



IA CHILD



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Implementation of Individual assessment in accordance with Directive 2016/800: Legal and practical issues

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Article 7

Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.
2. For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
 - (a) determining whether any specific measure to the benefit of the child is to be taken;
 - (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
 - (c) taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

What is the purpose of individual assessment?

What shall be assessed?

Who shall assess?

Who should be assessed?

When should assessment begin?

The purpose of Directive

The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are **able to understand and follow those proceedings** and to exercise their right to a fair trial, and to **prevent children from re-offending and foster their social integration**.

Specific purpose of individual assessment

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Member States shall ensure that the specific **needs** of children concerning **protection, education, training and social integration** are taken into account.

For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed.

The secondary (instrumental) purpose

Article 7.

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4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:

(a) determining whether any **specific measure** to the benefit of the child is to be taken;

(b) assessing the **appropriateness and effectiveness of any precautionary measures** in respect of the child;

(c) taking any **decision or course of action** in the criminal **proceedings, including when sentencing.**

Needs identification

Individual measures

Needs ensurance

Protection
Education
Training
Social integration

What shall be assessed?

The individual assessment shall, in particular, take into account the child's **personality and maturity, the child's economic, social and family background, and any specific vulnerabilities** that the child may have.

The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:

- (a) determining whether any specific measure to the benefit of the child is to be taken;
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Socio-psychological approach

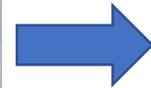
- To identify and ensure individual needs



Individual assessment tools

Legal approach

- To identify and individualize legal measures



Individual assessment report document (eg. Social inquiry report)

- The connection between legal and socio-psychological objectives shall be ensured;
- Needs assessment shall serve to identify and effectively apply legal measures;
- Legal and other measures shall serve to ensure individual needs of a child;
- Individual assessment results are used as legal instrument, thus
- The individual assessment shall be “translated” in legal language using official document form.

Directive doesn't require (directly) to apply specific (evidence-based) assessment instruments and measures.

There is a requirement of „qualified personnel“.

UN General comment No. 24 (2019) on children's rights in the child justice system

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>

11.<...>Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience.

Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs.

Why is there a need to introduce evidence-based instruments in national systems?

Consistency with the purposes of the directive: purposes of re-offending prevention and social integration require effective measures);

Enables and obliges to apply effective (evidence-based) measures;

Prevents the formal and ineffective implementation of the Directive;

Who are the subjects of assessment?

Subjects to individual assessment (general rule)

Suspected or accused children subject of criminal liability

Suspected or accused young persons under 21 years of age

The individual assessment (under the directive) should be not applied:

in minor offences cases (state discretion)

to children who are not under criminal proceedings (e. g. diversion).

in cases where individual assessment contradicts the best interests of the child (eg. cases of pre-trial detention).

When?

Article 7.

Right to an individual assessment

5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.

Questions for the discussion

The individual assessment is **child's right**;

The primary aim – ensure child's needs in criminal proceedings;

Thus the individual assessment shall not be a mandatory measure.

There would be a need to provide

a) the requirement of child's (his representative) consent?

b) the possibility to refuse the individual assessment?

Questions for discussion

Is it appropriate to introduce into legislation the obligation to use evidence-based instruments in individual assessment?

If it is provided in your country. How it is regulated?

Questions for discussion

The Directive does not specify requirements for assessors.

Which professionals and institutions should carry out the individual assessment?

Please also consider the context of the country, such as existing systems, legal regulation, resources, etc.

Who should be subject to the assessment?

When, at the time a person becomes a suspect or accused person in criminal proceedings, that person has reached the age of 18, but the criminal offence was committed when the person was a child, **Member States are encouraged** to apply the procedural safeguards provided for by this Directive **until that person reaches the age of 21**, at least as regards criminal offences that are committed by the same suspect or accused person and that are jointly investigated and prosecuted as they are inextricably linked to criminal proceedings which were initiated against that person before the age of 18.

This Directive should not apply in respect of certain minor offences. However, it should apply where a child who is a suspect or accused person is deprived of liberty.

Who should be subject to the assessment?

Member States should determine the age of the child on the basis of the child's own statements, checks of the child's civil status, documentary research, other evidence and, if such evidence is unavailable or inconclusive, a medical examination. A medical examination should be carried out as a last resort and in strict compliance with the child's rights, physical integrity and human dignity. Where a person's age remains in doubt, that person should, for the purposes of this Directive, be presumed to be a child.

Who should be subject to the assessment?

In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions other than deprivation of liberty in relation to relatively minor offences. That may be the case, for example, in relation to road traffic offences which are committed on a large scale and which might be established following a traffic control.

In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.

Who should be subject to the assessment?

In some Member States certain minor offences, in particular minor road traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.

Who should be subject to the assessment?

This Directive should apply only to criminal proceedings. It should not apply to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures.

In which cases individual assessment is not required?

Article 7.

Right to an individual assessment

6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.

(39) <...> It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in **the child's best interests**. This could be the case, for example, **where a child is in pre-trial detention** and waiting for the individual assessment to become available would **risk unnecessarily prolonging such detention**.

In which cases individual assessment is not required?

Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.