Established with the primary objective of promoting juvenile justice development and promoting children’s rights and well-being in Europe, the IJJO and Eurochild respectively have focused for the last ten years on fostering better harmonisation of EU legislation and promotion of effective practices in Europe. We believe that more equality across European states, and wide-spread implementation of common international standards, is the key condition to support the ultimate goals of a child-friendly juvenile justice system: promoting the well-being of the child, respecting his/her best interest and helping his/ her reintegration into the community. For these reasons, we firmly oppose the punitive approach to the justice system, and the use of custodial measures, which should be limited to a last resort, supporting instead dialogue between institutions and professionals who deal with children and the implementation of preventive, restorative and alternative policies.

The IJJO and Eurochild welcome the Directive proposal as a positive as well as necessary development in the framework of the European Institutions’ commitment to promote child-friendly justice, which is part of the EU Agenda for the Rights of the Child and directly inspired by the Guidelines on Child Friendly Justice of the Council of Europe.

In particular, given the recent European progress to reach higher standards for procedural safeguards, part of the roadmap on procedural rights of 2009, specifying heightened standards of protection for children as persons with specific needs is especially relevant. In this light, we hope that this directive can be more than a mere collection of minimum safeguards, and inspires Member States’ reforms. To fulfil this purpose, and become a true trigger of juvenile justice developments, the text needs to be ambitious and sufficiently specific.

We therefore believe that some amendments in the text would be instrumental to set ambitious goals for reform, to guarantee and to align the directive with International and European standards concerning the adequate and effective protection of children in the domain of justice.

- We welcome that the Directive considers the best interests of the child in his/her right to liberty, privacy, and to have the holder of parental responsibility informed of the criminal proceedings. Yet we believe the best interests of the child should be retained a fundamental principle across the entire Directive. The United Nations Convention on the Rights of the Child.

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1 For instance, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); United Nations Convention on the Rights of the Child; UN Rules for the Protection of Juveniles Deprived of their Liberty; Council of Europe, Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures; Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.
Child – the world’s most widely ratified international human rights instrument and ratified by all EU Member States – as well as its General Comments and Optional Protocols lay down the universal principles for promoting and protecting children’s rights, and as such should be highlighted in a separate recital of the Directive.

- **Art. 2 - the scope of application of the Directive.** It is necessary to maintain the original text of the Commission, rather than applying the changes proposed by the Council in the General Approach published in May, which reduce the time of application of the directive (the G. A. states that the provisions start being applicable from the moment the child is informed by the authorities of being subject to investigation.) Moreover, we believe that the safeguards established in this directive should be applied to all proceedings that entail the possibility of applying restrictive measures on children, independently from their classification as part of the criminal system. Broadening the scope of the Directive would ensure thorough protection of the rights of children in contact and in conflict with the law, responding to the trend of progressive de-formalisation of proceedings concerning persons below 18 years of age which is taking place in various European Member States.²

- **Art. 4 - the right to information.** We support the integration of a precise reference in the text to the use of child-friendly language, and of a specific obligation to provide information both orally and in writing in a child-friendly manner.

- **Art. 6 – the right to a lawyer,** exceptionally established as mandatory, as it is crucial to guarantee the child’s right to be heard³. The proportionally clauses for derogation introduced by the Council in the General Approach are particularly vague, especially concerning the definition of “seriousness of alleged offense” and deprivation of liberty for “a short period of time”. This may introduce considerable differences between Member States as to the circumstances in which this safeguard would be applied. On the other hand, it is essential to consider that the right to a lawyer is voided of its effectiveness when free legal aid is not guaranteed by the State to anyone who may not be able to afford it otherwise.

