4

The rights of the child and protection of children

The year 2011 witnessed important progress in European Union (EU) law and policy towards better protection of the rights of the child. These developments at EU level will affect how EU Member States ensure the prevention of the crimes of child trafficking, sexual abuse, sexual exploitation and child pornography, the protection of children who fall victim to such crimes and the prosecution of offenders. The new EU Agenda for the Rights of the Child establishes priority areas, including increasing knowledge about the situation and needs of the most vulnerable groups of children. Accompanied and unaccompanied migrant children continue to arrive in EU Member States, which requires adequate responses by public authorities, social and other services.

This chapter analyses the main developments and trends in the area of rights of the child that occurred in the EU and EU Member States, focusing particularly on violence against children; sexual abuse and exploitation of children; child trafficking; children and migration; child-friendly justice; developments regarding cross-national divorce and parental separation; participation of children; and data collection.

The EU Agenda for the Rights of the Child has contributed to defining further target areas of work where the EU and its Member States can act. The agenda lists 11 specific actions, among which are:

- promoting the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice and taking them into account in future legal instruments in the field of civil and criminal justice;
- supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children (2011-2014);
- paying particular attention to children in the context of the EU Framework for National Roma Integration Strategies, and supporting Member States to ensure the swift introduction and full functioning of the 116 000 hotline for missing children and the child alert mechanisms (2011-2012).[1]

1 See further European Commission (2011a).

Key developments in the area of children's rights:

- the EU Agenda for the rights of the child, the directive on preventing and combating trafficking in human beings and protecting its victims and the directive on combating the sexual abuse and sexual exploitation of children and child pornography form a new frame of reference at EU level;
- nine EU Member States are reforming their child protection systems, following reviews of national legislation in the area of child protection. Many EU Member States are also in the process of reforming their family justice systems;
- 11 EU Member States sign the Council of Europe Convention on preventing and combating violence against women and domestic violence which also covers girls; five EU Member States and Croatia ratify the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.
- in the asylum and migration context issues like constraints relating to age assessment at national level are discussed and the European Commission establishes an expert group on unaccompanied minors.

The United Nations (UN) Convention on the Rights of the Child (CRC) provides the backdrop against which many developments in the field can be measured. All EU Member States – and Croatia – have ratified the CRC. In December 2011, the UN General Assembly approved a third additional

protocol to the CRC, establishing a communication procedure (that is, a complaints procedure),[2] which it previously lacked. This procedure allows individuals, groups or their representatives who claim that their rights have been violated under the CRC to bring a complaint before its monitoring body, the Committee on the Rights of the Child. The adoption of this protocol will allow children, whether as individuals or as part of a group, to submit complaints directly to the Committee, thereby contributing to the enforcement of the international recognition of children as subjects of law and as rights holders.

4.1. Violence against children

In April 2011, the Committee of Ministers of the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence, which also includes girls.[3] Eleven EU Member States signed the convention, although none had ratified it at the time of publication (see Chapter 10 on international obligations). Given the general lack of comparable data on violence against children in Europe, the European Union Agency for Fundamental Rights (FRA) EU-wide survey on violence against women will provide much-needed information, looking at adult women's experiences of violence during childhood and at the issue of children witnessing violence against their mothers.

> *"With the Lisbon Treaty and the legally binding Charter of Fundamental Rights, the Rights of the Child are at the heart of the EU's objectives. They give us the means to act for children, and the duty to make use of these means."*
>
> *EU Commission Vice-President Reding, sixth Forum for the Rights of the Child, 23 November 2011*

Table 4.1: Prohibitions against corporal punishment, by country

Country	Prohibited in the home	Prohibited in schools	Prohibited in penal system as disciplinary measure	Prohibited in alternative care settings
AT	YES	YES	YES	YES
BE	NO	YES	YES	SOME
BG	YES	YES	YES	YES
CY	YES	YES	YES	YES
CZ	NO	YES	YES	NO
DE	YES	YES	YES	YES
DK	YES	YES	YES	YES
EE	NO	YES	YES	NO
EL	YES	YES	YES	YES
ES	YES	YES	YES	YES
FI	YES	YES	YES	YES
FR	NO	YES	YES	NO
HU	YES	YES	YES	YES
IE	NO	YES	YES	SOME
IT	NO	YES	YES	YES
LT	NO	YES	YES	NO
LU	YES	YES	YES	YES
LV	YES	YES	YES	YES
MT	NO	YES	YES	NO
NL	YES	YES	YES	YES
PL	YES	YES	YES	YES
PT	YES	YES	YES	YES
RO	YES	YES	YES	YES
SE	YES	YES	YES	YES
SI	NO	YES	YES	SOME
SK	NO	YES	YES	YES
UK	NO	YES	YES	SOME
HR	YES	YES	YES	YES

Source: Global initiative to end all corporal punishment of children, Global progress towards prohibiting all corporal punishment, *October 2011*

2 UN, CRC (2011), Optional protocol to the CRC on a communications procedure.

3 Council of Europe, Convention on preventing and combating violence against women and domestic violence.

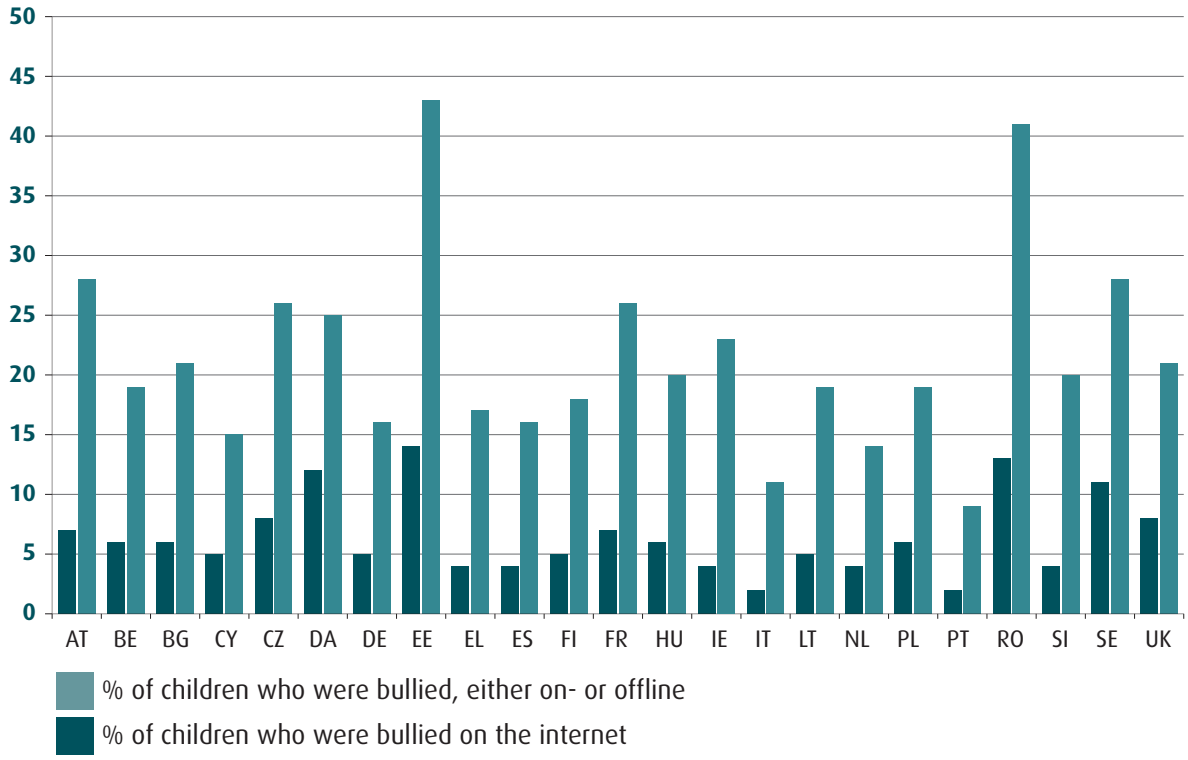
Whereas all EU Member States have prohibited corporal punishment against children in schools and penal institutions, as of October 2011 only 16 EU Member States had prohibited all forms of corporal punishment including against children at home and in alternative care settings: **Austria, Bulgaria, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Poland, Latvia, Luxembourg,** the **Netherlands, Portugal, Romania, Spain** and **Sweden**.[4]

