-55,000*	*0*	*2,200-3,300*
Portugal	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*0*	*8,000-15,000*	*0*	*600-900*
Romania	*16,000-31,000*	*16,000-31,000*	*16,000-31,000*	*0*	*16,000-31,000*	*0*	*1,200-1,900*
Slovakia	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*0*	*4,000-8,000*	*0*	*300-500*
Slovenia	*1,000-3,000*	*1,000-3,000*	*1,000-3,000*	*0*	*1,000-3,000*	*0*	*100-200*
Spain	*33,000-65,000*	*33,000-65,000*	*33,000-65,000*	*0*	*33,000-65,000*	*0*	*2,600-3,900*
Sweden	*7,000-13,000*	*7,000-13,000*	*0*	*0*	*7,000-13,000*	*0*	*500-800*
United Kingdom	*44.000-88.000*	*0*	*44.000-88.000*	*44,000-88,000*	*0*	*0*	*3,500-5,300*
EU total	***358,000-719,000***	***314,000-631,000***	***307,000-619,000***	***59,000-118,000***	***203,000-410,000***	***0***	***29,000-43,000***

EU jurisdiction	Option 4 – costs (000's euros)/ vulnerable persons						
	Assessment of vulnerability	Assistance by legal representative or person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	412- 819	6-11	149-297	0	17-33	0	1,328-1,991
Belgium	529-1,050	7-14	191-381	74-296	21-42	0	1,702-2,554
Bulgaria	379-752	5-10	137-273	0	0	0	1,219-1,829
Cyprus	39-78	1	14-28	1-2	2-3	0	126-189
Czech Republic	515-1,022	7-14	185-371	0	21-41	0	1,657-2,485
Denmark	272-539	4-7	98-196	3,897-7,794	11-22	0	874-1,311
Estonia	66-132	1-2	24-48	0	3-5	0	214-321
Finland	263-522	4-7	-	0	0	0	838-1,256
France	3,174-6,301	43-87	1,144-2,287	0	0	0	10,216-15,324
Germany	4,077-8,094	56-111	1,469-2,938	0	163-326	0	13,122-19,683
Greece	556-1,104	8-15	200-401	0	22-45	0	1,790-2,685
Hungary	498-989	7-14	179-359	0	20-40	0	1,603-2,405
Ireland	218-433	3-6	79-157	391-782	9-17	0	702-1,054
Italy	2,956-5,869	40-81	1,065-2,131	0	0	0	9,515-14,273
Latvia	113-224	2-3	41-81	0	5-9	0	362-544
Lithuania	167-331	2-5	60-120	0	7-13	0	537-806
Luxembourg	24-48	0-1	9-17	0	1-2	0	77-116
Malta	20-40	0-1	7-15	0	1-2	0	65-98
Netherlands	813-1,615	11-22	-	0	0	0	2,592-3,888
Poland	1,890-3,752	26-52	-	0	76-151	0	6,023-9,034
Portugal	526-1,045	7-14	190-379	0	21-42	0	1,695-2,542
Romania	1,067-2,119	15-29	385-769	0	43-85	0	3,436-5,154
Slovakia	268-532	4-7	97-193	0	11-21	0	862-1,293
Slovenia	100-198	1-3	36-72	0	4-8	0	321-481
Spain	2,245-4,458	31-61	809-1,618	0	90-180	0	7,227-10,841
Sweden	455-904	6-12	-	0	18-36	0	1,451-2,177
United Kingdom	2,100-4,175	0	1,093-2,187	18.303-36.606	0	0	9,766-14,650
EU total	23,742-47,146	295-591	7,660-15,320	22,666-45,481	563-1,126	0	79,322-118,983

