



Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU

Policy Brief

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Abbreviations used in this document

CRC	UN Convention on the rights of the child
EU	European Union
MS	Member States of the European Union
MACR	Minimum age of criminal responsibility

Name of Member State/country abbreviation

Austria	AT
Belgium	BE
Bulgaria	BG
Croatia	HR
Cyprus	CY
Czech Republic	CZ
Denmark	DK
Estonia	EE
Finland	FI
France	FR
Germany	DE
Greece	EL
Hungary	HU
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Spain	ES
Sweden	SE
United Kingdom - England and Wales	UK-E&W
United Kingdom - Northern Ireland	UK-NI
United Kingdom - Scotland	UK-S

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1. INTRODUCTION

"Child-friendly justice refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level."¹

Nineteen per cent of the EU population (95 million) is under the age of 18. These children can become directly or indirectly involved with the justice systems of Member States (MS) in a number of ways, for example when they commit offences, when they witness crimes or are victims, when they seek asylum, when they are the subject of adoption proceedings or when their parents disagree over custody. Judicial proceedings can have a considerable impact on children's lives and the absence of a child-friendly response can result in manifold restrictions or violations of their rights.² Furthermore, when the judicial systems of MS lack child-friendly procedures and practices, the most vulnerable children (e.g. children with disabilities and migrant children) face particular barriers in the enjoyment of their rights.³

Making the justice systems across Europe more child-friendly is a key action under the [EU Agenda for the Rights of the Child](#). It is an area of high practical relevance where the EU has, under the Treaties, competencies to turn the rights of the child into reality by means of EU legislation and support measures for MS.⁴ As part of its role in this regard, the European Commission carried out a study to collect data on children's involvement in criminal, civil and administrative judicial proceedings in all 28 EU MS for the years 2008-2010 (and 2011 where available).⁵ Contextual narrative overviews have been produced, describing the legal and policy situation in each MS as of 1 June 2012, with regard to children's involvement in such proceedings.⁶

In carrying out this study, the European Commission was guided throughout by the key international standards that govern the rights, status and role of children involved in criminal, civil and administrative proceedings, including: the [UN Convention on the Rights of the Child](#) (CRC); the [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#); and a number of [EU Directives and Regulations](#). The criminal justice phase of the study examined the involvement of child suspects/offenders, victims and witnesses in criminal judicial proceedings. The civil and administrative phase looked at the involvement of child plaintiffs, defendants, witnesses and subjects in proceedings relating to the areas of family, employment, asylum, migration, education, health, placement in care, administrative sanctions and offences committed by children below the minimum age of criminal responsibility (MACR).⁷

¹ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum](#) (2011) at p. 4.

² [An EU Agenda for the Rights of the Child](#) at p. 6.

³ [An EU Agenda for the Rights of the Child](#) at pp. 8-11.

⁴ See in particular, Article 3(3) of the [Treaty on European Union](#). See also, Article 24 of the [Charter of Fundamental Rights of the European Union](#).

⁵ The UK was divided into three separate jurisdictions for the purpose of the study: UK-England and Wales, UK-Northern Ireland and UK-Scotland. This brings the total number of jurisdictions discussed in this Brief to 30.

⁶ For the criminal justice phase of this study, [national contextual overviews](#) are available for each Member State as well as an [EU summary report](#). For the civil and administrative phase, there is one [EU summary report](#) available. <http://bookshop.europa.eu/children-in-civil-judicial-proceedings>;
<http://bookshop.europa.eu/children-in-administrative-judicial-proceedings>

⁷ The findings on children's involvement in civil and administrative judicial proceedings were presented together in this study for two reasons. Firstly, the scope of the safeguards and rights that were considered are broadly similar in the civil and administrative areas. Secondly, the classification of areas of law as civil or administrative varies between MS and presenting the findings separately would markedly reduce the possibility of making valid and substantive comparisons between MS.

EU-wide studies of this nature are rare and such research is challenging. Although every effort was made to gather reliable, comparable and official data on the number and treatment of children involved in judicial proceedings across the EU, there are significant gaps in the availability of such data, particularly disaggregated data on the involvement of children with disabilities and other vulnerable children in judicial proceedings. Furthermore, justice systems in MS differ in their nature and stage of development, particularly in the areas of civil and administrative law and the different approaches and interpretations adopted by MS make it difficult to draw accurate comparisons and reach EU-wide conclusions. Despite this, the study is a valuable source of information and creates a baseline of law, systems and procedures concerning children and justice systems across Europe.

Using the international and European children's rights standards as a framework,⁸ this policy brief presents the findings of the study in an accessible manner and examines the extent to which children are guaranteed effective access to, and adequate treatment in, criminal, civil and administrative judicial proceedings across Europe. In particular, it focuses on the implementation by MS of 10 key safeguards: access to adapted proceedings; right to information and advice; right to be heard; right to representation; right to protection of privacy; the best interests of the child; multidisciplinary cooperation; training of professionals; monitoring mechanisms; and access to remedies. Examples of existing legislation, policies and institutional practices are highlighted throughout. Recommendations are also made in relation to the further measures that MS should take, in order to ensure that their justice systems are fully adapted to the specific needs and vulnerabilities of children.

2. ACCESS TO ADAPTED PROCEEDINGS

Summary of relevant children's rights standards

- The right to access justice should be guaranteed for all children. Furthermore, throughout their engagement with the justice system, children should be treated with respect for their age, their special needs, their maturity and level of understanding and bearing in mind any communication difficulties they may have.⁹
- The right of children to access child-friendly judicial proceedings requires MS to put in place a number of modified practices and procedures. In particular:
 - Specialised courts should be established to ensure that cases involving children are dealt with in child-sensitive settings;¹⁰
 - Specialised units of professionals working with or for children should be developed, including within the police, the judiciary and other legal professions;¹¹
 - All proceedings relating to children should be prioritized and completed in the shortest time possible, in recognition of the fact that delay can have a particularly adverse effect on them;¹²

⁸ See Annex 2 for an overview of the application of EU law to children involved in criminal, civil and administrative judicial proceedings.

⁹ [Council of Europe](#) (2011) at pp. 5, 10.

¹⁰ [Council of Europe](#) (2011) at p. 10 and CRC Committee, *General Comment No. 10: Children's Rights in Juvenile Justice* (2007) at p. 24.

¹¹ See Article 40(3) of the [CRC](#), [Council of Europe](#) (2011) at pp. 10, 12, 30, 33 and [CRC Committee](#) (2007) at p. 24. Notably, the international standards referred to focus on the particular importance of the establishment of specialised institutions to deal with children in conflict with the law.

- Child-specific support mechanisms and procedures should be put in place to ensure that children are protected from harm, intimidation and secondary victimisation before, during and after judicial proceedings.¹³

2.1. Accessing judicial proceedings

The capacity of children to take legal action or invoke judicial proceedings in their own right varies widely across, and within, the EU MS. In relation to civil and administrative proceedings in particular, the Commission's study identifies that the variation in the procedural rules can act as a key barrier for children seeking to protect their rights through the justice systems of MS.

In half of the MS, only legal representatives and guardians (usually parents) enjoy procedural capacity to bring a case before a court in civil and administrative proceedings, subject to exceptions such as judicial discretion or parental authorisation. Notably, in CY, IE, UK-E&W and UK-NI no such exceptions apply and children must always act through a legal representative or guardian. In the remaining jurisdictions, the right of children to act in such proceedings is subject to the application of minimum age criteria (ranging from 12 to 16 years), the role of the child in the proceedings and/or the specific matter concerned. For example:

- In BG and RO, children aged 14 and above have the right to bring cases before a court in all areas of law, with parental/guardian consent;
- In SI, children aged 15 and above are allowed to initiate litigation independently without their legal representative/s in marital and family disputes;
- In DE, the minimum age of procedural capacity is 14 in family and placement in care cases, 15 in employment cases and 16 in migration and asylum cases. Children do not have the procedural capacity to act in cases concerning education, health, administrative sanctions and offences committed below the MACR; and
- In EL, children only have the capacity to act in family cases if they relate to the termination of adoption or non-contentious proceedings. The minimum age of procedural capacity in such cases is 12 and 16 years respectively.

Overall, the data collected identifies that provisions within MS, aimed at ensuring children's access to judicial proceedings, tend to be more rigorous in the areas of family and placement in care than in other areas of law. Such a selective and restrictive approach to the procedural rights of children has a notable impact in practice. For instance, when children are not deemed to have legal standing to initiate proceedings, they are rendered reliant on the actions of their legal representatives or guardians to vindicate their rights.

2.2. Specialised institutions

Not all MS have developed specialist courts to ensure children's effective access to, and adequate treatment in, judicial proceedings. For example, in the majority of jurisdictions, ordinary civil courts are competent to deal with children involved in family and

¹² [Council of Europe](#) (2011) at p. 35 and CRC Committee, [General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration](#) (2013) at p. 19.

¹³ [Council of Europe](#) (2011) at pp. 6, 9.

employment cases, whereas administrative courts are predominately used to review the decisions of the authorities in cases relating to asylum, migration, education and administrative sanctions. Specialisation is more common in the criminal justice sphere, with juvenile courts dealing with cases in the area of youth justice in 20 jurisdictions. Some of these specialist courts consist of courtrooms that are physically separated from adult courts. Others are ordinary courts that are adapted to the needs of children, including through the involvement of specialist judges.

However, the existence of gaps in the remit of these specialist courts affects the delivery of child-friendly justice across Europe. They tend to be geared towards the needs of child suspects/offenders, with child victims and witnesses participating in ordinary courts with the same judges who adjudicate on cases involving adults in 13 MS. The geographical distribution of such courts often limits their availability to children in practice. For example, only one specialist court exists in RO. In the regions of PT where Children and Family courts are not present, children are dealt with in courts of general jurisdiction.

Although the majority of MS have not introduced child-oriented specialisation in relation to other key criminal justice institutions (police forces, prosecution services, other legal practitioners), a number of good practices can be identified. Fourteen MS have set up special units within their police forces to deal with child suspects/offenders and/or child victims and witnesses. For example, in HR, only specially trained officers are allowed to investigate a crime or offence involving a child suspect.

Box 1 France – specialisation as a 'key pillar' of the juvenile justice system

In France, efforts have been made to extend specialisation to the key juvenile justice institutions, including the courts and the police force:

- France's juvenile courts (*Juges pour Enfants*) are involved whenever there are strong grounds for believing that a child is **a victim or a suspect**. The Juvenile Court can take actions of a criminal justice nature (when the child is a suspect) or civil justice nature (when the child is in need of protection). Notably, a child suspect may be found to be in need of protection, allowing the judge to take educational or protective measures in the child's best interests. Juvenile Courts are attached to High Courts (*Tribunaux de Grande Instance*) and are present throughout the French territory.
- Specific brigades have been set up within France's national police force (*brigades de protection des mineurs*) and national gendarmerie (*brigades de prévention de la délinquance juvénile*) to deal with juvenile justice matters. These brigades are responsible for conducting the investigation and interviews of child victims (and, depending on the case, child witnesses). Some Youth Brigades are exclusively competent to deal with child suspects (e.g. Bobigny).