In 2011, a number of EU Member States were in the process of carrying out partial or general reforms of their child protection systems, aiming to address existing failings – and their deeply harmful consequences for some children. The reviews – in **Bulgaria**, **Denmark, Estonia, Germany, Lithuania,** the **Netherlands, Portugal, Romania, Slovenia** and the **United Kingdom (England and Wales)** – have looked not only at how social services deal with cases of children in need of protection but also at how officials in the education and health sectors are required to respond to cases of alleged and reported cases of violence against children.

In October 2011, a draft Federal Act on Child Protection (*Bundeskinderschutzgesetz*) was approved in **Germany**, which includes, among other measures, the set-up of a network of institutions, professionals and social support services for child protection services at the level of the *Länder*; criminal records checks of staff working with children; and the enlargement of the mandate of youth welfare offices. With a strong focus on cooperation, the law aims at improving communication among different types of child professionals by creating a network and encouraging information sharing among agencies. Although the far-reaching proposal has been well received, experts consider that current underfunding makes it difficult to implement.[5]

Although national legislation and policies often address violence against children within the family, the identification and support of child victims remains a challenge. The lack of coordination between municipal social services has been identified as an important weakness. In **Denmark**, for instance, the Hjorring District Court (*Hjorring Byret*) found a husband and wife guilty of abusing their children and step-children, with offences including assault, incest and forcible restraint. Once the court learned that the municipality of former residence had withheld information from the municipality to which the family later moved about possible abuse within the family, it ordered the former to repay the costs of foster care of the child victims of abuse.[6]

Figure 4.1: Children aged nine to 16 who self-report having suffered bullying over the past 12 months, by country (%)



Note: *Latvia, Luxembourg, Malta, Slovakia and Croatia were not included in this study.*

Source: *Livingstone* et al., *2011,* EU kids online survey, *p. 25*

4 Global Initiative to end all corporal punishment of children (2011).

5 German Women Lawyers Association (2011).

6 Denmark, Court of Denmark (2011), *Anklagemyndighede v. TEJ og HAL*, RAFD-585/2011, 21 June 2011.

Reports regarding violence in schools or institutions continued to emerge. For instance, in Vienna, **Austria,** over 300 cases of child abuse in public institutions emerged during 2011, dating from the 1950s onwards. Some claims included very serious allegations, such as gang rape. The Vienna City Council established a committee to investigate the cases and provide assistance to the victims, including economic compensation. A final report on this issue is expected by the end of 2012. The city also created an Ombudsperson for children in institutions. The office is due to take up its duties in the spring of 2012.[7]

A pan-European hotline for children in need of advice is available at: 116,111. To assess awareness of the service, the European Commission carried out a survey in May 2011, finding that hotline awareness seldom rises above 1 % and never exceeds 7 %. These results underline the need for enhanced efforts to provide information on the helpline.[8] Plan International and Child Helpline International have called on EU Member States to improve the access of children affected by abuse in institutional settings to child helplines.[9]

The EU Kids Online study carried out by the London School of Economics found that bullying among children, defined in the report as treating others in a hurtful or nasty way, occurs both on- and offline, although more frequently offline (see Figure 4.1).[10] The survey was carried out in 25 countries (including the 27 EU Member States except Latvia, Luxembourg, Malta and Slovakia) between 2009 and 2011 among 25,000 children between the ages of nine and 16.

4.1.1. Deinstitutionalisation of children

Institutionalisation of children can result in difficult and problematic situations, as highlighted, for instance, by the French Ombudsperson in a 2011 report on France.[11] However, deinstitutionalisation efforts have continued in EU Member States, particularly in **Bulgaria**, to deal with the large numbers of children who are placed in institutions and consequently do not receive family, or family-type care.

As highlighted in the FRA annual report *Fundamental rights: challenges and achievements in 2010*, inquiries ordered jointly by the Chief Prosecutor and the Helsinki Committee in Bulgaria were made into the deaths and bodily injuries of children with disabilities in childcare institutions in Bulgaria.[12] The Chief prosecutor's inquiries revealed substantial deficits in his offices' investigations into these deaths and injuries, as well as a failure to follow up court cases which they had launched.[13] Nevertheless, as part of Bulgaria's efforts towards the deinstitutionalisation of children, the Health Act was amended in December 2010, requiring that an autopsy be made into the death of children placed outside their own families. The amendment also provides for establishing a specialised department within the Prosecutors Office to handle such cases.

Whereas institutionalisation is not necessarily linked to violence, it does interfere with the right to liberty and security – an interference that is not always justified. In the judgment *A. and others v. Bulgaria* published in November, the European Court of Human Rights (ECtHR) addressed the right to liberty and security of children in a young offenders' institution who displayed antisocial behaviour. The ECtHR ruled that given the stringent conditions they were faced with in the young offenders' institution and the length of time they had spent there, the applicants' right to liberty had been violated. The ECtHR noted that Bulgarian law failed to define 'antisocial behaviour' nor did it contain an exhaustive list of the acts characterised as such. It also observed that, in Bulgarian judicial practice, running away from home, vagrancy and prostitution were considered antisocial acts liable to result in various measures, including placement in a specialised institution.[14]

Promising practice

Setting standards for guardians of separated children in Europe

The non-governmental organisation Defence for Children devised *Core standards for guardians of separated children* in line with the CRC, EU Directives, the UN Guidelines for the Alternative Care of Children and the Quality4Children standards for children in out-of-home care, under the framework of the DAPHNE programme which combats violence against women and children. The core standards focus on qualifications and responsibilities of the guardian in relation to reception, return, legal procedures and a durable solution for the child. Proper guardianship systems are essential to finding lasting solutions for separated children, whether that be return to their country of origin, transfer to another country – for instance for family reunification – or integration into the receiving country. The guidelines were developed on the basis of the views of children in eight member States regarding the ideal characteristics of a guardian. The countries covered were: Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Slovenia and Sweden.

For more information, see: www.defenceforchildren.nl

7 For more information, see: www.wien.gv.at/menschen-gesellschaft/kinderheime.html.
8 European Commission (2011b).
9 Bazan, C. (2011).
10 Livingstone, S. *et al.* (2011).
11 France, Le Défenseur des droits (2011).
12 FRA (2011a), p. 72.
13 Bulgaria, Bulgarian Helsinki Committee (2011).
14 ECtHR, *Affaire A. et Autres v. Bulgarie,* 29 November 2011.