EU jurisdiction	Preferred Option – number children affected						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	*35,912*	*35,912*	*0*	*35,912*	*35,912*	*0*	*0*
Belgium	*20,000*	*20,000*	*0*	*0*	*20,000*	*0*	*0*
Bulgaria	*6,316*	*6,316*	*0*	*0*	*0*	*0*	*200*
Cyprus	*1,500*	*1,500*	*0*	*1,500*	*1,500*	*0*	*0*
Czech Republic	*8,737*	*8,737*	*0*	*0*	*8,737*	*0*	*300*
Denmark	*10,000*	*10,000*	*0*	*0*	*10,000*	*0*	*0*
Estonia	*2,227*	*2,227*	*2,227*	*0*	*2,227*	*0*	*0*
Finland	*38,574*	*38,574*	*0*	*38,574*	*0*	*0*	*0*
France	*207,821*	*207,821*	*0*	*207,821*	*0*	*0*	*0*
Germany	*265,771*	*265,771*	*0*	*265,771*	*265,771*	*0*	*0*
Greece	*7,748*	*7,748*	*0*	*0*	*7,748*	*0*	*300*
Hungary	*13,511*	*13,511*	*0*	*0*	*13,511*	*0*	*0*
Ireland	*8,000*	*8,000*	*0*	*8,000*	*8,000*	*0*	*0*
Italy	*31,826*	*31,826*	*31,826*	*0*	*0*	*0*	*0*
Latvia	*2,257*	*2,257*	*0*	*0*	*2,257*	*0*	*0*
Lithuania	*3,418*	*3,418*	*3,418*	*0*	*3,418*	*0*	*0*
Luxembourg	*2,145*	*2,145*	*0*	*2,145*	*2,145*	*0*	*0*
Malta	*282*	*282*	*0*	*0*	*282*	*0*	*0*
Netherlands	*84,115*	*84,115*	*0*	*84,115*	*0*	*0*	*0*
Poland	*52,081*	*52,081*	*0*	*0*	*52,081*	*0*	*0*
Portugal	*3,619*	*3,619*	*0*	*0*	*3,619*	*0*	*0*
Romania	*13,831*	*13,831*	*0*	*0*	*13,831*	*0*	*0*
Slovakia	*6,196*	*6,196*	*0*	*0*	*6,196*	*0*	*0*
Slovenia	*1,474*	*1,474*	*0*	*1,474*	*1,474*	*0*	*0*
Spain	*18,749*	*18,749*	*0*	*0*	*18,749*	*0*	*0*
Sweden	*30,286*	*30,286*	*0*	*30,286*	*30,286*	*0*	*0*
United Kingdom	*210,660*	*210,660*	*0*	*210,660*	*0*	*0*	*0*
EU total	***1,086,000***	***1,086,000***	***37,471***	***88,6258***	***506,688***	***0***	***800***

EU jurisdiction	Preferred option – costs (000's euros) / children						
	Assessment of vulnerability	Assistance by parents or a person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	825	118	0	2,522	99	0	0
Belgium	689	63	0	0	53	0	0
Bulgaria	391	21	0	0	0	0	302
Cyprus	51	5	0	3	4	0	31
Czech Republic	533	29	0	0	24	0	410
Denmark	354	32	0	0	27	0	0
Estonia	84	7	73	0	6	0	0
Finland	741	127	0	2.677	0	0	0
France	5,406	682	0	11,862	0	0	0
Germany	6,928	872	0	27.451	731	0	0
Greece	553	25	0	0	21	0	443
Hungary	586	44	0	0	37	0	0
Ireland	284	26	0	0.977	22	0	0
Italy	2,811	104	2,063	0	0	0	0
Latvia	121	7	0	0	6	0	0
Lithuania	181	11	145	0	9	0	0
Luxembourg	49	7	0	110	6	0	0
Malta	20	1	0	0	1	0	0
Netherlands	1,810	276	0	1,139	0	0	0
Poland	2,234	171	0	0	143	0	0
Portugal	473	12	0	0	10	0	0
Romania	1,047	45	0	0	38	0	0
Slovakia	300	20	0	0	17	0	0
Slovenia	100	5	0	3	4	0	0
Spain	2,061	62	0	0	52	0	0
Sweden	782	99	0	6.366	83	0	0
United Kingdom	5,333	691	0	39.883	0	0	0
EU total	34,749	3,564	2,281	92.996	1,394	0	1,186

