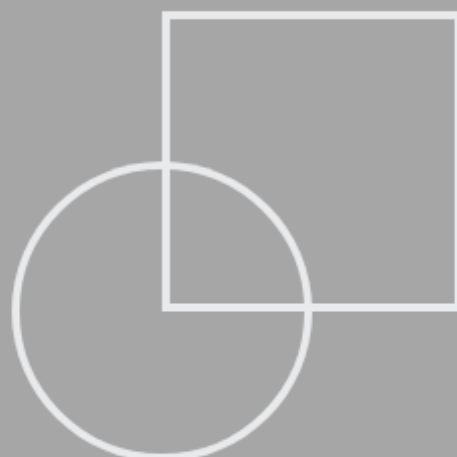


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The law of 14 March 2016: a reform to ensure the stability of children's careers

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Introduction

Law No. 2016-297 of 14 March 2016 on the protection of children is one of the most structuring reforms since the Law of 5 March 2007¹. Unlike the latter, which had profoundly reorganised the competences of child protection actors and affirmed the principle of prevention, the 2016 reform does not upset the existing institutional architecture. It is more in line with a logic of consolidation, seeking to correct the limitations revealed by nearly ten years of implementation of the previous reform².

This law is the result of a particularly thorough evaluation process. Between 2009 and 2015, many institutional reports drew up a converging observation: despite the progress of the 2007 reform, the paths of protected children remained marked by strong instability, significant territorial disparities and insufficient coordination between the various professionals working with minors³. The work of the Court of Auditors, the Defender of Rights, the National Observatory for Children in Danger (ONED), which became the National Observatory for Child Protection (ONPE) in 2016, as well as the report entrusted to Adeline Gouttenoire have gradually brought to light the need for a new legislative evolution⁴.

Beyond these institutional observations, the reform is also part of a context of evolution of scientific knowledge relating to child development. Research in developmental psychology and attachment theory has largely demonstrated that repeated disruptions of living spaces, attachment figures or educational projects can have lasting consequences on children's emotional, cognitive and social development⁵. This work invites us to go beyond a conception of protection centred solely on sheltering from danger to favour a more global approach, attentive to the continuity of relationships, the stability of reference points and the child's own time⁶.

This evolution of knowledge has gradually influenced doctrine, professional practices and parliamentary reflections. Child protection is no longer understood solely as a set of measures designed to put an end to an immediate danger. It is now tending to be conceived as a public policy aimed at supporting the development of the child over time, taking into account his or her fundamental needs, history and future prospects⁷.

It is with this in mind that the law of 14 March 2016 introduces several major changes: the strengthening of the project for the child (PPE), the creation of the National Council for Child Protection (CNPE), the establishment of a referring doctor in child protection, the strengthening of certain procedural guarantees, in particular around the ad hoc administrator, as well as a renewed reflection on the stability of career paths and the permanence of family ties. These different measures may seem heterogeneous when considered in isolation. However, they meet the same ambition: to build protection that is more focused on the child's journey than on the management of protection measures alone⁸.

The interest of this reform lies less in the creation of new mechanisms than in the paradigm shift it brings about. For the first time, the stability of the child's career became an explicit objective of child protection policy. This shift in perspective leads to a rethinking of the methods of support for minors in care, the coordination of interventions and the criteria for assessing their best interests⁹.

The question is therefore to what extent the 2016 reform has succeeded in transforming professional practices and effectively reducing the instability of career paths, beyond the affirmation of a new legislative objective.

¹ Law No. 2016-297 of 14 March 2016 on the protection of children, *Official Journal of the French Republic*, 15 March 2016.

² Law No. 2007-293 of 5 March 2007 reforming child protection.

³ Court of Auditors. (2009). *Child protection* ; ONED. (2013). *Ninth Annual Report to the Government and Parliament*.

⁴ Gouttenoire, A. (2014). *40 proposals to adapt child protection and adoption to today's realities* ; Defender of Rights. (2015). *Child Protection: Improving the Child's Pathway*.

⁵ Bowlby, J. (1969/1982). *Attachment and Loss* ; Ainsworth, M. D. S., et al. (1978). *Patterns of Attachment* ; Rutter, M. (1981). *Maternal Deprivation Reassessed*.

⁶ Guedeney, N., & Guedeney, A. (2010). *Attachment: A Clinical Approach*

⁷ Martin-Blachais, M.-P. (2017). *Consensus Approach on the Basic Needs of the Child in Child Protection*.