A small number of MS have also introduced specialisation among prosecutors and defence lawyers working with children involved in criminal judicial proceedings, including through the provision of training on children's rights and needs (on training see further Section 9). In some jurisdictions there are specialised facilities for children in pre-trial detention, for e.g. Juvenile Justice or Young Offender Centres in BE, DE and UK-NI.

Box 2 Austria – ensuring that judges and prosecutors working in the criminal justice system have child welfare experience

In addition to four years of legal training, including on the rights and needs of children, judges and prosecutors in Austria are required to have professional experience in education, social work or another field relevant to the welfare of children. They must also serve a minimum period of two weeks at a victim protection agency or a welfare institution prior to taking up their posts. This is to ensure that these professionals have a more rounded understanding of the way children experience criminal proceedings.

2.3. Avoiding undue delay

In the majority of jurisdictions, there is a legal obligation to avoid undue delay in the handling of cases involving children. Most MS have additional safeguards in place aimed at ensuring that criminal proceedings involving children are dealt with as quickly as possible.

A key measure adopted by some MS to prevent delays in the judicial process is the imposition of special time limits in which the court or a participant must act. For example, in relation to criminal judicial proceedings, 8 MS have established a maximum time limit for cases involving child suspects to get to trial. This maximum time limit varies from 2 weeks in FI to 6 months in HR and UK-S, the average being between 2 and 3 months. Another measure adopted by MS is the development of special fast-track procedures to ensure that cases involving child suspects are dealt with expeditiously (see Box 3).

Box 3 Denmark and France - fast-tracking the determination of cases involving child suspects

In Denmark, there is a fast-track procedure called the '7+7+ procedure' which applies to children who are suspected of committing violent or other serious crimes. The police are under an obligation to investigate the case within seven days, social services must complete a draft 'crime action plan' within the next seven days, and the prosecution service must send the case to the court as soon as possible after that.

In France, Public Prosecutors may fast track cases involving child suspects aged 13 and above charged with particularly serious offences. When the Public Prosecutor determines that further investigation is no longer needed, an accelerated judgment (*jugement à bref délai*) may be ordered which requires the trial to begin within a period of 10 days to two months from the start of the investigation. When the Public Prosecutor determines that the case requires even more urgent attention, a procedure of immediate appearance (*comparution immédiate*) may be ordered. This allows a hearing at the Juvenile Court to take place within two days.

Another measure adopted by a small number of MS is the establishment of a redress mechanism to ensure the implementation of the urgency principle in respect of judicial proceedings involving children (see Section 11 for further information on children's right to an effective remedy). These mechanisms vary and include the possibility of the child appealing the decision of a court to a higher court on the grounds of undue delay (e.g. BG). In mental healthcare proceedings in CZ, if the court violates the child's rights by issuing a delayed decision, the child is entitled to file a civil complaint against the State.

The above measures do not apply equally to all judicial proceedings involving children. According to the data, their application is commonly restricted to criminal cases involving child suspects or cases involving child plaintiffs and defendants in care, family, asylum and migration proceedings. Also, only a small number of MS provide guidance to judicial authorities on how to implement the duty to avoid undue delay in practice. Even where it is available, this guidance is usually general in nature and not specific to children.

2.4. Child-specific support mechanisms and procedures

In relation to proceedings in the areas of family and placement in care in particular, a number of MS have adopted safeguards to ensure that children are supported throughout the process and protected from harm, including secondary victimisation. Firstly, specialised services are available for children and their families in 18 MS (they are provided free of charge in 12 MS). These services provide support and guidance to ensure that any adverse consequences of the judicial process on family relations are avoided and they tend to be available at all stages of the proceedings. For example:

- In DE, youth services may participate in proceedings before the family court to support the child and explain the proceedings in a child-friendly manner; and
- In PL, a guardianship court may direct the child and his/her parents to therapeutic services and monitor the results of the therapy.

Another way of protecting children involved in the judicial process from harm is to ensure that they are accompanied by an appropriate support person. In 22 jurisdictions, this is achieved by making it a mandatory requirement for a legal representative, guardian, guardian ad litem, adult relative, or a lawyer to be present when a child is interviewed. In 24 MS, in addition to (or in a few cases instead of) this mandatory requirement, there are statutory provisions on the right of a child to receive assistance when attending proceedings, including from a social worker or a special representative (e.g. Children's Legal Advisor in AT).

Box 4 UK-Scotland – support for children in the children's hearing system¹⁴

A safeguarder may be appointed by a children's hearing, to protect the interests of the child during the proceedings. This may arise, for example, where there is a conflict of interest between the parents and the child. Their role is to provide support and advice to the child throughout the proceedings and they are required to report to the hearing as well as to other relevant persons. While the child's view should be considered in the report, the safeguarder is not required to advocate the child's view as they are not appointed by and cannot be dismissed by the child.

Furthermore, all MS (except LV) have statutory provisions permitting the court to impose measures to protect children that are suffering, or are likely to suffer, significant harm during the proceedings. The range and scope of the protection measures available to the court depends on the MS in question and the nature of the case, but can include: temporary child custody, temporary award of alimony, injunctions for child support, restraining orders and non-contact orders.

¹⁴ The children's hearing system deals with children who need care and protection and children who commit offences. The hearing system decides whether compulsory measures of intervention may be needed, including the placement of the child with foster carers, in a residential unit or in secure accommodation.

The majority of MS have also established safeguards aimed at protecting the rights of child suspects when they are apprehended by the police, in particular their right to contact their parents or another person of trust. Furthermore, the police have to adhere to special rules when stopping, searching or detaining a child in certain MS. For example:

- In EL, the law stipulates that when a child is arrested, the police must exhibit 'impeccable' behaviour and avoid any actions that could harm the child's honour, reputation or dignity. In particular, the use of handcuffs should be avoided for all children, unless there is a risk that the child may escape; and
- In IE, the law sets out that in any investigation relating to an offence by a child, the police shall respect the personal rights, dignity and vulnerability of children owing to their age and level of maturity.

3. RIGHT TO INFORMATION AND ADVICE

Summary of relevant children's rights standards

- From the first stage of their involvement in judicial proceedings, and at every step throughout the process, all children should be fully informed of, *inter alia*:
 - Their rights and the mechanisms they can use to exercise their rights in practice or to defend them where necessary;
 - Practical matters such as the relevant procedures involved, expected timeframes and their place and role in the proceedings;
 - The availability of protective measures and existing support services;
 - Where applicable, the charges brought against them and the possible consequences; and
 - The general progress and outcome of the proceedings, including all relevant judgments and decisions made.¹⁵
- This information should be promptly and directly provided to children in a manner which is adapted to their age and maturity and in a language which is understandable, as well as gender and culturally sensitive. It should also be provided to the child's parents or legal representatives.¹⁶
- Child-friendly materials and information services, such as specialised websites and helplines, should be widely accessible.¹⁷

The majority of MS recognise the statutory right of children involved in civil and administrative proceedings to receive information about their rights and the systems and procedures involved. Where this right exists, it tends to apply at all stages of the proceedings. The information provided generally covers, *inter alia*, the time, place, progress and outcome of the proceedings, the decision of the court, the child's right to a remedy and the availability of support services. In a smaller number of MS, children also have a statutory right to receive information at first contact with the judicial system or other competent authorities (including police, immigration, social, educational or

¹⁵ [Council of Europe](#) (2011) at pp. 4-6, 9, 23 and CRC Committee, [General Comment No. 12: The Right of the Child to be Heard](#) (2009) at pp. 15, 17. The right to information and advice is also covered in a variety of other instruments, including Articles 13, 37 and 40 of the [CRC](#), the [United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#) and the [European Convention on the Exercise of Children's Rights](#). See also, [Council Conclusions of 13 June 2013 on an EU framework for the provision of information on the rights of victims of trafficking in human beings](#).

¹⁶ [Council of Europe](#) (2011) at p. 6.

¹⁷ [Council of Europe](#) (2011) at p. 6.

healthcare services) and on the consequences of participating in judicial proceedings. Although the relevant legislative provisions are generally applicable to both adults and children alike, a small number of MS have developed additional child-sensitive measures. For example:

- A statutory requirement to provide information about rights and procedures in a child-friendly format (6 MS);
- A statutory requirement to communicate the decision of the court in a manner adapted to the child's level of understanding (10 MS);
- A statutory requirement to provide information in a manner that takes the special needs of the child into account (6 MS); and
- The development of guidance, or codes of conduct, aimed at judicial and other competent authorities on the provision of information to children (4 MS).

However, the application of the above safeguards can be limited in practice and, even where they exist, they tend to apply to children involved as plaintiffs and defendants in family and placement in care proceedings.

All MS, except HU, have statutory provisions on the right of child suspects/offenders involved in criminal judicial proceedings to receive information about their rights and the procedures in place. This information is generally provided to these children upon their first contact with the authorities (usually the police). However, the scope of information provided varies across MS. In DK, for example, police officers are only obliged to inform the child of the charges against him/her and of the right to silence. In several MS, the parent or legal representative of the child suspect has a corresponding right to receive information (e.g. AT, BG, DE and DK).

There is no legislative obligation for child suspects/offenders to receive information adapted to their needs, or in a child-friendly format, in the majority of MS. Furthermore, in some jurisdictions (e.g. CZ), the absence of detailed rules on the content of information to be provided, and the relevant procedures to be followed, means that practice on the ground may vary significantly. BE provides an example of more promising practice in this regard (see Box 5).

Box 5 Belgium – ensuring accountability in the provision of information

Children who are held in custody must be informed, either orally or in writing and in a language they understand, of, *inter alia*:

- Their rights and the reasons for their placement in custody;
- The maximum duration of the custody;
- The procedures that need to be followed as a result of the custody; and
- The possibility for the police to resort to coercive measures.

The police officers must subsequently confirm in the register of detainees that the above information has been provided. This system helps to ensure that they can be held accountable in relation to their obligation to provide information to child suspects.

Protections to ensure that child victims and witnesses are adequately informed of their rights, and of the criminal justice procedures in place, are even less common. Firstly, the right of child victims and witnesses to such information has not been enshrined in legislation in 6 and 11 MS respectively and is often implemented on a discretionary basis.

In the case of IE, for example, the right of child victims to information is contained in the Garda Síochána (Police) Victims Charter. In certain MS there are also a number of restrictions in place. For instance, in CY the Social Welfare Services have the discretion to determine what type of information, and in what form, is provided to child victims and witnesses, depending on their age and perceived maturity. Furthermore, only a small number of MS require the authorities to ensure that the information provided is adapted to the level of understanding of the child victim or witness.