The European Network of Ombudspersons for Children (ENOC) issued a report in December 2011 on *Respect of the rights of children and young people living in institutional care: state of play*.[15] The report is based on a survey of ENOC offices located across EU Member States and deals with children's rights and the reality they face in institutional care settings, excluding institutions for juvenile delinquency, mental health or foster care. The main findings of the report are that the wording of most legislation describing reasons for placement is vague, leaving the judiciary or other competent authorities (such as child protection services or social welfare offices) room for discretion. In cases of voluntary placement, a systematic review of placement decisions is not always provided for; and, while many countries have complaints procedures in place, it is not always clear how accessible these are for children and how much they make use of them.

In **Spain**, public attention focused on the 'stolen children' who, between the 1940s and 1980s, were given up for adoption at hospitals with neither their mothers' knowledge nor consent. This allegedly constituted a systematic practice in some hospitals, involving doctors, nurses and nuns. In June 2011, the general public prosecutor said that of the 849 investigations launched, evidence of a crime had been found in 162 cases and in those cases charges had been filed.[16] There are growing indications, however, that the practice may have involved hundreds of children. Complaints by various organisations – such as the National Association of the Victims of Irregular Adoptions (*Asociación Nacional de Afectados por Adopciones Irregulares*) and SOS Stolen Babies (*SOS Bebés Robados*) – over state delays in opening registries to enable the search for lost relatives[17] prompted the general public prosecutor to point out that the investigations would take time because they need to be coordinated with all the autonomous communities of Spain as it was believed that various networks had been involved.

4.2. Sexual abuse and exploitation

This section discusses the issues of sexual abuse and exploitation of children primarily through the prism of the Directive of the European Parliament and of the Council of the European Union on combating the sexual abuse, sexual exploitation of children and child pornography, adopted in November 2011, which replaced Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

15 ENOC (2011).
16 Agencia EFE (2011a).
17 Agencia EFE (2011b).

Although EU Member States are allowed two years to transpose the directive into national law, **Austria**, the **Czech Republic**, **Estonia**, **France**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Slovenia**, **Spain** as well as **Croatia** began amending their criminal codes in 2011 by criminalising different forms of violence on the internet or forms of sexual violence.

The directive introduces EU-wide requirements on the prevention of all forms of sexual abuse and exploitation of children, prosecution of offenders and protection for victims. It enhances the existing international framework, in particular the Optional Protocol of the CRC concerning the sale of children, child prostitution and child pornography (see also Chapter 10 on international obligations). The directive defines offences concerning not only sexual abuse, sexual exploitation of children and child pornography but also the solicitation of children for sexual purposes, and the incitement, aiding and abetting and attempt of these practices. It leaves EU Member States the discretion to decide whether or not some practices apply to consensual sexual activities between peers who are close in age and degree of psychological and physical maturity, as long as the acts do not involve any abuse.

In drafting the directive, a balance was sought between children's right to protection and the right to freedom of expression. As a result, the directive clarifies in its preamble that child pornography is a specific type of content that cannot be construed as the expression of an opinion.[18] EU Member States must therefore ensure the prompt removal of web pages hosted in their territory that contain or disseminate child pornography. They must also endeavour to secure the removal of such pages if hosted outside their territory, through, for example, cooperation with other states. Since the removal of child pornography content at source is often not possible, the directive authorises Member States to take measures to block access to those pages for internet users in their territory, provided that the measures are set by transparent procedures and provide adequate safeguards to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. The safeguards also need to include the possibility of judicial redress.

In all these respects, the directive also supplements the 2007 Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, which by March 2012 had been ratified by a total of 11 EU Member States, including ratifications in 2011 by **Austria**, **Bulgaria**, **Finland**, **Luxembourg**, **Romania** as well as **Croatia** (see also Chapter 10 on international obligations).

18 Directive 2011/93/EU, preamble para. 46.

In some EU Member States, public debates surfaced over the balance to be struck between the blocking or deleting of websites containing child pornography and freedom of expression. The Human Rights Defender in **Poland** organised a debate in February 2011, where children's rights organisations generally supported blocking websites, while other civil society organisations argued that doing so could be used to prohibit any other unwanted, politically sensitive content on internet pages.[19]

The directive also includes aggravating circumstances, such as when offences are committed against children in particularly vulnerable situations, such as children with mental or physical disabilities, in situations of dependence or in states of physical or mental incapacity due to substance abuse. Other aggravating circumstances include when the offences are committed by a member of the child's family, a cohabiting person, or a person abusing a recognised position of trust or authority, such as guardians or teachers, or, finally, by a repeat offender.

In order to avoid repeat offences, the directive requires that those previously convicted be prevented from exercising professional activities involving direct and regular contact with children. Employers involved in activities that bring (potential) employees into such contact with children are entitled to request information on their criminal convictions, as provided for in the directive, and on whether they have been disqualified from such work. Since January 2011, employers in **Denmark** are obliged to check the criminal records of staff in direct contact with children under the age of 15.

The directive also envisages intervention programmes or measures to prevent and minimise the risk of repeated offences of a sexual nature against children. Related to this, the directive criminalises the online 'grooming' of children or the solicitation of children for sexual purposes through the use of information and communication technologies, as well as child sex tourism, including where the offence is committed on a Member State's territory or by one of its nationals abroad. **Austria** and **Slovenia** amended their penal codes in 2011, introducing the criminalisation of grooming and defining various activities under the offence of child pornography.

In December 2011, the EU's Justice Home and Affairs Council adopted Conclusions on combating the sexual exploitation of children and child pornography on the Internet.[20] The conclusions require EU Member States to ensure the broadest and speediest possible cooperation to facilitate an effective investigation and prosecution of such offences. Moreover, they request the European Commission to, amongst other actions, explore ways to improve removal of child pornography. They ask EU Member States to consider the use of Europol to combat child sexual abuse online, including the exchange of information on webpages containing child pornography, leading to the pages' removal or the blocking of their content.[21] The Executive Director of the UN Office on Drugs and Crime underlined the international dimension of this phenomenon when, in April, he called for concerted global action to combat online child abuse, one of the most common forms of cybercrime.[22]

According to the EU Kids online report mentioned above, children spend an average of 88 minutes per day online and the average age of first internet use is nine.[23] Against the background of the extensive and early use of the internet and social networks and notorious cases of abuse, the European Commission's report *Protecting Children in the Digital World*[24] found that all EU Member States are conscious of these challenges and are increasing their efforts to respond to them. They are actively participating in the EU Safer Internet Programme, which runs between 2009 and 2013. This programme is designed to promote the safer use of the internet and other communication technologies, particularly for children and young people; to educate users, particularly children, parents, carers, teachers and educators; and to fight against illegal content and harmful conduct online. The Commission's report identified, however, divergences in Member State responses and concluded that further action at European level was needed to build on the best Member State practices.