⁸ France, *Code of Social Action and Families*, in particular Articles L. 112-3 and L. 223-1-1 resulting from the Law of 14 March 2016.

⁹ ONPE. (2018). *Thirteenth Annual Report to the Government and Parliament* ; Court of Auditors. (2020). *Child protection: a policy that is not adapted to the child's time*.

In order to measure its scope, it is necessary to examine the main contributions of the law of 14 March 2016, while placing them in their historical, institutional and scientific context.

I. From Protecting Danger to Protecting Development: The Origins of a New Reform

Major child protection reforms rarely come from an isolated event. They are most often the result of an accumulation of observations, criticisms and new knowledge that end up making it essential to evolve the law. The law of 14 March 2016 is a perfect illustration of this dynamic. Far from constituting a sudden rupture, it appears to be the culmination of a process begun several years earlier, during which the inadequacies of the French system became increasingly visible¹⁰.

The law of 5 March 2007¹¹ represented an important step forward. It affirmed the priority given to prevention, clarified the competences between the administrative and judicial authorities and established units for the collection, processing and evaluation of information of concern. This reform responded to a major concern of the early 2000s: to improve the detection of dangerous situations and to prevent certain children from remaining invisible to institutions for a long time.

However, a few years after its entry into force, the evaluations carried out have highlighted a difficulty. Indeed, the systems intended to identify children at risk were effective but the responses provided following the evaluations were unsatisfactory. Professionals observed paths marked by a succession of decisions taken in a hurry, without any real long-term strategy. A child could experience several places of care in a few years, regularly change referent educators, alternate between placement and return to the parental home before being entrusted again to the child welfare service. Each decision was made in response to a specific and urgent difficulty, without thinking about the project for the child.

This criticism has gradually become one of the main lessons of the ONED's work. Through its annual reports and several studies devoted to the trajectories of children in care, the Observatory has shown that breaks in the course are not only the result of individual accidents but are a recurrent feature of the child welfare system. The research revealed a strong heterogeneity of departmental practices, difficulties in coordination between the actors and insufficient anticipation of decisions concerning the future of the child. The lack of a global vision of the journey appeared to be an additional factor of vulnerability.

At the same time, the courts were themselves confronted with a complex temporality. The judicial time, necessary for the evaluation of family situations and the respect of the rights of the parents, did not always correspond to the time of the child. However, the first years of life play a decisive role in the construction of attachment bonds, a sense of security and relational skills¹².

This reflection has profoundly changed the way in which the concept of the best interests of the child is understood. For a long time, it was interpreted mainly from the point of view of protection against violence or educational deficiencies, but it has gradually been enriched with a developmental dimension. Protecting a child no longer meant just removing him or her from danger; This also meant allowing him to build lasting benchmarks, to maintain stable relationships with the adults who accompany him and to have a project for the child adapted to his needs.

The influence of scientific research is decisive here. Indeed, work on attachment shows that relational stability is a fundamental need for child development. Without calling into

¹⁰ ¹ Gouttenoire, A. (2014). *40 proposals to adapt child protection and adoption to today's realities*. Paris: Ministry of Social Affairs; Ministry of Families, Children and Women's Rights. (2015). *Draft law on the protection of children: explanatory memorandum*.

¹¹ Law No. 2007-293 of 5 March 2007 reforming child protection, *Official Journal of the French Republic*, 6 March 2007; Code of Social Action and Families, Art. L. 226-3.

¹² Bowlby, J. (2013). *Attachment and loss. Volume 1: Attachment* (.fr.). Paris: Presses Universitaires de France (original work published in 1969); Guedeney, N., & Guedeney, A. (2010). *Attachment: a clinical approach*. Paris: Elsevier Masson.

question the necessity of placements when they are essential, this research invites institutions to limit as much as possible successive changes in the environment and to preserve secure links. They also point out that repeated break-ups can produce effects comparable to those of situations of abuse when they are long-term and prevent the child from feeling "safe".

This evolution of knowledge has resonated particularly with child protection professionals. Educators, family assistants, magistrates, psychologists and doctors regularly reported on the difficulties encountered by children who had been placed in multiple situations, sometimes without any lasting solution being envisaged. The testimonies collected during the preparatory work for the law show that these situations had become one of the major concerns of professionals¹³.