EU jurisdiction	Preferred Option – number / vulnerable persons						
	Assessment of vulnerability	Assistance by legal representative or person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	*6,000-12,000*	*6,000-12,000*	*6,000-12,000*	*0*	*6,000-12,000*	*0*	*500-700*
Belgium	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*0*	*600-900*
Bulgaria	*6,000-11,000*	*6,000-11,000*	*6,000-11,000*	*0*	*0*	*0*	*400-700*
Cyprus	*0-1,000*	*0-1,000*	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-100*
Czech Republic	*7,000-15,000*	*7,000-15,000*	*7,000-15,000*	*0*	*7,000-15,000*	*0*	*600-900*
Denmark	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*0*	*300-500*
Estonia	*1,000-2,000*	*1,000-2,000*	*1,000-2,000*	*0*	*1,000-2,000*	*0*	*100-200*
Finland	*4,000-8,000*	*4,000-8,000*	*0*	*0*	*0*	*0*	*300-500*
France	*46,000-92,000*	*46,000-92,000*	*46,000-92,000*	*0*	*0*	*0*	*3,700-5,500*
Germany	*59,000-119,000*	*59,000-119,000*	*59,000-119,000*	*0*	*59,000-119,000*	*0*	*4,700-7,100*
Greece	*8,000-16,000*	*8,000-16,000*	*8,000-16,000*	*0*	*8,000-16,000*	*0*	*600-1,000*
Hungary	*7,000-15,000*	*7,000-15,000*	*7,000-15,000*	*0*	*7,000-15,000*	*0*	*600-900*
Ireland	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*3,000-6,000*	*0*	*300-400*
Italy	*43,000-86,000*	*43,000-86,000*	*43,000-86,000*	*0*	*0*	*0*	*3,400-5,200*
Latvia	*2,000-3,000*	*2,000-3,000*	*2,000-3,000*	*0*	*2,000-3,000*	*0*	*100-200*
Lithuania	*2,000-5,000*	*2,000-5,000*	*2,000-5,000*	*0*	*2,000-5,000*	*0*	*200-300*
Luxembourg	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-1,000*	*0*	*0*
Malta	*0-1,000*	*0-1,000*	*0-1,000*	*0*	*0-1,000*	*0*	*0*
Netherlands	*12,000-24,000*	*12,000-24,000*	*0*	*0*	*0*	*0*	*900-1,400*
Poland	*28,000-55,000*	*28,000-55,000*	*0*	*0*	*28,000-55,000*	*0*	*2,200-3,300*
Portugal	*8,000-15,000*	*8,000-15,000*	*8,000-15,000*	*0*	*8,000-15,000*	*0*	*600-900*
Romania	*16,000-31,000*	*16,000-31,000*	*16,000-31,000*	*0*	*16,000-31,000*	*0*	*1,200-1,900*
Slovakia	*4,000-8,000*	*4,000-8,000*	*4,000-8,000*	*0*	*4,000-8,000*	*0*	*300-500*
Slovenia	*1,000-3,000*	*1,000-3,000*	*1,000-3,000*	*0*	*1,000-3,000*	*0*	*100-200*
Spain	*33,000-65,000*	*33,000-65,000*	*33,000-65,000*	*0*	*33,000-65,000*	*0*	*2,600-3,900*
Sweden	*7,000-13,000*	*7,000-13,000*	*0*	*0*	*7,000-13,000*	*0*	*500-800*
United Kingdom	*44.000-88.000*	*0*	*44.000-88.000*	*44,000-88,000*	*0*	*0*	*3,500-5,300*
EU sub-total	***358,000-719,000***	***314,000-631,000***	***307,000-619,000***	***59,000-118,000***	***203,000-410,000***	***0***	***29,000-43,000***

