



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title

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

(Resubmitted draft version of 31 July 2013) *

(A) Context

Despite the existence of common principles and minimum standards stemming from the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (ECHR) and other international law instruments, the fair trial rights of vulnerable persons (i.e. children and vulnerable adults) throughout the various stages of criminal proceedings are, at present, not sufficiently guaranteed within the EU. This may therefore undermine mutual trust between judicial systems. As the principle of mutual recognition is the cornerstone of the area of justice, the European Council invited the Commission to put forward proposals contained in the Roadmap on Procedural Rights ("the Roadmap") adopted by the Council of Ministers in November 2009, setting out a step by step approach to strengthening the rights of suspects and accused persons in criminal proceedings. While some measures of the Roadmap have been already dealt with, this impact assessment accompanies a Commission's proposal for measures related to the special safeguards for suspected or accused persons who are vulnerable.

(B) Overall opinion: POSITIVE

While the report has been improved to a certain extent along the lines of the Board's first opinion, it should be further improved in a number of respects. The report should make an additional effort to present more concretely the specific problems such as the inadequate assessment of vulnerability as well as the lack of medical assessment and training of professionals. On this basis, it should better explain how the options differ from the status quo and from each other, for example as regards the "simple" screening procedure, information to parents or medical assistance. In this context, the report should justify the limited range of feasible options. The impact analysis should be further strengthened and aligned with the revised options, for example as regards the training of professionals, which is considered as a separate flanking measure. The report should discuss the feasibility of implementing the envisaged measures, namely given Member States' budgetary constraints. Finally, it should further attempt to fill in the prevailing information gaps on stakeholder views.

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

(C) Main recommendations for improvements

(1) Present the problems in a more balanced and concrete manner. Given the lack of clear evidence on insufficient mutual trust between the Member States, the report should revisit its assessment that the current situation is "detrimental" to mutual recognition of judgments and judicial decisions (with respect to children and vulnerable adults). The report should make a greater effort to clarify the scope and scale of specific problems, for example by explaining what exactly the current case-by-case screening of vulnerability includes, why it is not considered sufficient and what the views of Member States in this respect are. It should further discuss how the specific problems interact with each other, for example as regards the lack of medical assessment and/or assistance at arrest, pre-trial and trial stage (as this is currently included in the in-depth assessment, situational analysis as well as detention-related measures). It should also report on Member States' performance in training of professionals in contact with children and vulnerable adults. As regards the potentially affected population, the report should as a minimum provide an exhaustive rather than selective list of "non-compliant" Member States. Moreover, the report still needs to indicate why sufficient improvements cannot be expected from these Member States. More generally, it should explain why the issue of enforcement is not discussed, despite the fact that one of the most recent examples of abuse in detention comes from a "legally" compliant Member State.

(2) Clarify the added value and proportionality of options. The report should better explain how exactly the options are expected to be implemented in practice and how they differ from the status quo/baseline and each other. This is particularly the case for: (i) the "simple" screening procedure (i.e. options 3/1), including how the "potentially" vulnerable adults would be identified; (ii) information to parents on the rights and charges (as compared to the forthcoming requirement on information about custody); and (iii) medical assistance provided to vulnerable adults under option 3/3 (at EUR 35 lump sum fee) and option 4/3 (at EUR 27,50 for 30 minutes). Furthermore, it should justify why the options on specially trained policemen or judges are still presented as self-standing alternatives, despite the fact that training of professionals is considered as a separate flanking measure. Finally, the report should make a greater effort to clarify the EU competence as regards the measures under legislative option 4 (namely given that the detention with recreational facilities for vulnerable adults is later on discarded for subsidiarity reasons). Consequently, the limited range of feasible alternatives should be justified.

(3) Further improve the assessment and comparison of impacts. The report should further strengthen the impact analysis and align it better with the revised options. For example, it should clarify why a number of measures under options 3 and 4 are not expected to have additional costs as compared to the baseline (including court hearings with appropriate privacy protection rules). The report should also recall the assumptions made as regards the share of vulnerable persons expected to benefit from the envisaged measures and the corresponding frequency (e.g. in-depth screening at three points in time, medical assistance at two points in time). It should better explain why the EU average wage rate has been preferred to national wage rates (except for legal aid). Furthermore, the report should: (i) compare the options/measures against the criteria of "effectiveness" rather than "sufficiency"; (ii) clarify if the same criteria have been used for both children and vulnerable adults (given the different preference as regards the court hearings); and on that basis (iii) better explain the need to combine the elements of options 3 and 4 (e.g. by better reflecting the corresponding implementation costs). In this context and in view of Member States' budgetary and administrative constraints, the report should discuss the feasibility of implementing the envisaged measures, especially in those Member States lagging most behind.

(D) Procedure and presentation

While a brief summary of Member States' views has been presented in an annex, important information gaps seem to prevail, for example as regards police interviews or detention of vulnerable adults, reasons behind reluctance of some Member States and information on how these concerns have been taken into account. The views of remaining stakeholder groups (e.g. medical and legal practitioners, NGOs, enforcement experts) should be equally summarised in an annex. For each of the monitoring indicators, the report should explain how exactly they are expected to measure the success/effectiveness of the envisaged measures and how this would fit into the evaluation of proposals under the entire Roadmap. Finally, the report has become excessively long and needs to be shortened, for example by moving to the annexes: the entire "population" tables, the qualitative assessment of measures for vulnerable adults or the detailed description of improvements following the Board's opinion(s). It should also avoid a number of duplications in the text, namely those concerning the measures related to the Stockholm programme (4.1.2), inserted several times throughout the text.

(E) IAB scrutiny process

Reference number	2013/JUST/016
External expertise used	No
Date of IAB meeting	Written procedure An earlier version of this report was submitted to the IAB in June 2013, for which the Board issued an opinion on 5 July 2013