The institutions responsible for providing information to children involved in judicial proceedings include: judges, public prosecutors, social workers, guardians/custodians, Ombudspersons, lawyers and specialised services. In FR, for example, the Paris Bar Association has established a Children's Office. This Office, as well as other local Bar Associations and Youth Houses, provides children with free and confidential legal information or advice. Some MS have also produced materials to provide support and guidance to children involved in judicial proceedings, particularly in the areas of family and placement in care. These materials are usually leaflets issued by the relevant Ministries or Departments on a one-off basis and distributed by municipalities. However, web-based materials are also in existence. In the case of UK-S, a wide variety of materials have been produced to support children involved in Scotland's children's hearing system. The materials include a number of web-based tools to get information to children, including: an illustrated guide of children's rights in pictures; a 'Your Rights' card and letter, which are deliberately worded for children and designed for different ages; a DVD; and communication tools such as flashcards.

Box 6 Austria – ensuring that information on rights and procedures is adapted for child victims and witnesses

The Victim Assistance Service (*Prozessbegleitung*) of the Federal Ministry of Economy, Family and Youth has prepared a brochure for child victims entitled "Milli goes to court" (*Milli ist beim Gericht*). The brochure is used as a tool to prepare child victims and witnesses for questioning in court. It describes attendance at court from the point of view of a fictional child character called Milli. Milli describes the questions that child victims and witnesses are frequently asked when giving testimony. The brochure also uses cartoons to make the courtroom experience appear less intimidating and includes photographs of the courtroom, the way to court, the chair where the child sits, the video equipment that is used etc. Experience has shown that children who have appeared in court have recognised the chair, the video equipment and other features described in the brochure, making them feel more at ease during the proceedings.

4. RIGHT TO BE HEARD

Summary of relevant children's rights standards

- MS are under an obligation to secure the right of all children to be heard in judicial proceedings involving or affecting them, and to give due weight to the child's views in accordance with their age and maturity.¹⁸
- In order to effectively realise the right of the child to be heard in practice, the measures adopted by MS should be guided by the following key principles:

¹⁸ In particular, see Article 12 of the [CRC](#), [CRC Committee](#) (2009) and [Council of Europe](#) (2011) at pp. 3, 4.

- Expressing views is a choice for each child and not an obligation;
- The right to be heard should not be subject to any age limits or other arbitrary restrictions, either in law or in practice;
- A child should be heard in an environment in which he/she feels respected and secure and which is appropriate to his/her needs;
- The means used to give effect to the right to be heard should be adapted to each child's level of understanding and ability to communicate, and take into account the circumstances of the case;
- In full consideration of the need to protect children from harm, a child should not be interviewed more often than necessary and audio-visual statements from child victims and witnesses should be encouraged; and
- Facilitating the expression of views may require special measures for children in particularly vulnerable situations, including the provision of interpretation/translation services.¹⁹

4.1. Legislative and policy measures

Through legislative provisions, the majority of MS provide children with an express right to be heard during the course of civil and administrative proceedings. However, where such provisions exist, they are often restrictive in application. They tend to apply to children in the roles of plaintiffs and defendants and in certain areas of law only, most frequently in areas of family and placement in care. They apply somewhat less frequently to child subjects (21 MS) and witnesses (17 MS). Indeed, child witnesses often have an obligation to testify rather than a right to be heard. Furthermore, the protection of child witnesses from harm often takes precedence over giving effect to their right to be heard in judicial proceedings affecting them. In FI, for example, child witnesses under the age of 15 can be heard if the court deems that it is appropriate, of central significance to the clarification of the matter and would not cause the child harm.

Age limitations also frequently restrict the right of children to be heard in civil and administrative proceedings involving them. MS have adopted a selective and inconsistent approach in this regard, with age limitations ranging from: 10 years of age in RO (for all areas of law); 12 years of age in NL (for employment, health, education and most family cases); 14 years of age in PT (for family cases); and 15 years of age in FI (for all areas of law). Children below the minimum age may be heard, but this is at the discretion of the court. Similarly, in countries where there are no age limitations (e.g. CZ, EE), it is up to the judge to decide on a case-by-case basis, depending on the child's maturity and ability to understand the proceedings, whether the child concerned should be heard. In CY, a gender-differentiated approach exists as case-law foresees that the court must take the child's wishes into account at the age of 14 for boys and 16 for girls.

Furthermore, the scope of the right to be heard in civil and administrative proceedings varies across MS. In some cases (e.g. HR and FI), children above a certain age have the right to be interviewed, provide evidence, receive court rulings directly and intervene in the proceedings. In other MS (e.g. SI and SK), children only have the opportunity to be interviewed in private by the judge, who may or may not take their views into account. There are also variations within MS, with the most expansive definitions of the right to be heard often in the area of family law. For example, in DE, children over 14 have the right to be heard in matters regarding their care, custody or contact before the Family Court (even younger children may be heard if this appears necessary and useful). However, in

¹⁹ [Council of Europe](#) (2011) at pp. 6, 8-10, [CRC Committee](#) (2009) at pp. 8-10 and Article 14 of the [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \("The Beijing Rules"\)](#).

the areas of migration and asylum, children need to be 16 years of age to have a say in matters affecting them.

All MS provide child suspects/offenders involved in criminal judicial proceedings with an express right to be heard. Indeed, it is understood to be a central aspect of the child's right to a fair trial. Again, the scope of this right varies widely across MS. In some jurisdictions it is interpreted expansively, for example:

- In LV, the right of child suspects/offenders to be heard must be exercised in the presence of a defence counsel but includes an extensive set of rights such as the right to participate in all investigative actions, to initiate a settlement with the victim, and to submit an application regarding the termination of proceedings.

However, in other MS this right is more limited in its scope:

- In RO, child suspects only have the right to be heard by the judge on one occasion, a limitation which does not exist in the case of adults; and
- In IT, child suspects only have the right to be heard at the initial, 'investigation' stage of the proceedings. Once the trial has started, child suspects can ask to be heard, but the public prosecutor is not obliged to give them an audience.

In relation to child victims and witnesses, an express right to be heard exists in 21 and 12 MS respectively. In the remaining jurisdictions, the decision to consult with a child victim or witness, or call upon them to testify, is at the discretion of the police and judicial authorities. For example, in BE, EL, ES, FI, FR and PT, the public prosecutor can decide to deny audience to a child witness if this is considered expedient. In some MS, the police and prosecutors are strongly encouraged to consult with child victims but this does not amount to a legal obligation (e.g. the Victim's Code of Practice and Witness Charter of the UK-E&W). In many cases, MS have also interpreted the right of child victims and witnesses to be heard in a restrictive manner and put in place age limitations. However, some MS, including LV, demonstrate good practices (see Box 7).

Box 7 Latvia – an expansive definition of the right to be heard for child victims

Whilst child victims in Latvia must exercise their right to be heard through a legal representative until they reach the age of 15, the range of acts they can initiate and participate in, in the context of criminal proceedings, is amongst the widest in the EU. During pre-trial proceedings and/or court hearings, they have the right to, *inter alia*:

- Submit a complaint about the performance of the investigative authorities;
- Receive prior information on the results of expert examinations;
- Receive copies of all the case materials;
- Express opinions regarding any matter to be discussed, including the penalty to be imposed on the offender; and
- Ask questions to witnesses and experts and participate in the examination of any evidence submitted at the trial.

4.2. The statutory right to interpretation and translation

The right to interpretation and translation is an important pre-condition to give effect to the right to be heard for children involved in judicial proceedings who do not speak the local language.²⁰ In relation to civil and administrative judicial proceedings, children have a statutory right to interpretation and translation services in all but six jurisdictions. Furthermore, in UK-E&W and UK-NI, whilst no right to interpretation and translation exists in legislation, the Courts and Tribunals Service provides language interpreters in domestic violence cases involving children. However, this right is rarely recognised for children in the role of subjects or involved in proceedings in the areas of administrative sanctions and offences committed below the MACR.

Child suspects/offenders who do not speak or understand the language of the procedure also have the right to interpretation and translation in criminal justice proceedings in 16 MS. However, child victims and witnesses enjoy this right in less than a third of MS.

4.3. A child-friendly environment and approach

Even where children have a right to be heard during criminal, civil and administrative judicial proceedings involving them, this right may be compromised if the environment is not child-friendly. Subject to age restrictions in some cases, there is a legal obligation in 13 MS to conduct certain proceedings in the areas of civil and administrative law in a non-intimidating and child-friendly manner. A number of MS have also developed further safeguards, in order to ensure that children have the opportunity to exercise their right to be heard in a child-friendly setting. This objective is achieved in different ways in the different jurisdictions concerned, including:

- By restricting the number of people present when the child is interviewed;
- By conducting the child's examination separately or outside of the court room (e.g. in the judge's office or in a child-friendly studio);
- By using screens or protecting the child from the view of the other party; and
- By ensuring that evidence provided through audio-visual recordings is admissible.

In relation to civil and administrative proceedings, statutory provisions exist in some MS to ensure that interviews with children are adapted to the child's pace, attention span and any communication difficulties that the child may have. Similarly, a number of MS have introduced measures to ensure that children involved in criminal judicial proceedings are interviewed by the police or judicial authorities in a manner which is adapted to their needs and makes the process less intimidating. Such measures include:

- Providing support to prepare children for interviews;
- Having trained officials conduct interviews;
- Having a specialised professional (e.g. a psychologist) present at, and/or participate in, interviews;
- Video-recording interviews;
- The use of child-friendly language and questions;
- Limiting the number and length of interviews; and

²⁰ See Directive on the right to interpretation & translation in criminal proceedings, Annex 2, Table 1.1 – Table 1.10.

- Allowing the child to be accompanied by a person of trust (e.g. parent/guardian).

Overall, the application of the above safeguards is often restricted or discretionary in nature. Many of the measures are optional in a number of MS or conditional on the age of the child, his/her role in the proceedings and/or the type of offence. For example, safeguards relating to the establishment of a child-friendly environment are notably more prevalent for child witnesses and victims. This may reflect the fact that these safeguards can help to reduce possible secondary victimisation of the child and to minimise the contact between the child victim or witness and the alleged perpetrator of the crime. Furthermore, safeguards relating to the adaptation of the manner in which children are interviewed apply most frequently in the areas of family and offences committed below the MACR, with a notable absence of such measures in proceedings relating to employment, asylum, migration, education and health.

4.4. Guidance for professionals

Only 4 MS have developed guidance for judicial and other competent authorities on how to implement the child's right to be heard. In the case of PL, the guidance concerns recommendations aimed at judicial authorities on how children should be interviewed. While these recommendations are drafted with children involved in criminal proceedings in mind, they are also frequently used by professionals working in civil judicial proceedings. In UK-NI, there is specific guidance tailored for judicial authorities to ensure that the child's right to be heard is respected in asylum, migration and placement in care proceedings.

Box 8 England and Wales – guidance on children's right to be heard in proceedings linked to placement in care

In proceedings related to placement in care, the Family Court may appoint a Children's Guardian from the Children and Family Court Advisory Service (Cafcass) to represent the child subject. The Children's Guardian must advise the court, *inter alia*, on the child's wishes. Cafcass has issued specific guidance for Children's Guardians on how to ensure that the wishes of the child are understood and represented. The guidance also extends to the court's general duty, when considering whether to make, vary or discharge a specific order relating to children, to have regard to the ascertainable wishes of the child concerned (considered in the light of their age and understanding).