In some EU Member States efforts have been made to tackle the sexual abuse and exploitation of children from within the Catholic Church. The Catholic Church in **Germany,** for instance, has taken a number of concrete steps to address the rising number of sexual abuse claims against it. First, it has commissioned two research projects, one on sexual abuse of children by Catholic priests and members of religious orders, and another on sexual assaults from a psychiatric-psychological perspective. Second, it has established two hotlines, one for victims of sexual abuse generally, and another which specifically addresses cases which occurred in Catholic children's homes during the 1950s and 1960s.[25] During Pope Benedict XVI's September 2011 visit to Germany, he received a group of victims and underlined that the Catholic Church is interested in uncovering the full extent of the abuse that took place at its institutions.[26]

19 For more information, see: http://brpo.gov.pl/index.php?md=8841.
20 Council of the European Union (2011).
21 *Ibid.*
22 For more information on the Executive Director's statement, see: www.un.org/apps/news/story.asp?NewsID=38069&Cr=internet&Cr1.
23 O'Neill, B. *et al.* (2011).
24 European Commission (2011b).
25 For more information, see: www.hilfe-missbrauch.de and www.heimkinder-hotline.de.
26 Holy See (2011).

In **Ireland**, when launching the report In Plain Sight[27] commissioned by Amnesty International, the Minister for Children and Youth Affairs acknowledged state failures and announced a number of reforms. The Amnesty report explores the reasons why the abuse and exploitation of thousands of Irish children in state-funded institutions, previously revealed by the Ferns, Ryan, Murphy and Cloyne reports on child abuse in Ireland, were able to take place. Amnesty International's report argues that the root of the problem was the state's "deferential attitude to the hierarchy of the Roman Catholic Church",[28] which prevented the investigation and prosecution of abuse and lent the law's protection to the powerful instead of the powerless. It held that children were abandoned to a dysfunctional, chaotic and unregulated child protection system in which no one was held to account for its failure to protect and care for its charges.

4.3. Child trafficking

In April 2011, the EU adopted a directive on preventing and combating trafficking in human beings and protecting its victims,[29] replacing Council Framework Decision 2002/629/JHA on combating trafficking in human beings. EU Member States are required to comply with the directive by 6 April 2013.

This new directive includes a strong child protection component, addressing the issue in its definition of trafficking. It establishes that in the specific case of child trafficking, requirements normally necessary to determine the existence of an offence, such as the threat or use of force or other forms of coercion, are no longer necessary – which is also in line with the Council of Europe Convention on Action against Trafficking in Human Beings. The directive devotes several articles to the protection of child victims of trafficking, specifically including children in criminal investigations and proceedings and unaccompanied children. It recognises children's greater vulnerability and higher risk of falling victim to trafficking and stipulates that, in such cases of particular vulnerability, the penalty for a trafficking offence should be more severe. The directive incorporates key child protection principles such as the best interest of the child and contains concrete requirements for child protection, such as free legal counselling, appointment of a guardian and, to limit the risk of secondary victimisation, limits to the number of interviews, which should be performed by trained professionals. The directive establishes the possibility of video recording interviews, and specialised education programmes for children "aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings".

The European Commission is preparing a strategy on combating trafficking of human beings, which is expected to be approved in May 2012 and which aims to complement the various measures envisaged under the directive. A number of EU Member States also continued to develop legislation and policies to combat trafficking in 2011. These were **Austria, Bulgaria**, the **Czech Republic, Denmark, Greece, Ireland, Malta, Romania, Slovakia, Slovenia, Spain,** and the **United Kingdom**.

In February, for instance, **Slovakia** adopted a national programme to combat trafficking covering the prevention, protection and prosecution of trafficking from 2011 to 2014. In other EU Member States, legal reforms involved expanding legal definitions of trafficking to include new forms of exploitation: **Romania**, for instance, added child begging to the definition of trafficking in its revised Anti-trafficking law.

According to the US Department of State's annual *Trafficking in persons* report, **Estonia** remains the only EU Member State without a trafficking law. The Estonian government has taken steps to address this, presenting a proposal in August 2011 to review the Penal Code in this regard.[30]

As in recent years, the lack of data on the number of victims of trafficking and the inconsistent gathering of information from different data sources remained a challenge in most EU Member States. The **Romanian** legislative review mandated the General Inspectorate of Romanian Police to build a national database which will contain collated data on victims of trafficking and traffickers collected by different organisations, including NGOs. The Inspectorate is required to publish a statistical report every semester.

The new directive also requires the appointment of a National Rapporteur or a similar mechanism in all EU Member States. Some Member States have already established National Rapporteurs, and an informal network of rapporteurs was set up following a decision of the Council of the European Union adopted in June 2009.[31] In July 2011, the fourth meeting of the informal network of EU National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings was held in Brussels under the Polish Presidency and the direction of the EU Coordinator on Human Trafficking. The meeting focused on the issue of assistance and support for the victims of human trafficking.[32] According to Articles 19 and 20 of the directive, the National Rapporteurs are

27 Holohan, C. (2011).
28 *Ibid.*, p. 8.
29 Directive 2011/36/EU, OJ 2011 L101, p. 1.
30 US Department of State (2011), p. 156.
31 Council of the European Union (2009).
32 Poland, Ministry of the Interior (2011).

expected to make assessments, measure the results of anti-trafficking actions, including by gathering statistics, and transmit this information to the EU Anti-Trafficking Coordinator.[33] The Coordinator should channel this information into the European Commission's biennial report, which is intended to provide a common comparative basis upon which to evaluate the progress made in the fight against trafficking in human beings.

FRA ACTIVITY

Joining forces to identify and protect child victims of trafficking at European borders

The FRA, together with other international players, contributed to a briefing for border guards attempting to identify child victims of trafficking during an operation by Frontex, which coordinates EU Member State cooperation in the field of border security. Frontex carried out its joint operation 'Hammer' between 5 October and 15 November in 24 European airports. The FRA also provided Frontex with input for the drafting of operational guidelines on how to protect the rights of children crossing European air borders.

4.4. Children and migration

4.4.1. Separated children in a migration or asylum context

Following the European Commission's adoption in May 2010 of the Action Plan on unaccompanied minors 2010–2014 and related conclusions of the Justice and Home Affairs Council in June 2010,[34] the European Commission established an expert group on unaccompanied minors in the migration process in 2011. The group, which is expected to meet twice a year, consists of government experts nominated by EU Member States as well as stakeholders and private experts, who are invited depending on the topics discussed.

The first meeting of the expert group was held in June 2011 and focused on the question of guardianship, which is an important element for the protection of unaccompanied minors. In its Action Plan, the European Commission says it will evaluate the necessity of either introducing targeted amendments of the concept of guardianship or a specific instrument setting down common standards on reception and assistance for all unaccompanied minors. The Action Plan invites Member States to consider introducing review mechanisms to monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision making process and, in particular, to prevent abuse.[35] Other aspects highlighted include legal representation, access to accommodation and care, initial interviews, education services and appropriate healthcare.