At the same time, the international dimension was taking an increasing place in French thinking. The recommendations made by the United Nations Committee on the Rights of the Child recalled that States should organize their protection mechanisms around the best interests of the child, giving priority to the continuity of his education and the stability of his environment. The International Convention on the Rights of the Child, ratified by France in 1990, did not only require the protection of minors against violence; It also invited the public authorities to promote the conditions for their physical and psychological development.

It is in this context that a new idea has gradually emerged: the effectiveness of a protection measure can no longer be evaluated solely in terms of its legal compliance. It now had to be assessed in terms of its impact on the child's life course. The route became a public policy object in its own right. It is no longer just a question of responding to successive crises and emergencies, but of making each decision part of a coherent trajectory, based on the needs of the child rather than on the constraints of institutions.

This evolution reveals a lasting tension between institutional time and the time of the child. The authorities must respect the rights of parents, ensure an adversarial assessment and avoid irreversible decisions taken in a hurry. However, the child cannot wait indefinitely for an uncertain family situation to stabilize. The 2016 reform seeks precisely to better articulate these temporalities.

¹³ National Assembly. (2015). *Report No. 3125 drawn up on behalf of the Committee on Social Affairs on the draft law on the protection of children*; Senate. (2016). *Report No. 339 on the Child Protection Bill*.

II. The project for the child: from the administrative obligation to the construction of a real pathway

If there is one provision that best illustrates the line of conduct of the law of 14 March 2016, it is undoubtedly the strengthening of the project for the child (PPE). Introduced by the law of 5 March 2007, this bill aimed to formalise the objectives pursued for each child benefiting from a protection measure. However, almost ten years after its introduction, the various national evaluations drew a widely shared conclusion: the EPP remained a tool that was insufficiently invested by professionals and its use varied greatly from one department to another.

The reports of the ONED and then the ONPE noted that some services had made the EPP a real instrument for steering the pathway, regularly updated and shared between the various stakeholders, while others were limited to an essentially administrative document, drawn up at the beginning of the measure and then rarely re-examined¹⁴. This heterogeneity was all the more worrying as it led to inequalities in care between children depending on their territory of residence.

The 2016 reform therefore does not create a new tool; it seeks to give the EPP a scope that practice has not always recognized. The legislator thus affirms that the plan for the child should no longer be considered as an administrative formality intended to satisfy a legal obligation, but as the reference document around which all support is organized. This evolution reflects an important change of perspective: the protection measure is no longer considered only as a response to danger, but as a project built around the child's own needs.

This conception explains why the content of the PPE is significantly enriched. The document is no longer limited to recalling the nature of the measure imposed. It must now specify the objectives pursued, the fundamental needs of the child, the actions implemented, the modalities for exercising parental authority, the family ties to be preserved, the interventions of the various professionals as well as the deadlines for reassessment. The EPP thus becomes a tool for coordination as well as a support for reflection.

This coordination is a direct response to one of the main difficulties identified before the reform. Child protection mobilizes a plurality of actors, social workers, magistrates, family assistants, reception establishments, teachers, health professionals or child psychiatry services... This plurality of trades is sometimes in difficulty to come together according to their intervention logic. The risk is therefore that decisions follow one another without any real articulation, to the detriment of the continuity of the child's career. By strengthening the EPP, the legislator seeks to establish a common language that allows everyone to contribute to a shared project¹⁵.

The reform is also part of a broader evolution of the place accorded to the child in decisions that concern him. For several years now, legal writers and international courts have pointed out that minors can no longer be considered as a mere object of protection. In accordance with the International Convention on the Rights of the Child, he or she must be involved, according to his or her age and degree of maturity, in decisions concerning his or her future. The EPP thus becomes one of the privileged supports for this progressive participation, without calling into question the responsibilities of the holders of parental authority.

However, this participation remains difficult to implement. Professionals are frequently confronted with situations in which the wishes expressed by the child, the expectations of his parents and the imperatives of protection appear difficult to reconcile. The EPP is not intended to eliminate these tensions; On the other hand, it provides a framework for making them explicit, for collective debate and for motivating the choices made with regard to the best interests of the minor¹⁶.

¹⁴ ONPE. (2016). *The Project for the Child (PPE): state of play, organizational and practical issues*.

¹⁵ Gouttenoire, A. (2016). "The law of 14 March 2016 on the protection of the child: a reform of continuity?", *Journal du droit des jeunes*, n° 358, p. 10-18.