Guidance for court staff regarding the adaptations required to ensure that interviews are conducted in a child-friendly manner also exists in a small number of MS, particularly in relation to proceedings in the areas of asylum, migration and offences committed below the MACR. In UK-S such guidance exists even though there are no statutory provisions to ensure that interviews with children are adapted to the child's pace, attention span and communication difficulties. In UK-E&W and UK-NI, special guidance exists for those conducting interviews with very young children involved in criminal judicial proceedings.

5. RIGHT TO REPRESENTATION

Summary of relevant children's rights standards

- MS should ensure that children involved in judicial proceedings have the right to access legal counsel and representation in their own name in a number of circumstances.²¹
- In particular, MS should ensure mandatory access to a lawyer for all children who are suspected or accused in criminal proceedings (with the exception of cases involving certain minor offences where mandatory access to a lawyer would be disproportionate). As an additional safeguard, these children should not be able to waive their right to be assisted by a lawyer.²²
- Children should be provided with timely legal counsel and representation, in such a manner so as to allow them to exercise their rights practically and effectively.²³ In particular:
 - Children should have access to free legal aid, under the same or more lenient conditions as adults;²⁴ and
 - Lawyers representing children should treat them as fully fledged clients with their own rights. Having provided the child with all necessary information and explanations concerning the possible consequences, they should bring forward the views and opinions of the child.²⁵

Providing children with effective access to a lawyer acts as a fundamental safeguard against violations of their rights during the judicial process and supports them to fully understand and follow the proceedings. The specific focus of this section is on the extent to which MS protect the right of child suspects involved in criminal judicial proceedings to access legal counsel and representation, as a necessary element of the right to a fair trial.

According to the data and information collected during the Commission's study, the right of child suspects to legal representation is recognised in all MS. This right extends to all phases of the proceedings in the majority of jurisdictions, with some exceptions where it applies during the investigation phase only (e.g. FI, NL and UK-S). Most MS have also taken further steps to ensure that child suspects can enjoy their right to legal representation in an effective manner. For example, in all MS, except DK and SE, there is a legal obligation for the police (or other relevant authorities) to inform children who have been apprehended of their right to a lawyer. Furthermore, child suspects are provided with defence counsel on a mandatory basis in 23 MS. Where mandatory defence

²¹ [Council of Europe](#) (2011) at p. 8.

²² Articles 4 and 6 of the [Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings](#) (see Annex 2). For further information on the right of children to access a lawyer, see Article 6(3) of the [European Convention on Human Rights](#), Articles 27 and 28 of the [Charter of Fundamental Rights of the European Union](#), Rule 15 of [The Beijing Rules](#) and [CRC Committee \(2007\)](#).

²³ Article 3 of the [Directive 2013/48/EU of the European Parliament and of the Council 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 have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty](#) (see Annex 2).

²⁴ [Council of Europe](#) (2011) at p. 8 and [CRC Committee \(2007\)](#) at p. 15.

²⁵ [Council of Europe](#) (2011) at p. 8.

exists, its application is often dependent on the seriousness of the charge and in some cases on the age of the child suspect. For example:

- In BE, mandatory defence only exists if a case goes to court;
- In DE, mandatory defence is only automatic if the child is placed in pre-trial detention;
- In EL, mandatory defence only exists for child suspects who are accused of an offence which, if committed by an adult, would be considered a serious crime; and
- Mandatory defence only exists for children above 15 years in CZ and for children under the age of 16 in NL.

Furthermore, the right of child suspects to apply for legal aid exists in all MS except HR and NL. Although this represents progress in the implementation of child-friendly justice, the provision of legal aid is subject to various conditions in different MS. In some jurisdictions, no conditions are set and legal aid is available to all child suspects free of charge. In a number of other MS, access to free legal aid is subject to a means-test and/or the merits of the case. These conditions are defined differently across MS, for example:

- In CY, in addition to a means-test, legal aid is only available free of charge to child suspects who are charged with an offence that carries a prison sentence exceeding one year;
- In DK, the child suspect must repay the costs incurred by the State if he/she is later convicted; and
- In DE, child suspects can receive free legal aid free of charge regardless of their financial situation but additional merit-based tests are imposed (see Box 9);

Box 9 Germany - merit-based criteria for the provision of free legal aid to child suspects

Child suspects must be appointed a legal counsel free of charge in the following circumstances:

- The main hearing is held at the Higher Regional Court or at the Regional Court;
- The accused child is charged with a felony;
- The proceedings may result in an order prohibiting the pursuit of an occupation;
- The accused child has been in an institution for at least three months based on a judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to commencement of the main hearing;
- The accused child may be committed in order to assess his/her mental condition; and
- The previous defence counsel has been excluded from participating in the proceedings by court decision.

6. RIGHT TO PROTECTION OF PRIVACY

Summary of relevant children's rights standards

- The privacy and personal data of children should be fully protected before, during and after judicial proceedings in accordance with national law.²⁶
- This requires MS to put in place a number of measures, for example:
 - MS should ensure that there is limited access to all records or documents containing personal and sensitive data of children and that the professionals involved abide by strict rules of confidentiality, except where there is a risk of harm to the child. If the transfer of such data is necessary and appropriate, it should be done in line with relevant data protection legislation;²⁷
 - MS should prohibit the dissemination or publication of information or personal data, particularly in the media, which could reveal or facilitate the disclosure of the child's identity;²⁸
 - MS should encourage the media to adopt self-regulatory measures and monitor their operation in practice;²⁹ and
 - MS should ensure that court and other hearings of a child are conducted behind closed doors (*in camera*). Exceptions to this rule should be very limited and clearly stated in law.³⁰

6.1. The right to privacy and protection of personal data

The MS of the EU have adopted a number of safeguards to protect the privacy rights of children involved in judicial proceedings. However, in nearly all cases, children's right to privacy is balanced against the rights to freedom of information and expression. The tension between these fundamental rights has led to a variety of provisions regarding the extent to which cases involving children can be publicised. Ultimately, this has resulted in the practical implementation of the privacy rights of children being at the discretion of the judicial authorities in the majority of MS.

Firstly, almost all jurisdictions provide in statute for the right to privacy for children involved in civil and administrative proceedings. This right tends to apply at every stage of the judicial process and involves, at minimum, a prohibition on the part of any actor to reveal the identity of the child involved in court proceedings. In a number of MS, professionals directly involved in the proceedings are obliged to treat all information and data concerning the case confidentially. However, in other countries certain categories of information are subject to confidentiality rules, but not others. In SE, for example, information before the court is public unless subject to confidentiality rules which are clearly delineated in legislation. The confidentiality rules in SE are also more extensive in certain areas of law (namely, migration, asylum, health and placement into care) than in others.

In 17 of the 27 jurisdictions where children involved in proceedings have a statutory right to privacy, the judge may order the disclosure of information to third parties (e.g. for reasons of public safety) in certain areas of law. Conversely, in cases where the starting

²⁶ Articles 16 and 40(2)(b)(vii) of the [CRC](#), [Council of Europe](#) (2011) at p. 22, [CRC Committee](#) (2007) at p. 18 and Rule 8.1 of [The Beijing Rules](#).

²⁷ [Council of Europe](#) (2011) at p. 6.

²⁸ [Council of Europe](#) (2011) at p. 6 and Rule 8.2 of [The Beijing Rules](#).

²⁹ [Council of Europe](#) (2011) at p. 6 and CRC Committee, [Report of the UN Committee on the Rights of the Child, Eleventh Session](#) (1996) at p. 80.

³⁰ [Council of Europe](#) (2011) at p. 6, Article 14 of the [International Covenant on Civil and Political Rights](#) and [CRC Committee](#) (2007) at p. 19.

point is that proceedings should be public, members of the judiciary enjoy discretionary power to make a non-disclosure order regarding information related to the proceedings (e.g. for reasons of ensuring the child's safety) in some MS. Furthermore, all MS, except CZ, provide for the statutory right of children to the protection of their personal data, especially in the context of processing, storing and transmitting court records. In most cases, MS have also developed further procedures to ensure that the records of children are kept strictly confidential and closed to third parties.

Overall, the above listed measures apply most frequently to children involved as plaintiffs, defendants and witnesses in proceedings relating to the areas of family and placement in care. In many jurisdictions, the relevant measures do not cover children in the role of subjects.

Box 10 France – protection of the child's privacy during family proceedings

Only parties to the proceedings and judicial officials have access to the file of a case. A third party (e.g. Family Council or grandparent) with legitimate interest requires judicial authorisation to consult the record of the case and have a copy issued. In certain proceedings in the area of family law, even disclosure of the real first name of the child, his/her school, or a picture of his/her parents is sufficient to constitute a criminal offence. Children may seek compensation through their parents where their rights have been infringed. Also, the Public Prosecutor may in his/her own right launch a formal lawsuit for children whose right to privacy has been violated.

A general right to privacy exists at a statutory level in all MS for child suspects/offenders, victims and witnesses involved in criminal judicial proceedings (except for BG and PT, where child witnesses are not covered). For child suspects/offenders and victims, this right applies at all stages of the proceedings in most MS, subject to a small number of exceptions. However, the privacy rights of child witnesses only enjoy statutory protection during the trial itself in 13 MS.

This statutory right to privacy is balanced against the freedom of information and expression in all MS except SI, where the identity of children can never be disclosed. For example, in some MS (e.g. EL, IE, NT and UK-S) legislation prioritises the child suspect/offender's right to privacy but judges have discretionary power to order the disclosure of information where this is considered to be a proportionate means of achieving a legitimate aim, such as freedom of information or expression. In relation to child victims and witnesses, the application of the right to privacy often depends on the age of the child concerned or the nature of the offence. For example:

- In MT and PT, the right to privacy applies to victims below the age of 16 only; and
- In FR, LT and SE, the right to privacy of child witnesses only applies in certain cases, including those involving sexual abuse and other serious offences.

All MS have developed procedures to restrict third party access to children's criminal records, except MT where crimes committed by children are not entered into criminal records. The approach taken by most MS is to automatically delete the criminal records after a specific period of time has elapsed, ranging from one year (e.g. CZ) to ten years (e.g. LV). In some MS, the period of time that must elapse before the records are deleted depends on the type of offence, the sentence given and/or whether the child reoffended. In 16 MS, non-disclosure procedures restrict access to the criminal records of child offenders. Certain conditions can apply, for example, in ES the child or his/her family

must explicitly request non-disclosure. Furthermore, in a small number of MS a procedure exists to delete or prevent the disclosure of criminal records when the child turns 18. However, such procedures are often limited in their application. In PL, for example, the procedure only applies to the records of children who were subject to an educational measure by the family court.

6.2. The prevention of privacy rights violations by the media

In the majority of MS across the EU, there are legislative provisions in place aimed at preventing violations of the privacy rights of children by the media at all stages of civil and administrative judicial proceedings. Although these provisions are generally broad in scope, they have limited application to child subjects in cases relating to offences committed below the MACR. Furthermore, the media implement self-regulatory measures in 22 MS to protect the privacy rights of children, such as a code of ethics. Monitoring of these self-regulatory measures is carried out by independent bodies in 16 MS, for example:

- The independent, non-governmental Cyprus Media Complaints Commission (CY);
- The Press Council (DK); and
- Office of the Inspector of Journalist Ethics (LT).