The ECtHR addressed many of these aspects of child protection in the *Rahimi v.* ***Greece*** case. In a judgment handed down in April, the ECtHR found violations of Article 3 (prohibition of inhuman and degrading treatment), Article 5 (right to liberty and security: in particular paragraphs 1 and 4) and Article 13 (right to an effective remedy) of the ECHR. The case concerned Eivas Rahimi, a 16-year old Afghan who arrived on the Greek island of Lesbos in 2007 without the required travel documents. Greek authorities arrested him and gave him an expulsion order as an accompanied minor. Mr Rahimi, then still a child, subsequently filed an application for asylum. The ECtHR found that Greece had failed to prove that he was indeed accompanied. He had not been assigned a tutor nor provided with legal representation while in detention, the ruling said. And, while Mr Rahimi had informed the authorities that he spoke only Farsi, a statement the authorities never challenged, the ECtHR noted that his appeals procedures information form was in Arabic. Mr Rahimi had complained about the fact that he had been detained together with adults. The detention centre's lack of leisure activities and the inability to communicate from it with the outside world also drew the ECtHR's notice. Mr Rahimi was in a situation of extreme vulnerability, given his age and personal situation, the ECtHR found.[36]

The methods used to determine the age of a person applying for asylum or protection remain controversial in several EU Member States. According to the Commission's Action Plan on Unaccompanied Minors,[37] the Council Conclusions on Unaccompanied Minors,[38] and General Comment No. 6 of the UN Committee on the Rights of the Child,[39] in case of uncertainty regarding the age of a person and when there is a possibility that the person is a child, she or he should be treated as such until proven otherwise – and therefore granted the relevant and necessary protection.

In addition, the Separated Children in Europe Programme published a *Review of current laws, policies and practices relating to age assessment in 16 European Countries* in May, covering 15 EU Member States (**Austria, Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Italy, Malta,** the **Netherlands, Poland, Portugal, Slovenia, Spain** and the **United Kingdom**) and Norway.[40] The report

33 See also Chapter 7 of this report.
34 FRA (2011a), p. 74; see also FRA (2010), pp. 19-20.
35 European Commission (2010), para. 4.1.
36 ECtHR, *Affaire Rahimi v. Grèce*, No. 8687/08, 5 April 2011. For related aspects concerning the protection of separated, asylum seeking children, see FRA (2010) and FRA (2011b).
37 European Commission (2010), para. 4.2.
38 Council of the European Union (2010), para.11.
39 UN Committee on the Rights of the Child (2005), para. 31 (i).
40 Save the Children (2011a).

documents some of the serious constraints that keep children from accessing effective mechanisms to appeal the results of age assessments. The main obstacles to appeal identified by the study are that "1) age assessment results are often not made through a specific (e.g. administrative) decision, but are either part of a broader procedure (typically the asylum determination procedure) or simply form the basis for other decisions (e.g. expulsion; placement in accommodation with adults, etc.) that can be appealed; 2) the child in several countries is not sufficiently informed about its possibility to appeal; 3) in addition there is often a lack of adequate support for the child in order to appeal age assessment results; 3) in one instance the law does not allow individuals to request age assessment."[41]

At the national level, the **Spanish** Ombudsperson (*Defensor del Pueblo*) published a report regarding procedures to determine the age of migrant persons.[42] The report argues that there is consensus among the scientific community that age-determination techniques based on bone maturity or dental mineralisation are subject to large margins of error. Similarly, the report highlights the inadequacy of techniques that require children's exposure to radiation for non-therapeutic use. The scientific community, the report notes, insists that any study of age determination take into account the influence of the specific pathological, nutritional, hygienic-sanitary factors and physical activity involved, while ethnic factors are still under debate. The report concludes that there is growing support for a more holistic approach to age determination, with medical examinations yielding to psycho-social assessments, although there is as yet no consensus among the scientific community on the elements of this holistic method.

The **British** government announced that it would halt the detention of children for immigration purposes as of December 2010. Civil society organisations have, however, reported that such detentions continue despite the policy change. Between May and August 2011, 697 children were held at Greater London and South East ports, almost a third of whom were unaccompanied.[43] Her Majesty's Inspector of Prisons also expressed concerns regarding the monitoring of those detained at ports, following the results of its unannounced inspections at three Heathrow Terminals. Among these was the lack of staff awareness on how to refer child victims of trafficking to the responsible authorities.[44]

The situation of migrant children at the Lampedusa reception centre in **Italy** raised serious concerns. The United Nations High Commissioner for Refugees (UNHCR), in a call to alleviate the situation, noted that the centre was hosting some 2,000 persons in March, while it was originally designed to accommodate 850 people.[45] In a similar call, Save the Children asked for the immediate transfer of 530 children, mostly the unaccompanied, out of Lampedusa.[46]

The International Organization for Migration (IOM) published a report in December 2011, noting that in the **Czech Republic**, in accordance with section 178 of the Residence of Aliens Act, foreigners older than 15 years of age, who are capable of expressing their will and acting independently, are deemed legally competent persons. As a result, unaccompanied minors who are older than 15 years of age may be detained under the same conditions as adults, although adults may be held for a maximum of 180 days, while detention for under 18-year old foreigners must not exceed 90 days.[47]

In **Greece**, the President of the Administrative Court of First Instance of Piraeus held that the detention of the complainant, an unaccompanied child, was contrary to the child's interests and his/her need for special protection and support and violated the CRC. [48]

Local authorities often lack the resources to provide adequate services to separated children, an issue that was highlighted by the actions taken in September 2011 by the president of the General Council of Seine-Saint-Denis department (*Département*) in **France**. This department is an important entry point into France, as Charles de Gaulle international airport is located there. Of the nearly 6,000 unaccompanied minors who arrived in France in 2010, 934 arrived at Charles de Gaulle airport. The cost of supporting these unaccompanied minors fell upon the Seine-Saint-Denis department, which at €35 million represented about 20 % of its total child welfare budget; for 2011, the estimated cost of supporting unaccompanied minors was €42 million.[49] As a result, in September 2011, the president of the general council refused to host any more newcomers, leaving 80 unaccompanied minors without shelter, in an attempt to call the government's attention to the need for a more equal distribution among departments of the burden of providing support for unaccompanied minors. Reception of newcomers was resumed in October 2011, after the signing of an agreement with the Ministry of Justice to ensure the distribution of new arrivals among departments in the Paris region: for each child hosted in Seine-Saint-Denis, the Paris prosecutor's office agreed to assign responsibility to other departments for nine others.

41 Save the Children (2011a), p. 30.
42 Spain, Acting Ombudsman (2011).
43 The Children's Society (2011).
44 United Kingdom, Her Majesty's Inspectorate of Prisons (2011).
45 UNHCR (2011).
46 Save the Children (2011b).
47 Hancilova, B. and Knauder, B. (2011), p. 89.
48 Greece, Administrative Court of First Instance of Piraeus, Decision 229/2011, 21 March 2011.
49 France, Seine-Saint-Denis Département (2011).

Burden sharing was also in evidence in **Spain**, where the national government agreed to give subsidies to the Canary Islands regional government to cover the costs of reception and transfer of unaccompanied children. The national government approved Royal Decree 724/2011 of 20 May 2011 on the concession of a direct subsidy to the Autonomous Community of the Canary Islands for the reception and transfer of unaccompanied alien minors (*Real Decreto 724/2011, de 20 de mayo de 2011, por el que se regula la concesión de una subvención directa a la Comunidad Autónoma de Canarias para el traslado y acogida de menores extranjeros no acompañados*).[50] This subsidy will finance the transfer of these minors to other autonomous communities and their accommodation on the Canary Islands while their transfers are prepared.

4.4.2. Children with an irregular migration status

Children with an irregular migration status face difficulties in accessing their rights. In October 2011, the Council of Europe Parliamentary Assembly approved a recommendation on undocumented migrant children in an irregular situation.[51] This recommendation covers the areas of education, healthcare and housing as well as detention and exploitation. The EU *acquis* also grants rights to children in an irregular situation, such as the right to education, for instance.