¹⁶ Martin-Blachais, M.-P. (2017). *Consensus Approach to the Basic Needs of the Child in Child Protection*

Beyond its content, the project for the child also changes the way we understand time in child protection. Before the reform, many measures were renewed year after year without any in-depth reflection on their purpose. Some children were thus subject to a succession of temporary placements which, cumulatively, represented several years of care with no real prospect of a future. By making the EPP a living document, regularly re-evaluated, the law now invites professionals to question not only the proper implementation of the planned actions, but also the relevance of the project itself. Do the objectives set still correspond to the needs of the child? Is the return to his family still realistic? Would another solution offer more stability? These questions reflect the transition from a logic of management of measures to a real reflection on the pathway.

Almost ten years after its adoption, the EPP nevertheless remains one of the measures whose implementation remains the most contrasted. The evaluations carried out by the ONPE and the Court of Auditors show that its drafting quality, its appropriation by professionals and its effective use still differ significantly depending on the departments and their resources.¹⁷ This diversity is a reminder that legislative reform alone does not transform professional practices. It also requires training of stakeholders, institutional commitment and a common culture of coordination.

Despite these limitations, the strengthening of the project for the child is undoubtedly one of the most significant changes to the law of 14 March 2016. By making the individual journey the anchor point of any intervention, the legislator affirms that the quality of protection is no longer measured solely by the ability to respond to a dangerous situation, but also by the ability to offer the child continuity in the decisions that concern him/her. The PPE thus becomes the concrete expression of a renewed conception of the best interests of the child, more attentive to his or her long-term development than to the resolution of immediate difficulties.

However, this logic of coordination could not produce its full effects without a more global evolution of the institutional organization of child protection. This is precisely the purpose of the other provisions of the 2016 law, which strengthen national governance, develop health coordination and improve the legal representation of minors in order to make the stability of pathways a collective responsibility.

¹⁷ ONPE. (2018). *Thirteenth Annual Report to the Government and Parliament* ; Court of Auditors. (2020). *Child protection: a policy that is not adapted to the child's time*.

III. Renewed governance to ensure the continuity of pathways: the National Council for Child Protection, the referring doctor and the ad hoc administrator

The law of 14 March 2016 is not limited to strengthening individual monitoring tools. It also reflects a reflection on the very organization of child protection. The evaluations carried out after the 2007 reform had highlighted the limits of a highly decentralized system, marked by significant disparities between departments. While this autonomy made it possible to adapt responses to local realities, it also led to inequalities in the support of children, access to care, evaluation practices and the implementation of the project for the child¹⁸. From then on, the question was no longer only to improve protection mechanisms, but also to strengthen the national coherence of public policies.

It was with this in mind that the National Council for Child Protection (CNPE) was created. More than a new advisory body, it is a forum for consultation bringing together the State, departments, professionals, researchers and associations in order to promote the sharing of knowledge, the development of common recommendations and the dissemination of good practices. Without calling into question departmental competences, the legislator thus affirms that the quality of child protection is also based on national governance capable of reducing territorial disparities and promoting a common culture centred on the needs of the child.

The reform also highlights a dimension that has long been insufficiently taken into account: the health of protected children. The work of the ONED and then the ONPE has shown that the latter more frequently present somatic, psychological and developmental difficulties, while their care pathways often remain fragmented¹⁹. Changes in the place of reception, difficulties in transmitting medical information or inequalities in access to specialised care compromised the continuity of their care.

The creation of a referring doctor for child protection responds to these observations. Its mission is not to replace health professionals working with children, but to ensure better coordination between health actors and child protection services. This function reflects an important evolution: health is now considered as an essential component of the child's career and no longer as a separate issue from his or her educational and social support.

Finally, the law is part of a broader movement to recognize the child as a subject of law. Although the ad hoc administrator already existed before 2016, the reform contributes to strengthening its position by recalling that, in certain procedures, the interests of the minor may require independent representation when they conflict with those of his or her legal representatives. This development, inspired in particular by the International Convention on the Rights of the Child, illustrates the growing desire to take into account the minor's own voice and interests in decisions that concern him.

Taken in isolation, the CNPE, the referring doctor and the ad hoc administrator could appear to be technical devices. However, their coherence becomes apparent when they are placed in the general scheme of the reform. All of them have a common objective: to improve the coordination of actors, to strengthen the continuity of interventions and to ensure that each decision is part of a coherent process, built on the needs of the child. This same logic will lead the legislator to question another essential issue: that of the permanence of ties and the search for lasting family solutions for children entrusted to child protection.