MS have also adopted legislation aimed at regulating the media, in order to protect the identity of children involved in criminal judicial proceedings in all countries except for FI, SE and SK. The extent to which state regulations protect the privacy rights of children varies. In particular, these regulations tend to be more extensive in the case of child suspects/offenders than they are in the case of child victims or witnesses. For example:

- Media outlets in CY are prohibited from broadcasting the name of a child suspect involved in police or judicial proceedings, or any information which may lead to the revelation of the child's identity. However, the media may, in exceptional cases, present the fact that children are involved as witnesses or victims of a crime (stopping short of disclosing the names of the children involved);
- In DE, state regulations only provide judges with discretionary power to exclude the media from court hearings involving child suspects where they consider this to be a proportionate means of protecting the child's best interests; and
- In EL, whilst the media are prohibited from revealing the identity of the relatives of the child suspect/offender by using their name, image or any other elements of their identity, the prohibition can be relaxed if revealing this information is considered 'indispensable in order to report the facts of the case'.

Box 11 UK England and Wales - Protecting the right to privacy of child suspects/offenders in criminal judicial proceedings

When a child suspect/offender is involved in proceedings in a youth court, the media is prohibited from publishing or broadcasting:

- Any report which reveals the name, address or school of the child concerned or includes any particulars likely to lead to his/her identification; or
- Any picture of the child concerned in the proceedings.

This prohibition may be lifted by the court in the following circumstances:

- Publishing the child's identity is necessary to avoid injustice to the child;
- The child is unlawfully at large and publishing his or her identity is necessary for the purpose of apprehending the child; and

- The child is charged or convicted of certain offences of a serious nature.

The above restrictions do not apply if a child suspect is tried in an adult court (Crown Court or adult Magistrate's Court). In these cases, the right of the public to information is prioritised and the onus is on the court to make an order restricting publicity.

In addition to the state regulations above, in 12 MS, the media implement self-regulatory measures to protect the right to privacy of children involved in criminal judicial proceedings although the extent to which these apply varies across MS.

6.3. Legal obligation to conduct court hearings behind closed doors

In the majority of jurisdictions, there is a legal obligation to hold civil and administrative proceedings in certain areas of law *in camera*. For example, this obligation applies to all civil judicial proceedings in FR, to proceedings relating to child custody in DK and to all disputes arising in connection with personal status matters (i.e. divorce, maternity or paternity, protection of the property of children) and adoption in HR.

The legal obligation to hold proceedings *in camera* applies most frequently in the areas of family and placement in care. However, in a number of MS it does not apply to child suspects involved in judicial proceedings or in the area of education more generally. In areas where this obligation does not apply, or in the small number of MS where no such legal obligation exists, judges have discretionary power to order the hearings to be held *in camera*. They may do so for a number of reasons, including: to protect the parties' personal or private life; to protect the parties from potential harm; if it is necessary to do so due to moral considerations; where publicity is not in the public interest; or if the presence of the public would be harmful to the interests of justice. Notably, in BG, children may request proceedings to be held *in camera* through their parents/guardians, or in their own name if they are over 14 years of age and have their parents' consent.

In relation to child suspects involved in criminal judicial proceedings, the approach adopted varies widely across MS. For example:

- An obligation to hold hearings involving child suspects *in camera* exists in BG, CZ, EL, FI, FR, IE, IT, RO and SI. In the case of RO, this obligation is lifted if a court decides that holding a hearing in public is in the child's best interest. In CZ and IT, children above a certain age (15 and 16 years respectively) may apply for a public hearing;
- Hearings involving child suspects are open to the public, unless a court decides to the contrary, in BE, EE, ES, MT, PT, SE, UK-E&W, UK-NI and UK-S. Notably, the court does not have discretion in this regard in cases involving sexual abuse across the UK; and
- The court must decide, on a case-by-case basis, whether to make the hearing private in DE, DK, HR, LV and NL.

In a small number of MS, the obligation to hold hearings involving child victims *in camera* only exists in cases involving sexual abuse, prostitution or pornography. In all other cases involving child victims and witnesses, there is no legal obligation but the court can order to conduct the hearing behind closed doors if it is in the child's best interests.

7. THE BEST INTERESTS OF THE CHILD

Summary of relevant children's rights standards

- MS should respect and implement the right of all children to have their best interests assessed and taken into account as a primary consideration in all actions and decisions concerning them.³¹
- A rights-based and individualised approach to the assessment and determination of the child's best interests should be adopted. Such an approach should take into account the personal context, situation and needs of the child concerned and incorporate the following elements:
 - Due consideration of the child's views, identity, protection, safety and situation of vulnerability; and
 - Respect for the other rights of children at all times, including their right to dignity, liberty and equal treatment.³²

This section focuses on the variety of measures adopted by MS to advance the implementation of the principle that the best interests of the child should be a primary consideration in the handling of civil and administrative judicial proceedings.

The majority of jurisdictions have reflected the principle that the best interests of the child should be a guiding force in decision-making at a constitutional or legislative level. However, in a number of MS this principle is restricted in scope. For example, in jurisdictions such as BE and IT, the relevant legislation only refers to the need to take the child's best interests into account. It does not state that the child's best interests should be a primary or paramount consideration. In some MS, the principle of advancing children's best interests is only enshrined in civil judicial procedural codes (not administrative judicial procedural codes) or in specific sectoral legislation concerning family disputes and child protection. In others, it is enshrined in sectoral laws pertaining to specific areas of administrative justice, such as asylum, migration, health and education. Furthermore, in a small number of MS (e.g. CY, EE) this principle has yet to be enshrined at a national level.

A number of MS have developed criteria at a legislative level, in order to help judges to assess the best interests of children involved in specific types of proceedings (see Box 12). In others, looser guidelines have been developed, usually through the case-law of the higher courts. However, in approximately one-third of MS no such criteria or guidelines exist to support the implementation of this principle in practice. In SE, the absence of such criteria is deliberate as the government has reasoned that the

³¹ See Articles 3(1) and 21 of the [CRC](#), [Council of Europe](#) (2011) at p. 4, [CRC Committee](#) (2013) at pp. 5, 19 and [C-451/11, MA and Others, 6 June 2013](#). Notably, Article 21 of the CRC states that in the area of adoption, the best interests of the child should be the paramount consideration.

³² [Council of Europe](#) (2011) at pp. 4, 19 and [CRC Committee](#) (2013) at pp. 4, 9, 13-16, 18-20.

authorities and courts need to have the flexibility and discretion to decide what is in the best interests of the child on a case-by-case basis.

Box 12 UK England and Wales – Determining the best interests of the child

The Children Act 1989 contains a “Welfare Checklist”, which obliges the court, when considering whether to make a care and supervision order, to have regard, *inter alia*, to:

- The ascertainable wishes and feelings of the child concerned;
- The child’s physical, emotional and educational needs and how these are to be met;
- The child’s age, sex, background and any other characteristic considered relevant;
- Any harm suffered or risk of harm; and,
- The likely effect of a change in circumstances.

In a number of MS there is a legal obligation on the part of the court to give due weight to the child’s views as part of the best interests assessment. Notably, in LU this measure is followed in practice even though there is no legal requirement to give due weight to the expressed views of the child. In other jurisdictions, this obligation only applies in the specific area of family law. Unfortunately, there are still a small number of jurisdictions (e.g. LV, PT and SI) where the court is under no legal obligation to consider the views of the child when determining his or her best interests.

Furthermore, in several MS the court consults with professionals/experts from different disciplines, in order to obtain a holistic picture of the child’s best interests. In some MS these consultations are not obligatory (e.g. IT, LU), while in others they are only obligatory in proceedings relating to the family and placement in care (ES, LT, RO). Section 8 below provides further information on the use of multidisciplinary approaches by the competent authorities when dealing with children involved in judicial proceedings.

8. MULTIDISCIPLINARY COOPERATION

Summary of relevant children’s rights standards

- MS should encourage the relevant authorities to continuously adopt a comprehensive and multidisciplinary approach, in order to ensure that the complex and multiple needs of children are met and any actions taken are systematically coordinated. When implementing such an approach, professional rules on confidentiality and the child’s right to private and family life should be fully respected.³³
- MS should establish a common assessment framework and interagency protocols for different professionals working with and for children, especially children at risk. Such professionals include lawyers, psychologists, physicians, police, immigration officials, social workers and mediators.³⁴

³³ [Council of Europe](#) (2011) at pp. 3-4, 8, Rule 1 of [The Beijing Rules](#) and [CRC Committee](#) (2013) at pp. 12, 15-16 and 19.

³⁴ [Council of Europe](#) (2011) at p. 8 and Council of Europe, [Recommendation CM/Rec \(2011\)12 of the Committee of Ministers to member states on children’s rights and social services friendly to children and families](#) at p. 8.

8.1. The prevalence of a multidisciplinary approach to safeguard the rights of children in judicial proceedings

Only half of the MS place a legal obligation on the court to obtain a comprehensive understanding of the child involved in civil or administrative proceedings through the adoption of a multidisciplinary approach. Furthermore, in those jurisdictions where such a legal obligation exists, it primarily applies to cases involving child plaintiffs and defendants in the areas of family and placement in care. Conversely, it is much less frequent for such an obligation to extend to cases in the fields of employment and education and those involving child subjects and witnesses.

In relation to criminal judicial proceedings, nearly all MS recognise the importance of a multidisciplinary approach, in order to obtain a comprehensive understanding of the child and to adapt the penal, rehabilitative or protective measures to his/her needs. Indeed, only 6 MS do not explicitly encourage a multidisciplinary approach to juvenile justice through legislative or policy measures. However, where such measures do exist, they tend to be limited in that they promote the adoption of a multidisciplinary approach by professionals who work with specific groups of children only. For example, most multidisciplinary activities at MS level attempt to facilitate the cooperation of professionals who work with child suspects/offenders and child victims of domestic violence and/or sexual abuse. Professionals working with child witnesses are only encouraged to adopt a multidisciplinary approach in two jurisdictions (LU and LV).

8.2. The adoption of cooperation procedures and frameworks

In addition to the legal obligation to adopt a multidisciplinary approach, a number of MS have developed further measures to support professionals working with and for children in judicial proceedings to fulfil their responsibilities in this regard. The adoption of such an approach is most commonly facilitated through formalised cooperation procedures between judicial authorities and other professionals. Such procedures take different forms in different MS, for example:

- In HR, social, health and educational institutions are obliged to cooperate with judicial authorities or among themselves in their efforts to collect and share data;
- In NL, a formal agreement exists specifying principles for the exchange of information between the relevant criminal, civil and/or administrative judicial organisations involved in migration proceedings; and
- In PT, in civil guardianship procedures the social services, composed of multidisciplinary teams, are obliged to elaborate a "social report" on the child, their integration in society and their family.