- **Art. 7 – the right to an individual assessment.** While welcoming this specific provision that takes into account the necessity to tailor criminal proceedings to the specific needs of each child, we believe that further definition is needed to ensure the implementation of minimum standards at national level. For the same reasons, proportionality derogations should not apply to this article, as they would undermine the respect of the best interest of the child. In particular, we propose:
  A) To clarify the subjects responsible to carry out the evaluation, and to adopt a multi-disciplinary approach including the participation of social services, and not exclusively of police and magistrates. In fact, the psychological aspect is an essential component

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² The issue of the limited scope of the directive in contrast with a de-formalisation trend was also addressed by the expert Vania Patané, Professor in the Law Department, University of Catania during the public hearing on November 11th, 2014.

of such evaluation, and therefore a professional in this field should be present. Nonetheless, particular attention should be paid to avoiding unnecessary repetition of questioning, which could prove especially stressful for a young person.

B) To develop a **series of criteria** to be taken into consideration in the course of the evaluation, such as the socio-economical background of the child; level of maturity; emotional and intellectual development.

C) To clarify in advance the **purpose** of these information and ensure that they cannot be used in the course of the proceeding as further elements charged to the child.

- **Art.9** – **Questioning of Children.** The audio-visual registration of each questioning cannot be subject to proportionality derogation, not event in case the child is not in custody.

- **Art.12** – **Specific Treatment in Case of Detention.** In line with the Council of Europe’s Guidelines on Child-Friendly Justice, we believe that the core objective of juvenile justice, even in case of detention measures, should be facilitating reintegration into society. Therefore we support:
  
  A) The specification that educational activities must include access to leisure, physical education, and sport.
  
  B) Guarantees of the respect of gender and ethnic identity and religious belief
  
  C) Child-friendly and easily accessible complaint mechanisms in the custodial facilities and independent inspections of the institutions providing accommodation to children and young people.
  
  D) The provision concerning separate detention from adults is crucial and should be protected, as well as the specific reference to the possibility of maintaining it also after children turn eighteen.
  
  In this respect the recent decision of the United Nations General Assembly to appoint an Independent Expert to carry out a global study on Children Deprived of Liberty could be directly relevant.

- **Art.14** – **the right to protection of privacy.** It needs to be specified that the information collected in the course of the proceeding concerning the child, and the information about the proceeding itself, are in principle not to become public, even after the child has reach 18 years of age. At that point instead, any previous juvenile criminal record should be destroyed.

- **Art. 16 – the right to appear in person to the trial.** Participation of children in the judicial process is in principle desirable in order to ensure that they understand the consequences of the proceedings, and that they can support their own defence. Nonetheless, the right to waive such participation can be equally important in particular circumstances, to protect the child.

- **Art. 18; art. 19; art.20; direct State Responsibilities.** The guarantee of **legal defence**, provided by the State in case of necessity, is crucial to respect fair trial guarantees, and
cannot be subject to proportionality considerations. Initial and continuous training of law professionals who get in contact with children is a precondition to guarantee that their rights are respected and the implementation of any proceeding is carried out appropriately. Therefore the Directive’s phrasing should envisage more clearly an obligation for Member States to integrate such training into their justice system. Finally, the provision on data collection⁴ is particularly important to achieve better harmonisation of criminal practices, currently a huge gap in the European justice system, as also revealed by the recent Commission study on criminal proceedings in the 28 Member States.

Finally, we consider that the text should clearly provide for effective remedies in case of violation of the safeguards introduced by the directive. The lack of such provision is a noticeable shortcoming of the text, especially in light of the numerous references to the Charter of Fundamental Rights of the European Union⁵, and it needs to be addressed in order to ensure the proper effectiveness of the Directive.

⁵ Art. 47, Title VI, Charter of Fundamental Rights of the European Union: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal (…)”
The International Juvenile Justice Observatory (IJJO) is a Belgian Foundation of public interest, based in Brussels, that advocates internationally the rights of children and adolescents at risk of social exclusion, especially those in conflict with the law. For more information see: http://www.oijj.org/en

The IJJO has established in 2009 the European Council for Juvenile Justice (ECJJ), a network that counts more than 60 members, experts in juvenile justice from the 28 Member States. ECJJ members include representatives from the academia, the public administration and government sector, and civil society. For more information see : http://ejjc.org/

Eurochild is a network of organisations and individuals promoting the rights and welfare of children and young people in Europe. The network currently has 170 members in 35 European countries. Our work is underpinned by the United Nations Convention on the Rights of the Child.

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