At the national level, EU Member States have undertaken legal reforms relevant to undocumented children. In **Spain**, for example, the new Organic Act 10/2011 allows illegally residing women who report being victims of gender-based violence to request a residence permit for their under-age or disabled children or if they are unable to provide for their own needs. This provisional residence permit is granted automatically. Similarly, the Supreme Court granted asylum to an Algerian woman and her children who fled the husband/father's repeated physical and psychological violence. This decision followed the Asylum and Refugee Office's (*Oficina de Asilo y Refugio*) initial rejection of their asylum application and the granting instead of a residence permit based on humanitarian reasons. The woman and her children appealed this decision and the National Audience Court (*Audiencia Nacional*) recognised their right to asylum in Spain – a decision the Supreme Court endorsed.[52]

In the **Netherlands**, the Administrative High Court delivered a landmark judgment on the provision of child allowances to children of migrant parents in an irregular situation. Under Dutch law, residents alone are entitled to child allowances. The court argued that although the Dutch State did not admit these persons to its territory it had knowingly accepted their stay in the Netherlands for a sustained period of time. Apart from the obligation in Article 8 of the ECHR to protect the right to private and family life, the court considered that the Netherlands had also knowingly accepted to a certain degree the duty, flowing from the CRC, to care for the children of these persons. The lack of a residence status, as required by Article (2) of the Child Allowance Act, was therefore judged not to be a valid reason to exclude this group from child allowance.[53]

As concerns developments in case law, the ECtHR found a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (1) (right to liberty and security) of the ECHR in the case of *Kanagaratnam and others v.* ***Belgium*** in December 2011. A Tamil family comprising a mother and her three children was detained for almost four months in a centre whose detention conditions the ECtHR had already deemed inappropriate for children's needs. The children's situation amounted to inhuman and degrading treatment and represented a violation of Article 3. The ECtHR also considered that by placing the children in a closed centre designed for adult illegal aliens, in conditions which were ill-suited for their extreme vulnerability as minors, the Belgian authorities had not sufficiently secured the children's right to liberty guaranteed under Article 5 (1).[54]

In March 2011, the Court of Justice of the European Union (CJEU) issued a milestone ruling related to the rights of children who are EU citizens but whose parents lack regularised status in an EU Member State.[55] The *Zambrano* case concerns the granting of residence and work permits to a Colombian citizen residing irregularly in **Belgium** with two dependent children of Belgian nationality. According to the CJEU's Grand Chamber, the refusal of the right of residence or a work permit to the parent of the children would mean that the children would be forced to leave the EU to accompany their parents. Similarly, if a work permit were not granted to the parent, he might have insufficient resources to provide for himself and his family, which would also result in the children, EU citizens, having to leave EU territory. The children would therefore be unable to exercise their rights as EU citizens. The Court concluded that Article 20 of the Treaty on the Functioning of the European Union (TFEU) precludes a Member State from refusing a third-country national a residence or work permit in the Member State of residence and

50 Spain, Royal Decree 724/2011 of 20 May 2011.
51 Council of Europe, PACE (2011a).
52 Spain, Decision 4013/2011 of the Supreme Court of Spain, 15 June 2011.
53 Netherlands, Administrative High Court, LJN: BR1905, No. 08/659515, July 2011.
54 ECtHR, *Affaire Kanagaratnam et Autres v. Belgique*, No. 15297/09.
55 The case originated from a reference for a preliminary ruling from the Tribunal du travail de Bruxelles (Belgium). See also, CJEU, C-34/09, *Ruiz Zambrano v. Office national de l'emploi*, Grand Chamber, 8 March 2011.

nationality of his/her children, if such decisions deprive those children of the genuine enjoyment of the substance of the rights attached to their status as EU citizens. This case is therefore key to the recognition of the rights of children as EU citizens and to the definition of the right to family life under EU law more generally.

4.5. Child-friendly justice

Making justice accessible to children is a goal embedded in a number of policy documents adopted in 2011, such as the EU Agenda for the rights of the child or EU directives, such as those on trafficking, and on sexual abuse and exploitation and child pornography,[56] and the new proposed Victims Directive[57] (see Chapter 9 on 'Rights of crime victims').

The *Guidelines on child-friendly justice*, approved by the Council of Europe Committee of Ministers in November 2010, has become a key document in the field.[58] The guidelines deal with the place and role, views, rights and needs of the child in judicial proceedings, as well as in alternatives to such proceedings. They concern the provision of access to justice for children including also in cases where children are accused of crimes. The European Commission and the FRA have initiated two complementary studies in order to gather statistical data, develop indicators, as well as collect qualitative data on the involvement of children in the justice system.

A number of reforms in family laws and criminal codes have taken these Council of Europe guidelines and other relevant international instruments, into consideration. In the **Czech Republic**, for instance, the proposal for the amendment of the civil code reinforces the need to obtain the child's opinion in all proceedings and consider the child's wishes when deciding a case.

Legislation came into force in **Poland** in August, improving the enforcement of court orders establishing contact between children and their non-resident parent.[59] The law establishes a two-stage enforcement mechanism in the Civil Procedure Code. If one parent prevents the other's contact with a child or children, breaking a contact order, the court can issue a warning notice. If the breach continues, the court can impose financial penalties on the breaching parent, taking into account the scale of the breach and the financial situation of the person concerned. The court can order the parent preventing contact to reimburse the costs incurred as a result of the breach. The Polish Ministry of Justice has also recommended a special protocol for interviewing children in criminal proceedings and published information leaflets for children about their rights in courts, such as: "I will be a witness in court".[60]

Promising practice

Interviewing in child-friendly rooms

As part of its 2008-2011 Crime Prevention Strategy, the **Czech Republic's** Ministry of the Interior established 30 rooms across the country specifically for interviewing child victims of crime. The ambition is to allow police officers to interview children in a comfortable and child-friendly atmosphere, contributing to the child's feeling of safety during the police investigation. The rooms are decorated with child-friendly furniture, painted in bright colours and equipped with books, toys and drawing materials. The rooms also have all the equipment necessary to video record statements.

Similar provisions exist in **Bulgaria**, where children are interviewed in especially equipped rooms, so-called blue rooms. In August, Bulgaria also adopted a policy concept in the area of child justice which envisages an overall human-rights-driven reform of the system of juvenile justice, in order to better guarantee the best interest of the child.

Czech Republic, Ministry of the Interior (2011), The standard equipment of special interview rooms for minors involved in the criminal proceeding. See: www.mvcr.cz//clanek//standard-vybaveni-specialni-vyslechove-mistnosti-pro-detskeho-ucastnika-trestniho-rizeni.aspx

Bulgaria, Council of Ministers (2011) Concept for state policy in the area of child justice (Концепция за държавна политика в областта на правосъдието на детето). See: www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=117

4.5.1. Child-friendly justice in the context of child trafficking, child sexual abuse, exploitation and pornography

The EU directives on trafficking and on the sexual abuse and exploitation of children and child pornography both provide specific instructions on how to ensure access to child-friendly justice. According to the Trafficking Directive, child victims of trafficking should have access to free legal counselling and representation, and, in case of a conflict of interest between the parents and the child, a representative should be appointed. The hearing should take place behind closed doors. According to the directive on sexual abuse, interviews should be conducted in purpose-built rooms by professionals trained in interviewing children. The number of interviews should be kept to as few as possible.