Furthermore, in a small number of MS, common assessment frameworks have been adopted for professionals working with and for children involved in civil and administrative proceedings. These are intended to support professionals to assess the child's legal, psychological, social, emotional, physical and cognitive situation.

Box 13 Estonia - multidisciplinary measures

A common assessment framework for professionals

The Ministry of Social Affairs has issued Guidelines targeted at social workers on the assessment of the child and family and a handbook on case management. The

handbook introduces a "social work method" in order to promote an integrated approach to cases and to ensure cooperation among specialists from different areas.

In relation to the criminal justice sector in particular, the existence and nature of cooperation procedures varies significantly across jurisdictions. For example, in 13 MS formal procedures exist to facilitate cooperation between professionals working with children involved in criminal judicial proceedings. On the other hand, in 10 MS the adoption of a multidisciplinary approach by professionals takes place on an ad hoc basis, if and when the professionals involved consider it important or useful. In these jurisdictions, the cooperation mostly takes place in the early stages of the proceedings when information about the case is being collected and assessed by the police or by the judge/prosecutor. Notably, procedures do exist for the police or the judge to consult with professionals in other fields (e.g. psychologists) to obtain an expert opinion. Even in MS where formal agreements or protocols have been signed by different departments to facilitate cooperation, the implementation of such measures is not always structured. Only 5 MS have set up institutions aimed at ensuring that a multidisciplinary approach is implemented consistently across cases and in a sustained fashion (see Box 14).

Box 14 Netherlands and Sweden - the adoption and implementation of formalised cooperation procedures

Netherlands

Safe houses (Veiligheidshuizen) have been set up at a regional level across the country, in order to improve the coordination of penal and rehabilitative interventions for child offenders. Safe houses organise regular case meetings, where criminal justice organisations, municipalities, social sector and care organisations discuss different interventions with the aim of reducing crime and in particular, re-offending rates.

Sweden

In several municipalities there are Children's houses (Barnahus), where different authorities (social services, the police, prosecutors, forensic doctors, paediatricians and the Authority for Child and Youth Psychiatry) gather together in a child-friendly environment to obtain information and provide support to children who have been victims of violence or sexual abuse.

Mechanisms are also in place to facilitate interactions between criminal, civil and/or administrative judicial proceedings (in cases which span these jurisdictions) in 8 MS. Such mechanisms include the possibility for the court to merge proceedings. In ES, for example, administrative proceedings can be merged with a civil proceeding and taken before the civil court.

9. TRAINING OF PROFESSIONALS

Summary of relevant children's rights standards

- MS should ensure that all professionals working with and for children receive interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.³⁵
- Such training should include information on, *inter alia*:
 - Children's legal rights and the standards in place;
 - Child and adolescent development and psychology;
 - Pedagogical skills;
 - Communicating with children at all ages and stages of development, and with children in situations of particular vulnerability; and
 - Where appropriate, the social and other causes of young offending and the measures available to deal with children in conflict with the law.³⁶
- The training provided should be in-depth and ongoing – including initial training and re-training – and its effectiveness should be periodically evaluated to determine the extent to which it has contributed to a culture of knowledge and respect for children's rights.³⁷

9.1. The existence of initial and continuous training programmes

The study indicates that training on the rights of children is not available for professionals working with or for children involved in civil and administrative proceedings in BG, DE, DK, MT and RO. In the other MS, some form of training on the rights of children does exist, but it varies in terms of its obligatory or voluntary nature and its availability to specific groups of professionals.

For example, initial and continuous training programmes have been developed in a number of MS for professionals working with and for children involved in civil and administrative proceedings. However, the type of professional groups covered by such programmes varies across the MS. In the majority of the jurisdictions concerned, the training is provided to social workers. In a smaller number of MS, training is additionally provided to a range of legal professionals, including judges. Furthermore, the provision of training to these professional groups is also dependent on the fields of law in which they work. Where initial and continuous training programmes exist, they are only provided to professionals working in all areas of law in 7 and 10 MS respectively. Overall, training is most frequently available for professionals working with children involved in family and placement in care proceedings. It is much less common for such training to be available for professionals working with children in the areas of education, administrative sanctions and offences committed below the MACR.

Although a number of MS have introduced mandatory training programmes for the key professional groups working with or for children within the criminal justice system, such programmes are still unavailable in 10 jurisdictions. Again, even where such programmes exist, their availability to the different professional groups varies widely.

For example, mandatory training programmes relating to child-friendly justice exist in:

³⁵ [Council of Europe](#) (2011) at p. 23.

³⁶ [Council of Europe](#) (2011) at pp. 8, 23, [CRC Committee](#) (2013) at p. 19 and [CRC Committee](#) (2007) at p. 25.

³⁷ CRC Committee, [General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child](#) (2003) at p. 13.

- 14 MS for police officers who are likely to have contact with children. In EL, this mandatory requirement only extends to police officers working with child suspects/offenders;
- 12 MS for judges, particularly those working within specialist juvenile courts. In BE, EL, HU and IE, the training requirements only cover judges who deal with child suspects/offenders; and
- 11 and 7 MS respectively for public prosecutors and defence lawyers who are likely to have contact with children. In the case of HU, BE and SI, such mandatory requirements only extend to public prosecutors or defence lawyers working with child suspects/offenders.

Box 15 France - training for legal professionals

Defence lawyers who work under the French Judicial Aid Scheme must have received training in the field for which they seek to work. Such training is compulsory and provided for free to lawyers wishing to work in juvenile justice under the Scheme.

The French Bar Association's National Council (*Conseil National des Barreaux*) has a series of initiatives for the creation of a specialised group of lawyers (*groupement d'avocats d'enfants*) in each local Bar Association, and provides regular training to these lawyers. Approximately 70% of the Bar Associations have set up such groups and therefore hold a list of specially trained lawyers.

20 MS have also set up some form of continuous training courses for criminal justice professionals who are likely to come into contact with children. In most cases, participation in this training is voluntary and the training is provided in a one-off manner rather than as part of a structured and on-going process of professional development. Depending on the jurisdiction in question, this training is provided to judges, police officers, prosecutors, defence counsels and/or social workers.

9.2. The scope of the training provided

MS have adopted a variety of approaches in relation to the style and scope of the training that they provide to professionals working with children involved in civil and administrative proceedings. In addition to the training provided on the rights of children from a purely legal perspective, a legal obligation exists in 13 MS to provide multidisciplinary training to such professionals on the needs of children and the adaption of procedures where necessary. In SE, for example, persons who are engaged in training to become judges take mandatory courses relating to children's development and needs.

There is also a legal obligation in 10 jurisdictions to provide mandatory training to professionals on communicating with children at all ages and stages of development. This legal obligation applies to different groups of professionals (e.g. social workers, judges and legal professionals) in different MS and aims to equip them with the necessary knowledge and skills to communicate appropriately with children in a range of circumstances. Furthermore, in 17 jurisdictions there are voluntary training opportunities available for professionals on communicating with children involved in judicial proceedings. Overall, where a legal obligation exists to provide multidisciplinary and/or communication-based training, it most frequently applies to professionals working in the areas of family and placement in care and only rarely applies to those working in education.

Box 16 Slovenia - training for guardians of unaccompanied children

Unaccompanied children seeking asylum must have a guardian appointed and this guardian is required to have completed mandatory training, including modules on:

- Family law (e.g. guardianship, foster care);
- Social work (e.g. relevant legislation, methods of work taking into account the best interests of children, intercultural, racial and religious characteristics);
- Psychology (e.g. development psychology, establishing a relationship of trust, methods of talking to a child, post-traumatic stress syndrome); and
- Protection of the rights of children (e.g. national and EU legislation).

The initial course consists of 24 hours of training. Every five years each nominated guardian also has to attend an advanced training course lasting eight hours.

In relation to criminal judicial proceedings, whilst the content of the training provided to judges and prosecutors varies across countries, there is frequently an emphasis on child psychology and child welfare, in addition to the legal aspects of child-friendly justice. Notably, judges and prosecutors in AT are given the possibility to participate in international training courses (such as those provided by the European Judicial Training Network), which emphasise international standards of child-friendly justice.

The training that police officers receive often has a more practical orientation, focusing in particular on how to communicate with children. For example, in a number of MS it covers child-friendly interview techniques, including the use of audio-visual equipment. The training provided to police officers does have a broader focus in some MS, covering aspects of child psychology, social policy, legal issues and forensic science (see Box 17).

Box 17 Luxembourg - a multidisciplinary approach to training the police

Officers who form part of the Youth Protection Department of Luxembourg's national police force must attend a three-week training course at the Police Academy of Freiburg (in Germany). This multidisciplinary programme covers the following areas:

- Juvenile criminal law;
- Child psychology (e.g. special training on how to welcome children to police stations);
- Communication with children (e.g. special interview techniques);
- Social questions of particular relevance children (e.g. children and new social media, children in schools, children and drugs);
- Crime prevention (especially prevention of sexual abuse); and
- Forensics and forensic science.

This is followed by another two-week training course that focuses on the specific issue of sexual abuse of children. Other forms of training are made available by different Ministries (Ministry of Family, Ministry of Justice and the Home Ministry) which help to foster a spirit of cooperation between the different services. The Youth Protection department of Luxembourg's national police force also organises a seminar on 'cognitive hearing', which is a special interview technique aimed at creating a positive relationship between the child and the investigator in order to avoid traumatisation.

10. MONITORING MECHANISMS

Summary of relevant children's rights standards

- MS should rigorously promote and monitor the implementation of their obligations under the international standards on child-friendly justice, through the establishment of one or more independent monitoring mechanisms that ensure consideration of, and respect for, children's rights.³⁸
- Such mechanisms should have a broad mandate for promoting and protecting children's rights. In particular, they should be capable of holding the competent authorities to account for guaranteeing the fulfilment of children's rights in criminal, civil and administrative judicial proceedings.³⁹

10.1. The incidence and scope of national monitoring mechanisms

National monitoring mechanisms play a key role in ensuring the compatibility of safeguards implemented by MS with the principles of child-friendly justice and in helping children to become increasingly aware of their rights, including in the context of judicial proceedings.

The majority of MS have established monitoring mechanisms at a national level, with competence to monitor the rights of children involved in criminal, civil and administrative proceedings. In many MS, an Ombudsperson or Children's Commissioner has been established to carry out a monitoring role, the majority of which deal exclusively with the rights and concerns of children. However, in most jurisdictions this task is shared between the Ombudsperson/Commissioner and at least one additional institution. In AT and ES, for example, there is an inter-ministerial obligation to review the impact of legislative proposals on children. As well as the Ombudsman for Children's Rights in LU, there is a Municipal Child Rights Protection Service within every municipality administration with the responsibility to secure the best interests and rights of children at a local level.

Most of the mechanisms that exist monitor the rights of children involved in judicial proceedings in all or almost all areas of law. However, in some MS they have a more limited role. For example, in UK-S there is a mechanism in place which only monitors the rights of children involved in proceedings relating to the areas of placement in care and offences committed below the MACR. Furthermore, monitoring mechanisms rarely apply to children involved in civil and administrative proceedings as subjects.