¹⁸ Court of Auditors. (2009). *Child Protection*. Paris: La Documentation française; Defender of Rights. (2015). *Child Protection: Improving the Child's Pathway*. Paris: Defender of Rights.

¹⁹ National Observatory for Children in Danger (ONED). (2013). *Ninth Annual Report to the Government and Parliament* ; National Observatory for Child Protection (ONPE). (2015). *Tenth Annual Report to the Government and Parliament* ; Martin-Blachais, M.-P. (2017). *Consensus Approach on the Basic Needs of the Child in Child Protection*.

IV. Stable pathways: a new compass for child protection

Beyond the mechanisms it creates or consolidates, the law of 14 March 2016 enshrines a more profound evolution of child protection: the stability of the pathway becomes an explicit objective of public action. The quality of protection is no longer measured solely by the ability to protect a child from a situation of danger, but also by the ability to offer him or her lasting reference points and a coherent life project. This orientation is an extension of the reflections undertaken for several years on the fundamental needs of the child and the need to adapt decisions to the time of his development rather than solely to the rhythm of administrative or judicial procedures.²⁰

This evolution leads to a renewed conception of the best interests of the child. Without calling into question the principle that the family must remain in or return to the family whenever it is compatible with its interests, the law recalls that this requirement cannot lead to the indefinite prolongation of temporary situations. The preparatory work underlined that some children remained under protection for many years, in a succession of renewed measures without any real plan for the future being defined²¹. The reform thus invites professionals to make their decisions in a forward-looking way, attentive to the changing needs of the minor and to the construction of a stable pathway.

This logic also explains the renewed interest in simple adoption. Without making any in-depth changes to its legal regime, the 2016 law relaunches discussions on its use for certain children who are permanently entrusted to child welfare. Unlike full adoption, simple adoption makes it possible to create a new filiation link while preserving those existing with the family of origin. It can thus constitute an appropriate response when the child has built lasting emotional ties with his or her foster family or a trustworthy third party, without it being appropriate to definitively sever the legal ties with his or her biological family. However, the parliamentary debates bear witness to the hesitation caused by this development, with some seeing it as a way of securing pathways, others fearing a weakening of the principle of support for parenthood.

However, the stability of the paths should not be confused with a search for immobility. The needs of the child change as he or she develops and some changes in care may be necessary. The challenge is not so much to avoid any change as to ensure that it is anticipated, prepared and supported in order to limit its effects on the child. The continuity of the course is thus based as much on the stability of educational, academic, medical or emotional ties as on the permanence of the place of reception. This approach invites professionals to think about transitions rather than to undergo them.

Nearly ten years after its adoption, this orientation continues to inspire public policies for the protection of children. The various evaluations carried out since 2016 show that the stability of career paths is now a common reference for professionals. They nevertheless stress that its implementation remains confronted with several structural difficulties, in particular territorial disparities, the shortage of family assistants, difficulties in accessing child psychiatric care and the lack of adapted solutions for children with complex needs. These limits are a reminder that stability does not depend solely on legislative developments, but also on the human, material and institutional resources mobilized. Even more than the measures it institutes, it is this new way of conceiving child protection that constitutes the major contribution of the law of 14 March 2016 and which has inspired subsequent reforms, in particular that of 7 February 2022.

²⁰ Law No. 2016-297 of 14 March 2016 on the protection of children, *Official Journal of the French Republic*, 15 March 2016; Martin-Blachais, M.-P. (2017). *Consensus Approach on the Basic Needs of the Child in Child Protection*. Paris: Ministry of Solidarity and Health.

²¹ National Assembly. (2015). *Report No. 3125 drawn up on behalf of the Committee on Social Affairs on the draft law on the protection of children*; Senate. (2016). *Report No. 339 on the Child Protection Bill*.

Conclusion

Beyond the measures it institutes, the law of 14 March 2016 marks a turning point in the French conception of child protection. By making the stability of the pathway an objective in its own right, she affirms that the quality of protection is no longer measured only by the ability to protect a child from immediate danger, but also by the ability to offer him or her a coherent environment, lasting landmarks and a real life project.

This evolution reflects a more assertive consideration of the child's fundamental needs and his or her development over time, by inviting professionals to place their decisions in a logic of continuity rather than in a succession of ad hoc responses. While the implementation of this ambition remains faced with organisational and territorial difficulties, the 2016 reform has profoundly renewed the foundations of child protection. It is thus a decisive step in the evolution of French law and paves the way for subsequent reforms, in particular Law No. 2022-140 of 7 February 2022 on the protection of children.

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