56 Directive No. 2011/36/EU; Directive 2011/93/EU.
57 Proposal for a directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime.
58 Council of Europe, Committee of Ministers (2010).
59 Poland, Act of 26.05.2011 amending the Code of Civil Procedure, Official Gazette 2011 No. 144, item 854.
60 For more information, see: http://fdn.pl/bede-swiadkiem-w-sadzie.

The way in which children are granted access to justice, when and by whom they are provided with information regarding court proceedings, as well as the timing of their involvement varies among EU Member States, as well as within regions or among specific courts. The transposition of both directives in 2013 should ensure a more standardised approach to the protection of children in criminal investigations and proceedings.

4.6. Developments regarding cross-national divorce and parental separation

EU Council Regulation No. 2201/2003, also known as Brussels II bis, continues to influence the way in which EU Member States deal with children in the context of cross-national divorce and parental separation cases, particularly on aspects related to parental responsibility. These aspects include: rights of custody and rights of access, guardianship and similar institutions, the placement of the child in a foster family or in institutional care. They also concern measures for the protection of the child, visiting rights and child abduction cases.[61] In Article 11, the regulation establishes that in order to obtain the return of children who were wrongfully removed or retained in a Member State in which they are not habitually resident, children must be given the opportunity to be heard during the proceedings unless this appears inappropriate given their age or degree of maturity.

In the *Aguirre Zarraga v. Pelz* case,[62] a German court asked the CJEU whether it could exceptionally oppose the enforcement of a Spanish court judgment ordering the return of a child, because the Spanish court had certified that it had fulfilled its obligation to hear the child before ruling on custody rights although this hearing had not actually taken place. The CJEU held that the right of the child to be heard, enshrined in Article 24 of the Charter of Fundamental Rights, requires that the legal procedures and conditions which enable children to express their views freely be made available to them, and that those views be obtained by the court. The CJEU stated that Article 24 of the Charter and Article 42 (2)(a) of Regulation No. 2201/2003 require the court to take all appropriate measures to arrange such hearings, with regard to the children's best interests and the circumstances of each individual case. Under these provisions, children must also be offered a genuine and effective opportunity to express their views. Nevertheless, the CJEU ruled that the German court could not oppose the enforcement of a certified judgment, ordering the return of a child who was wrongfully removed, since the assessment of whether there was an infringement of these provisions fell exclusively within the jurisdiction of the Spanish courts.

A key issue under the Brussels II bis Regulation is the determination of the habitual residence of the child. In *Mercredi v. Chaffe*, the Court of Appeal of **England and Wales** referred to the CJEU a case concerning the removal of a two-month-old child from the United Kingdom to the island of Réunion, **France**. The CJEU ruled that the concept of habitual residence, for the purposes of Articles 8 and 10 of Council Regulation (EC) No. 2201/2003, implies some degree of integration in a social and family environment. The factors which must be taken into consideration include: the duration, regularity, conditions and reasons for the stay in the territory of that EU Member State and for the mother's move to that state; and, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State.[63]

EU Council Regulation No. 4/2009, which regulates a number of cross-border matters related to maintenance obligations, has been fully applicable since June 2011.[64] The Regulation's main objective is to allow a maintenance creditor to easily obtain in one Member State a decision which will automatically be enforceable in another Member State without further formalities, such as registration. It applies to maintenance between parents and children. It remains to be seen how effective this regulation will prove in practice.

EU Member States, such as **Austria, Belgium,** the **Czech Republic, Ireland, Poland, Slovenia** and the **United Kingdom**, are in the process of undertaking partial or general reforms of their family justice systems.

The Chamber of Representatives in **Belgium**, for example, approved a proposal in July for a Law creating a Family and Youth Tribunal. The main aim of this law is to regroup the competent judicial authorities for topics related to family and youth law, creating one specialised court competent in all these areas. It is expected that the 'one-court concept' will improve the coherence of jurisprudence and accessibility to the court as well as simplify procedures for citizens. The Ministry of Justice in **Austria** proposed amending the law on custody and visiting rights with the aim of balancing the interests of mothers, fathers and

61 Council Regulation (EC) No. 2201/2003 of 27 November 2003, Art. 1.
62 CJEU, C 491/10 PPU, *Joseba Adoni Aguirre Zarraga v. Simone Pelz*, 22 December 2010.
63 CJEU, C/947/10 PPU, *Barbara Mercredi v. Richard Chaffe,* 22 December 2010.
64 Council Regulation (EC) No. 4/2009, OJ 2009 L 7/1.

the best interest of the child.[65] During 2012 several federal courts in Austria will pilot test the work of assistance bodies in court dedicated to family issues (*Familiengerichtshilfe*).[66] Under this new system, social workers and psychologists will provide parents and children, as well as judges, with specialised assistance during case proceedings.

4.7. Participation of children

Article 24 (1) of the Charter of Fundamental Rights of the European Union recognises the right of children to express their views freely and requests EU Member States to take those views into consideration in accordance with the child's age and maturity.

While the question of children's participation in decisions which affect them is gaining prominence at the international level, as illustrated by the Council of Europe's Strategy for the Rights of the Child and the EU Commission Agenda for the Rights of the Child, practice at EU Member State level varies widely, dependent upon the specific sector concerned and the age of the child.

In December, the United Nations Children's Fund (UNICEF) and Save the Children published *Every child's right to be heard – a resource guide on the Committee on the Rights of the Child General Comment No. 12*. This resource guide, recommended by the Committee on the Rights of the Child, elaborates on the General Comment and provides practical help on implementation through examples of legislation and policy, guidelines for practitioners, evidence from research and examples of meaningful participation in practice.[67]

Austria sent a strong signal in this direction, inserting into the constitution a reference to the right of children to participate in their personal affairs. This change was part of a broader constitutional reform encompassing references to the right to protection and care, the right to personal relationships with both parents, the prohibition of child labour, the prohibition of corporal punishment, the right to education free from violence, and the right of children with disabilities to protection and care according to their needs.[68] Critics complain, however, that the constitutional reform incorporates only some of the rights enshrined in the UN CRC and should have been more comprehensive.[69]

The family justice system review in **England and Wales,** established in 2010 and sponsored by the Ministry of Justice, the Department for Education and the Welsh Government is a response to the increasing pressure on the family justice system and concerns about delays and effectiveness. Since its appointment, the experts' panel has taken steps to ensure the participation of children, consulting them on their experiences in family law proceedings and seeking their recommendations for a new family justice system. The panel published its first interim report in March 2011 and its final report in November 2011,[70] as well as a guide to facilitate the involvement of young children. This guide included an age-appropriate explanation of the current system, the possible changes envisaged and a tool for children to give their opinions.[71] The Office of the Children's Rights Director for England organised a number of consultations. It published a child-friendly version of its final report, which highlights how children's suggestions fed into the recommendations of the final report.[72]

Several national Ombudspersons, such as those in **Estonia** and **Sweden,** consulted children when planning their work. Other Ombudsperson offices, such as those in **Croatia, Greece** and **Ireland**, established youth advisory panels. The Ombudsman for the Rights of the Child in **Greece**, for example, set up a panel of 20-to-30 girls and boys, aged 13 to 17. The panel, which is appointed for a term of two years, meets four times a year with the Ombudsperson. At the July 2011 meeting, children discussed the rights of the child on the internet, the economic and social crisis, the right to education and health and questions of violence.