EU jurisdiction	Preferred option – costs (000's euros)/ vulnerable persons						
	Assessment of vulnerability	Assistance by legal representative or person of trust	Medical assistance	Mandatory access to a lawyer	Police interview	Court hearings	Detention
Austria	412- 819	6-11	149-297	0	17-33	0	263-394
Belgium	529-1,050	7-14	191-381	74-296	21-42	0	337-506
Bulgaria	379-752	5-10	137-273	0	0	0	241-362
Cyprus	39-78	1	14-28	1-2	2-3	0	25-37
Czech Republic	515-1,022	7-14	185-371	0	21-41	0	328-492
Denmark	272-539	4-7	98-196	3,897-7,794	11-22	0	173-260
Estonia	66-132	1-2	24-48	0	3-5	0	42-64
Finland	263-522	4-7	-	0	0	0	168-251
France	3,174-6,301	43-87	1,144-2,287	0	0	0	2,023-3,034
Germany	4,077-8,094	56-111	1,469-2,938	0	163-326	0	2,598-3,898
Greece	556-1,104	8-15	200-401	0	22-45	0	366-549
Hungary	498-989	7-14	179-359	0	20-40	0	317-476
Ireland	218-433	3-6	79-157	391-782	9-17	0	139-209
Italy	2,956-5,869	40-81	1,065-2,131	0	0	0	1,944-2,917
Latvia	113-224	2-3	41-81	0	5-9	0	72-108
Lithuania	167-331	2-5	60-120	0	7-13	0	110-165
Luxembourg	24-48	0-1	9-17	0	1-2	0	15-23
Malta	20-40	0-1	7-15	0	1-2	0	13-19
Netherlands	813-1,615	11-22	-	0	0	0	518-778
Poland	1,890-3,752	26-52	-	0	76-151	0	1,205-1,807
Portugal	526-1,045	7-14	190-379	0	21-42	0	336-503
Romania	1,067-2,119	15-29	385-769	0	43-85	0	680-1,021
Slovakia	268-532	4-7	97-193	0	11-21	0	171-256
Slovenia	100-198	1-3	36-72	0	4-8	0	64-95
Spain	2,245-4,458	31-61	809-1,618	0	90-180	0	1,431-2,147
Sweden	455-904	6-12	-	0	18-36	0	290-435
United Kingdom	2,100-4,175	0	1,093-2,187	18.303-36.606	0	0	1,934-2,901
EU total	23,742-47,146	295-591	7,660-15,320	22.666-45.481	563-1,126	0	15,803-23,705

Annex XI Procedure

The European Commission's Impact Assessment Board (IAB) examined this report and issued an opinion on 5 July 2013. The revised report takes on board the recommendations of the IAB and introduced the following main modifications and clarifications:

- The problem definition has been generally revised by better explaining the general and specific problems. In this context, particular attention has been given to the section on mutual trust and mutual recognition (Section 4, in particular 4.1.3)
- A clear separation of the two categories of vulnerable persons, children and vulnerable adults, has been introduced throughout the Impact Assessment, including in particular the problem definition, options and impact analysis.
- A preferred option has been developed for children and vulnerable adults separately, clearly setting out the proposed safeguards, their impacts and costs (Section 9).
- The proposed safeguards for children and vulnerale adults have been clarified, their necessity and interplay with each other have been better explained. Age assessment has been discarded taking into account that it exists already in all Member States (Section 6).
- The comparison of the proposed safeguards with international standards has been further developed and enhanced (Sections 4.1 and 4.2 and Annex IV).
- The relationship between these safeguards and the other instruments of the Roadmap has been further developped and clarified in sections 2 and 4.1 and 4.2. The Baseline scenario has been adapted (Section 4.4).
- Training measures have been presented separately from proposed safeguards as flanking measures (Section 6).
- Measures aimed at achieving full harmonisation have been explicitly discarded (Section 6).
- An overview of implementation costs across Member States and the envisaged measures has been prepared for options 3 and 4 and the preferred option (separately for children and for vulnerable adults).
- Estimates on the affected population have been prepared for options 3 and 4 and the preferred option (separately for children and for vulnerable adults).
- The method for estimating the cost and limitations of the use of national data have been explained and clarified in Annex VII. Clarifications have also been introduced in Annex VII with regard to the costs of screening of vulnerability.
- The timeframe for the transposition and implementation of the envisagaged measures has been clarified. A number of possible monitoring indicators has been identified (Section 10).
- Finally, the views of different categories of stakeholders, including Member States, have been more extensively referred to throughout the Impact Assessment. An overview table of stakeholder views has been included in Annex II.

The revised report was resubmitted on 31 July 2013 and approved by the IAB in its opinion of 20 September 2013. Following this latter opinion, changes were introduced to present the

problems related to mutual trust in a more balanced manner. The interaction of specific problems and the scope and scale of specific problems were clarified.

Moreover, clarifications were made to the proportionality of certain options and their impacts.

Finally, stakeholders' views were summarised in more detail in an annex. For streamlining reasons, certain tables and parts of the texts were moved to Annex X and Annex XI.