The powers vested in the Ombudsperson/Commissioner or other similar monitoring bodies vary across jurisdictions. In most cases, the monitoring mechanisms have an advisory function and review domestic legislation, policies and practice related to judicial

³⁸ [Council of Europe](#) (2011) at p. 12, [CRC Committee](#) (2003) at p. 11 and CRC Committee, [General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child](#) (2002).

³⁹ [CRC Committee](#) (2002) at pp. 2, 4-6.

proceedings to ensure their compatibility with international standards. More extensive powers relating to the rights and welfare of children include the power to, *inter alia*:

- Receive complaints and investigate alleged violations of the rights of children, including the formulation of recommendations or advice in order to ensure a better protection of children's rights and interests (e.g. LU);
- Bring, intervene or assist in administrative proceedings (UK-NI);
- Initiate proceedings before the Constitutional Court in cases where the relevant authority is in breach of international standards (LV);
- Request that the public prosecutor institute criminal proceedings in each criminal case involving a child, regardless of the child's role in the proceedings (PL);
- Report on conditions for and treatment of those in prisons, including young offender institutions (e.g. UK-E&W);
- Commence disciplinary actions against public officials, including judges (SE); and
- Inspect any authorised premises providing shelters or any type of accommodation for children (HR).

Box 18 Croatia - monitoring the rights of children in judicial proceedings

The Ombudsman for Children is an independent authority accountable to the Croatian Parliament. Its objective is to protect and monitor the rights and interests of children related to all types of administrative procedures and judicial proceedings. It also monitors the compliance of Croatian legislation with international agreements and conventions ratified by Croatia. The Ombudsman has the right to issue recommendations and to address warnings to public administrative authorities dealing with children. Authorities are obliged to provide the Ombudsman with prompt responses on measures taken following such warnings. If necessary, the Ombudsman can report malpractice to the supervisory authorities or alternatively, directly to the Croatian Government.

To perform its tasks, the Ombudsman has unlimited access to any data, information or files regarding any procedure involving children, including confidential data, and unlimited access to inspect premises providing shelters or accommodation for children. The Ombudsman has the right to request expert assistance from any specialised institution, for example, to carry out psychological evaluation of a child or to provide assistance in questioning a child.

11. ACCESS TO REMEDIES

Summary of relevant children's rights standards

- For rights to have meaning, children must have recourse to remedies that allow them to effectively exercise, and act upon violations of, their rights.⁴⁰
- In order to give effect to the right of children to an effective remedy, MS have the responsibility to put a number of safeguards in place. In particular:
 - MS should ensure that every child has access to appropriate, independent and effective complaints mechanisms and appellate bodies, with legal and other assistance provided where necessary;

⁴⁰ Article 2(3) of the [International Covenant on Civil and Political Rights](#), Article 13 of the [European Convention on Human Rights](#), [Council of Europe](#) (2011) at p. 8 and [CRC Committee](#) (2003) at p. 7.

- MS should ensure that children in conflict with the law have the right to appeal to an impartial authority or judicial body a decision finding them guilty of an offence, and the measures imposed;
- MS should ensure that all of the relevant procedures in place are child-sensitive, age-appropriate and rights-respecting in nature; and
- MS should ensure that where rights are found to have been breached, there should be appropriate reparation provided (e.g. compensation).⁴¹

All MS make legal remedies available to children whose rights have been violated in civil or administrative judicial proceedings. The form which these remedies take varies across jurisdictions, in terms of their accessibility to children, their legal representatives and/or third parties:

- In 23 MS, children involved in civil or administrative proceedings have a statutory right to appeal a court's decision in their own name. However, their ability to exercise this right in practice is subject to the minimum age of procedural capacity in place in the MS in question (see Section 2.1);
- In cases where children are below the minimum age of procedural capacity, their legal representative holds the right to appeal a court decision on their behalf in all MS. In 8 of these MS, the child is required to give consent before a legal representative can make submissions and/or appeal against a court's decision on his/her behalf; and
- All MS, except BE, BG, LU and UK-S, have a statutory provision allowing child care authorities to appeal against certain court decisions involving children. For example, they may appeal against a court decision which refuses to allow the child access to a parent.

A number of MS have also adopted additional safeguards, in order to ensure that the right of children to access redress is fully protected in practice. For example, in 13 MS there is a legal obligation to ensure that the procedures available to children to claim compensation for damages caused by violations of their rights are effective. Where such an obligation exists (and in some cases in the absence of such an obligation), the types of measures adopted by MS in this regard vary and include:

- An obligation for the court to provide information on access to remedies and options for compensation when it hands down a judgment (e.g. AT, HR);⁴²
- The provision of legal aid in order to cover the cost of an appeal (e.g. FI, PT);⁴³
- The possibility of extending time limits to appeal in cases where a legal representative was not secured in time for the child to appeal (e.g. BE); and
- Specific institutional support to provide children and/or their legal representatives with guidance, advice or protection (e.g. Child Commissioners in CY, social services in BE and SI, the Child's Legal Advisor in AT, the Children and Young People's Ombudsmen in AT and FI, and the Youth Welfare Offices in AT).

While the first two types of support mentioned above are provided to any party (i.e. adults and children alike) wishing to access remedies or compensation, the latter measures are examples of the specific adaptation of procedures to the needs of children.

⁴¹ [Council of Europe](#) (2011) at p. 4 and [CRC Committee](#) (2003) at pp. 7, 17-18.

⁴² See Section 3 for further information on access to information and advice.

⁴³ See Section 5.2 for further information on access to free legal aid.

A further safeguard adopted by all MS, except IE and RO, is the establishment of a mechanism to permit the court, or the child involved in judicial proceedings, to take action if there is a conflict of interests with the child's parents in the context of accessing remedies or compensation. Such mechanisms usually involve the appointment by the court of a legal guardian or guardian *ad litem* to support children who wish to access remedies or make compensation claims against their parents.⁴⁴ In CY, for example, the mechanism involves requesting the Child Commissioner to intervene.

As a general rule, the safeguards discussed above only apply in specific circumstances to children involved in civil and administrative judicial proceedings. Overall, they tend to apply to child plaintiffs and defendants involved in cases in the area of family law or placement in care. However, it is less frequent for such safeguards to extend to child subjects and witnesses involved in proceedings across all areas of law.

The type of legal remedies available for children involved in criminal judicial proceedings also varies according to the role of the child in the proceedings, the type of right that has been violated and the provisions in place in each MS. While child subjects/offenders have the right to appeal decisions concerning conviction and sentence to a higher court in all MS, the rules that apply in these cases are either similar to those that apply to adults or more stringent in nature;

- In AT, BG, DE and LU, the appeal against a conviction or sentence cannot be filed by the child directly but only by the child's legal representative;
- In SI, the maximum time limits for filing appeals are shorter for child suspects (8 days) than for adult suspects (15 days); and
- In AT, appeals are only possible for judgments by district courts and single judges at regional courts, not by courts of lay judges or courts with a jury.

Furthermore, child suspects can claim compensation if they have been acquitted by a court or if the conviction or sentence is overturned following an appeal in 15 and 16 MS respectively. However, in cases of acquittal in particular, additional circumstances often need to be present for the child to be able to claim compensation, including:

- The child must have been detained prior to acquittal (AT);
- The prosecution must have been abandoned (DK);
- Serious failure must have occurred in the criminal justice procedure (HR, MT, PL, PT, RO and SI); or
- The police must have taken part in unlawful behaviour, including unlawful arrest (LV).

While child victims have the right to claim compensation for damages caused by the offence in all countries, they can only appeal the decision in 12 MS. Furthermore, child victims can only appeal against a decision concerning the conviction or sentence and a decision not to prosecute in 9 and 6 MS respectively. Even where such rights exist, MS have placed restrictions on their application in practice in many cases. For example, the right of child victims to claim compensation only extends to cases relating to trafficking and violent crime in CY. In EL, a child victim needs to pay a charge in order to file an appeal or complaint against a decision relating to a civil claim for compensation.

⁴⁴ See Section 5.1 for further information on the right to access legal counsel and representation.

Child witnesses involved in criminal judicial proceedings have access to some legal remedies in certain MS. In a small number of jurisdictions, child witnesses can claim compensation for damages caused by the offence if they are also victims. They can also claim compensation for damages caused by unlawful decisions or violations in the legal procedure by filing a civil claim in 11 MS. However, as a general rule child witnesses (who are not also victims of an offence) do not have a right to appeal decisions taken during the investigation or the trial.

More broadly, there are a variety of redress mechanisms in place across the MS for children who have been discriminated against in criminal judicial proceedings. These range from the right to complain to the corresponding Equality authority or Ombudsperson, to the right to pursue a discrimination claim in a civil or criminal court.

12. CONCLUSIONS AND RECOMMENDATIONS

This policy brief identifies the relevant international standards concerning children's involvement in criminal, civil and administrative judicial proceedings and presents the findings from the Commission's study on these areas in the 28 MS of the EU. The significant data gaps make it difficult to assess the true nature of the implementation of children's involvement in the justice systems across the EU. They also make it difficult to compare progress in this implementation across MS. At the same time, the following conclusions can be drawn:

Progress has been made across the EU in the implementation of international children's rights standards in the area of child-friendly justice. There are some high standards of compliance with children's rights in some areas and some excellent practice is evident across MS.

Nevertheless:

- Implementation of children's rights standards in judicial proceedings remains selective and inconsistent. In many cases, measures to give effect to children's rights are limited in scope or application.
- In many MS, children's ability to enjoy their rights in practice is commonly dependent on a number of conditions, including: their age, their role in the proceedings, the stage which the proceedings are at, the specific area of law to which the proceedings relate and the discretion of the judicial authorities.
- This study suggests significant variations across and within MS in terms of how international standards in the area of judicial proceedings are protected.

There are many areas where improvements are possible. In particular, the mainstreaming of existing protections is necessary to ensure that regardless of where and how children come into contact with the justice system (child protection, divorce proceedings, immigration or education), children are treated with respect for their rights. The position of especially vulnerable children – including children with disabilities, Roma children and children at risk of or in poverty – is worthy of very careful consideration. MS need to take particular measures to remove the inequalities that these children face when they come into contact with the justice system.

The study highlights that there are some areas where particular improvements are required and **MS** are thus recommended to address the following issues:

1. Limitations and conditions currently attached to children's access to the courts and to independent remedies in some MS should be removed;
2. Specialist courts should be set up to deal with all matters affecting and involving children;
3. Information about children's rights should be adapted to children's circumstances and made more widely available;
4. The right to be heard, currently most commonly recognised and realised in child protection and family law proceedings, should be implemented in all proceedings affecting and involving children. The widespread use of age limits should be reviewed and guidance should be issued to support professionals and court staff in their respect for children's right to be heard;
5. The right to mandatory defence in criminal proceedings should be universally protected;
6. Children's privacy rights need to be underpinned by law to ensure their more robust and widespread protection;
7. The best interest principle, not currently widely applicable beyond child protection and family law, needs to be widely implemented. The process of determining the child's best interest needs to be undertaken by means of a multidisciplinary process;
8. Training should be provided on a systematic basis to all professionals who work with and for children.