In **Slovakia**, promotion of participation of children and young people in policy making has been emphasised in the work of the newly established Committee for Children and Youth (the expert body to the Government's Council for Human Rights, National Minorities and Gender Equality, the permanent advisory body to the Slovak Government). At its first session in August 2011, the Committee established a task force mandated to design a mechanism of direct participation and involvement of children and young people in the work of the Committee. Steps were taken to involve representatives of children and youth themselves in designing the proposed participation mechanism from the first stages of its creation, with a view to create a child-friendly mechanism capable of reflecting their specific needs, language and perspective.[73]

The Opinion of the European Economic and Social Committee on the Communication on the EU Agenda for

65 Austria, *Entwurf eines Bundesgesetzes, mit dem das Kindschaftsrecht im Allgemeinem Bürgerlichen Gesetzbuch und das Ausserstreitgesetz sowie das Ehegesetz geändert werden* (2011).
66 Austria, Judicial System (2011).
67 Lansdown, G. (2011).
68 Austria, Bill on Constitutional Rights of Children.
69 Ludwig Boltzmann Institute for Human Rights (2011).
70 See: www.justice.gov.uk/downloads/publications/moj/2011/family-justice-review-final-report.pdf.
71 United Kingdom, Ministry of Justice (2011a).
72 United Kingdom, Ministry of Justice (2011b).
73 Slovakia, Ministry of Labour, Social Affairs and Family (2011).

the Rights of the Child adopted in December emphasised the need to promote child participation.[74] It called, among other measures, for protected hearings for child victims of sexual abuse and for those involved in their parents' divorce proceedings. The Committee noted that to spare children additional trauma their testimonies should be heard by specially trained professional experts, and conducted in neutral places rather than in court.[75]

The Constitutional Tribunal in **Poland** analysed the Act on the protection of mental health at the request of the Human Rights Defender, who was challenging the requirement that only children aged 16 and above must consent to psychiatric treatment. The Defender argued that civil law recognises limited legal capacity for children from the age of 13. Accordingly, several health-related laws should also provide children with the right to express their opinions to such vital questions as medical intervention, depending on their individual maturity and development. The Tribunal did not find sufficient grounds in the Constitution or the CRC to justify that claim. It ruled that the Act violates neither the Constitution nor the CRC with respect to the minimum age for consultation.[76] Due to lack of competency, the Tribunal did not, however, review age-of-consent discrepancies in other laws, such as in terminations of pregnancy and bone marrow transplants, where one need only be 13 years or age, or for participation in medical experiments, which hinges on an individual's 'personal development'.

4.8. Data collection

The lack of coordinated collection of data on the implementation of children's rights remains a concern in a majority of EU Member States. Typically, each country has several governmental departments – such as justice, interior and social welfare – and non-governmental organisations that collect data on victims, covering various categories such as victims of trafficking, domestic violence, sexual abuse or the number of unaccompanied children applying for asylum. What is missing is a centralised, focused data collection mechanism. The directive on trafficking devotes specific attention to this issue, assigning the European Commission the role of producing a report every two years on such data collection and analysis.

Promising practice

Centralising data collection on children at risk

The 2007 law reforming the child protection system (*loi réformant la protection de l'enfance*)[77] in **France** required all departments (*départements*) to develop a centralised system for the collection, evaluation and analysis of 'information that raises concerns' (*informations préoccupantes*) on children in danger or at risk of being in danger. In October 2011, the National Observatory for Children at Risk (*Observatoire national de l'enfance en danger*) published a report detailing the procedures in place in the field to collect these data. The report responds to the creation of departmental observatories on the protection of childhood (*observatoires départementaux de la protection de l'enfance*) and the transmission of anonymous data established by decree 2011-222, which was adopted in March 2011.

See: Observatoire national de l'enfance en danger (2011), Enquête nationale informations préoccupantes, available at: http://oned.gouv.fr/docs/production-interne/chiffres/enquete_ip_v15.pdf

Outlook

The prompt EU Member State ratification of the Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, would ensure better protection for girls as victims of gender-based violence and children witnessing domestic violence. Similarly, on-going reforms of child protection systems in several EU Member States should improve both the access to social services for children and the response to reports of violence against children.

The effect of the new directive on combating the sexual abuse, sexual exploitation of children and child pornography will begin to be felt as soon as it is transposed into national legislation. It should improve the protection of children against sexual abuse and exploitation and lead to more effective prosecution of offenders.

In parallel, efforts to combat the sexual exploitation of children and child pornography on the internet will continue to require the full attention and vigilance of EU institutions and bodies and of EU Member States.

Children who are the victims of trafficking should benefit from higher levels of protection as the new Directive on preventing and combating trafficking in human beings and protecting its victims gains influence and extends its reach in EU Member States over time.

74 European Economic and Social Committee (2011).
75 *Ibid.*, para. 1.13.
76 Poland, Judgment of the Constitutional Tribunal, 11 October 2011, K 16/10.
77 France, Law No. 2007-293 reforming child protection, SANX0600056L 2007-293, 5 March 2007.

The EU Council Regulation concerning jurisdiction as well as the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility will continue to influence the way in which EU Member States deal with children in the context of cross-national divorce and parental separation cases. It will also continue to bear on the right of children to be heard in these and other judicial matters. As a result, on-going developments in rendering justice more child-friendly will be of particular interest. Research on child-friendly justice carried out by the EU Commission and the FRA will provide relevant information for national authorities when transposing the Directives on trafficking and on sexual abuse and exploitation.

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UN & CoE

January

February

March

7 April – Council of Europe Committee of Ministers adopts the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

7 April – UN Committee on the Rights of the Child issues its Concluding observations on Denmark

18 April – UN Committee on the Rights of the Child issues General comment No. 13 on the right of the child to freedom from all forms of violence

April

11 May – Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) opens for signature and is signed by 11 member states on the same day

May

20 June – UN Committee on the Rights of the Child issues its Concluding observations on Finland

June

July

4 August – UN Committee on the Rights of the Child issues its Concluding observations on the Czech Republic

August

21 September – Council of Europe Committee of Ministers adopts Guidelines on child-friendly healthcare

September

7 October – UN Committee on the Rights of the Child issues its Concluding observations on Sweden regarding the Optional Protocol on the sale of children, child prostitution and child pornography

31 October – UN Committee on the Rights of the Child issues its Concluding observations on Italy

October

16 November – Council of Europe Committee of Ministers adopts Recommendation on children's rights and social services friendly to children and families

November

19 December – UN General Assembly approves the third optional protocol to the Convention on the Rights of the Child

December

EU

January

15 February – European Commission presents the EU Agenda for the rights of the child

February

March

5 April – European Parliament and the Council of the European Union adopt a Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

April

18 May – European Commission adopts a proposal for a directive of the European Parliament and of the Council on establishing minimum standards on the rights, support and protection of victims of crime

May

June

July

August

September

October

November

13-14 December – Council conclusions on combating sexual exploitation of children and child pornography in the Internet – strengthening the effectiveness of police activities in Member States and third countries

13-14 December – European Parliament and Council of the European Union adopt a Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

December