MS should also

- invest in data collection, especially disaggregated data, in order to document progress in the implementation of children's rights in judicial proceedings;
- promote ways to document and share good practices at a national and at an EU level;
- look to develop initiatives to maximise the potential of the data collection to further enhance collaboration across the EU.

In addition, the Commission should

- develop an action plan to advance child-friendly justice in the European Union. This should include taking measures to ensure that within the institutions of the EU, especially the courts and decision-making processes, the rights of children are fully protected;
- implement a research strategy that advances the implementation of the rights of the child. This needs to be underpinned by a rights-based approach, to engage with children themselves and document their lived experiences.
- A stock-take should be undertaken of all of the major studies funded in child rights by the European Commission to date, in order to evaluate these studies and

to identify the gaps that remain in European knowledge and data on the implementation of children's rights.

13. ANNEX 2 APPLICATION OF EU LAW TO CHILDREN INVOLVED IN CRIMINAL, CIVIL AND ADMINISTRATIVE JUDICIAL PROCEEDINGS

Table 1.1 Access to adapted proceedings

Access to adapted proceedings		
	Child-specific support measures & procedures	Avoiding undue delay
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (29); Arts 4.1(7), 13.2, 15	Art. 13.1
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (9), (38); Arts 1, 22(4), 23-24	×
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Arts 13, 15.1, 16	Preamble (23); Art. 15.3(a)
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	×	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	×	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	×	Arts 11(3), 15(4), 15(5), 31
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	Art. 10(a)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (13)	Arts 21-25, 28.3, 29, 34.5, 36.1(b)
Return Directive (Directive 2008/115/EC)	×	Art. 15.2(a-b)
Recast Qualification Directive (Directive 2011/95/EU)	Art. 31	×
Mediation Directive (Directive 2008/52/EC)	×	×

Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (30-31); Arts 18-20	Art. 20.3(a)
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Table 1.2 Right to information and advice

Right to information and advice			
	The right to information & advice	Providing information in a child-friendly manner	Development of child-friendly materials & information services
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (15); Arts 4-5	×	×
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (15), (21), (26-33), (38); Arts 1, 3-4, 6, 7.3-7.4, 9.1, 11.3	Preamble (21); Arts 3.2, 4.2	Preamble (62)
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	Preamble (18-39); Arts 1-9	Preamble (26), (38); Arts 3.2, 4.4, 5.2	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (33); Arts 11.5-11.6	×	×
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	<i>See Table 1.3 (right to interpretation & translation)</i>	×	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	Preamble (27), (46), (55); Arts 3.4, 9.1(a), 10.4-10.5	Art. 9.1(a)	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	×	×	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×	×	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (18), (34); Arts 4.5, 26, 34.9	Preamble (34); Arts 4.2-4.3, 26.3	×

Return Directive (Directive 2008/115/EC)	Arts 12, 15.2, 16.5	Art. 12.2	×
Recast Qualification Directive (Directive 2011/95/EU)	Preamble (47); Art. 22	Art. 22	×
Mediation Directive (Directive 2008/52/EC)	×	×	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (50)	Preamble (34)	Preamble (34-35)

Table 1.3 Right to be heard

Right to be heard			
	Express right to be heard/ Participate	Procedural safeguards: Child- friendly interviews & environments	Right to interpretation & translation
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Art. 16	Preamble (21-23), (32); Art. 9	×
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (14), (20-21), (41-42); Arts 1.1, 3.1, 10	Preamble (53); Arts 7.2, 23, 24.1(a)	Preamble (34-36); Arts 4(f), 5.3, 7
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×	×	Preamble (25); Arts 3.1(d), 4.5
Anti-Trafficking Directive (Directive 2011/36/EU)	×	Preamble (20), (22); Arts 12.4, 15.3-15.4, 15.5(b)	Art. 11.5
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	×	×	Preamble (14-33); Arts 1-8
Directive on the right of access to a lawyer in criminal proceedings (Directive	×	×	×

2013/48/EU)			
Brussels IIa Regulation (Regulation 2201/2003/EC)	Preamble (19-20); Arts 11(2), 23(b), 41.2(c), 42.2(a)	×	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×	×	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (13), (18); Arts 5, 6.3(d)	Arts 5.4-5.5	Arts 5.4, 27.5
Return Directive (Directive 2008/115/EC)	×	×	Arts 12.2-12.3, 13.3
Recast Qualification Directive (Directive 2011/95/EU)	Preamble (18); Art. 31.3	×	Art. 22
Mediation Directive (Directive 2008/52/EC)	×	×	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	×	Preamble (30); Arts 20.3-20.5	×

Table 1.4 Right to representation

Right to representation		
	Right to access legal counsel & representation	Access to free legal aid
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (12), (16-18); Arts 4.1, 6	Preamble (24); Art. 18
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (38); Arts 4(d), 24.1(c)	Art. 13

Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	Art. 3.1(a)	Art. 3.1(b)
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (19); Arts 12.2, 15.2	Preamble (19); Arts 12.2, 15.2
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	Preamble (19-20); Art. 2.2	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	Preamble (12-34), (34-55); Arts 1-3, 7.2, 8-10, 12-14	Preamble (28), (45), (48); Art. 11
Brussels IIa Regulation (Regulation 2201/2003/EC)	×	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	Art. 10(c)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Arts 6.2, 26.2, 27.5-27.6	Art. 27.6
Return Directive (Directive 2008/115/EC)	Art. 13.3	Preamble (11); Art. 13.4
Recast Qualification Directive (Directive 2011/95/EU)	×	×
Mediation Directive (Directive 2008/52/EC)	×	×
Directive to combat sexual abuse & sexual exploitation of	Preamble (30), (32); Art. 20.2	Preamble (32); Art. 20.2

children (Directive 2011/93/EU)		
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Table 1.5 Right to protection of privacy

Right to protection of privacy		
	Right to protection of privacy & personal data	Conducting proceedings behind closed doors
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (28); Arts 4.1, 14.2-14.3	Preamble (28); Art. 14.1
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (54); Art. 21	Art. 23.3(d)
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (33)	Art. 15.5(a)
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	×	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	×	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	×	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×	×

Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (26-27), (34); Arts 4.1(e-f), 5.5, 31-32, 34, 38-39	×
Return Directive (Directive 2008/115/EC)	×	×
Recast Qualification Directive (Directive 2011/95/EU)	Arts 31.5, 37	×
Mediation Directive (Directive 2008/52/EC)	Preamble (23); Art. 7	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (50); Art. 20.6	Art. 20.5(a)

Table 1.6 The best interests of the child

The best interests of the child		
	Taking the best interests of the child into consideration	Individual assessment of needs
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (15), (26), (28); Arts 5, 12.1, 14.1	Preamble (19), Art. 7
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (14), (19); Arts 1.2, 3.3	Preamble (55-57); Arts 1.2, 22
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (8), (22-23); Arts 13.1, 14.2, 16.2	Preamble (18), (20), (23); Arts 12.4, 14.1
Directive on the right to interpretation & translation in criminal	×	×

proceedings (Directive 2010/64/EU)		
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	Preamble (55); Art. 5.2	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	Preamble (12); Arts 12, 15(1), 15(5), 23(a)	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	Art. 10(a)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (13), (16), (24), (35); Arts 2(k), 6, 8, 20.3	Preamble (13); Art. 6(3)
Return Directive (Directive 2008/115/EC)	Preamble (22); Arts 5, 10, 14.1(d), 17.5	×
Recast Qualification Directive (Directive 2011/95/EU)	Preamble (18-19), (27), (38); Arts 20.5, 31	Preamble (18)
Mediation Directive (Directive 2008/52/EC)	Art. 7(a)	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (2), (6), (30); Art 18.1	Preamble (30); Art. 19.3

Table 1.7 Multidisciplinary cooperation

Multidisciplinary cooperation	
	Requirement to adopt a multidisciplinary approach
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	×
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (62)
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (4-5)
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	Arts 54-56
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (28), (34); Arts 34, 36.1(a)
Return Directive (Directive 2008/115/EC)	Preamble (19)
Recast Qualification Directive (Directive 2011/95/EU)	Art. 36
Mediation Directive (Directive 2008/52/EC)	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	×

Table 1.8 Training of professionals

Training of professionals		
	Professional training & capacity-building	Further detail on the scope of the training
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (27); Art. 19	Art. 19.1
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (61), (63); Arts 23.2(b), 25	Preamble (61)
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	Preamble (37-38); Art. 9	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (15), (25); Arts 9.3, 15.3(c), 18.3	Preamble (25); Art. 18.3
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	Art. 6	Art. 6
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	×	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	×	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×	×
Recast Dublin Regulation (EU Regulation 604/2013)	Arts 6.4, 35.3	×
Return Directive (Directive 2008/115/EC)	×	×
Recast Qualification Directive (Directive 2011/95/EU)	Arts 31.6, 37	×
Mediation Directive (Directive 2008/52/EC)	×	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (36); Arts 20.3(c), 23.3	Preamble (36); Art. 23.3

Table 1.9 Monitoring mechanisms

Monitoring mechanisms	
	Monitoring the implementation of rights
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (33); Art. 20
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (62)
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	×
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (27); Art. 19
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	×
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	×
Brussels IIa Regulation (Regulation 2201/2003/EC)	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Arts 35-36, 46
Return Directive (Directive 2008/115/EC)	Art. 16.4
Recast Qualification Directive (Directive 2011/95/EU)	×
Mediation Directive (Directive 2008/52/EC)	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (44)

Table 1.10 Access to remedies

Access to remedies	
	Access to effective remedies & compensation
Proposal for a Directive on procedural safeguards for children suspected or accused (COM(2013) 822)	Preamble (34)
Victim's Rights Directive (Directive 2012/29/EU)	Preamble (24), (35), (43-45), (49), (62-63); Arts 4(b), 4(e), 4(h), 5, 9.1, 11, 16
Directive on the right to information in criminal proceedings (Directive 2012/13/EU)	Preamble (36); Arts 4.3, 8.2
Anti-Trafficking Directive (Directive 2011/36/EU)	Preamble (19), (33); Arts 12.2, 15.2, 17
Directive on the right to interpretation & translation in criminal proceedings (Directive 2010/64/EU)	Preamble (25); Arts 2.5, 3.5
Directive on the right of access to a lawyer in criminal proceedings (Directive 2013/48/EU)	Preamble (49), (52); Art. 12
Brussels IIa Regulation (Regulation 2201/2003/EC)	×
Directive on Residence permits for victims of human trafficking (Directive 2004/81/EC)	×
Recast Dublin Regulation (EU Regulation 604/2013)	Preamble (19); Arts 4.1(d), 26.2-26.3, 27, 34.9
Return Directive (Directive 2008/115/EC)	Arts 12-13, 15.2(a)-15.2(b)
Recast Qualification Directive (Directive 2011/95/EU)	×
Mediation Directive (Directive 2008/52/EC)	×
Directive to combat sexual abuse & sexual exploitation of children (Directive 2011/93/EU)	Preamble (30), (32), (50); Art. 20.2

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