

Rights of the Child: the work of the European Union Agency for Fundamental Rights

Background

The Agency for Fundamental Rights (FRA) is a body of the European Union established on 15 February 2007 with the aim to provide EU institutions and Member States with assistance and expertise relating to fundamental rights. One of the FRA's key areas of activity concerns **child rights**, where it develops policy relevant research providing evidence based assistance and expertise to its primary stakeholders, the institutions and Member States of the EU.

Introduction

One fifth of the European Union's population are children and the protection and promotion of their rights are a priority for the EU and its institutions. EU Member States are bound to protect respect and promote the rights of the child under international and European treaties, in particular the **UN Convention on the Rights of the Child** and the **European Convention on Human Rights**. The **European Union's Charter of Fundamental Rights** also recognises children's rights in Article 24.

The situation of many children across the EU is worrying. Although the European Union region is one of the most affluent and developed in the world, according to Eurostat, 19% of its children aged 0-16 are at risk of poverty; many suffer violence within the family, in the community, in residential care and in other settings; many continue to be placed in institutions despite the potentially damaging effects, particularly on young children; children are still being trafficked and smuggled into and across EU Member States to be exploited despite the international efforts to stop this horrific form of abuse; separated children seeking asylum are often placed in detention, lacking access to appropriate housing, education, and health care; disabled children and those from minority ethnic backgrounds continue to suffer discrimination, often on multiple grounds, and experience problems in accessing vital services such as education and health care.

These problems point to an urgent need for concerted EU action, particularly during a period of economic crisis that threatens national social protection systems draining the resources available for the most needy and vulnerable.

The European Union's commitment to implementing a children's policy has been strengthened in recent years with the introduction of a range of measures addressing child protection, poverty and social exclusion, and age-based discrimination. However, much remains to be done in improving EU legislation, policy and structures to meet the range of issues facing children. While recognising that the primary responsibility for many children's issues lies at the national level, EU action is also essential.

Developing child rights indicators

An important step in this direction was taken by the European Commission in 2006. Its Communication **‘Towards a Strategy on the Rights of the Child’** represents a coherent, considered approach to the development, application, monitoring and review of EU law and policy affecting children. In this document the Commission argues that the impact of all relevant EU action, including in the legislative domain, should be monitored on the basis of a *set of appropriate indicators*.

In this context, and following a request by the European Commission, after 15 months of intensive research involving a detailed review of the normative and conceptual framework, as well as extensive consultation with a range of EU, international and national stakeholders, policy-makers and children’s rights specialists, as well as an analysis of EU level data availability and comparability, the FRA presented on 25 March 2009 a set of indicators covering four core areas of EU competence as an initial toolkit to evaluate the impact of EU law and policy on children’s status and experience across various fields.

The FRA report is available on line at:

http://www.fra.europa.eu/fraWebsite/products/publications_reports/pub-rightsofchild-summary_en.htm

→ The areas covered by the indicators were selected on the basis of **four key criteria**:

1. That the area is **included in the CRC child rights framework**;
2. That it falls within **EU competence**;
3. That it affects a **significant proportion** of the EU’s child population or **raises urgent concerns**;
4. That there is a clear **EU policy interest**.

→ The indicators are grounded in a specific conceptual framework characterised by **three key features**:

1. They adopt the **UN CRC as normative framework**

In this way the indicators will be able to measure the extent to which EU law and policy affects children’s social experiences, legal status and life opportunities, as well as whether EU law and policy espouse and reinforce the principles and practices of the UN CRC, and how these provisions are implemented at the national level. The indicators measure the impact of law and policy ‘on the ground’ making reference to the relevant UN CRC provisions. It is important to emphasise that the indicators are not intended to scrutinise Member States’ implementation of their obligations under EU law, nor are they intended as an additional means of monitoring EU Member States’ compliance with the UN CRC. The first is the exclusive task of the European Commission, as guardian of the Treaties, while the second is the task of the UN Committee of the Rights of the Child. Rather, these indicators are aimed at assessing impact, highlighting achievements, and revealing gaps in EU provision for children enabling EU institutions to develop the appropriate legal and policy response to enhance the protection and promotion of children’s rights at EU level.

2. They respect the limits of EU competence

The indicators are developed in areas where the EU is competent to enact provision and in which there is already an identifiable body of law and policy. The absence of any explicit reference to children in the Treaties has meant that ‘hard’ EU law relating to children has evolved either indirectly (embedded in more generic legislation relating, for example, to the free movement rights of family members or migrant groups), or through EU health and safety legislation with its strong elements of child protection (toy safety, television advertising, etc). In addition there is a range of measures that have been introduced through less formal avenues: soft law measures (in the field of education); co-ordinated action plans (in the field of health, poverty and family policy); and intergovernmental initiatives (in the field of child protection).

3. They are ‘Child Rights’ indicators

While ‘*child well-being*’ indicators reveal the state of children’s lives, ‘*child rights*’ indicators consider **the interaction between children, the state and society on matters concerning children**, taking into account the need to strengthen capacities of both **right holders** to claim their rights and **duty bearers** to fulfil their obligations. A rights approach takes as its starting point a normative framework, including current and proposed legal and policy developments, but also its state of implementation.

Indicator core areas

CORE AREAS	INDICATOR GROUPS			
<i>Family environment and alternative care</i>	Family justice	Rights and welfare of separated children due to migration		Family reunification
<i>Protection from exploitation and violence</i>	Child trafficking	Sexual and economic exploitation		Violence against children
<i>Adequate standard of living</i>	Child income poverty	Impact of government response;		Aspects beyond income poverty as well as children’s subjective perceptions
<i>Education, citizenship and cultural activities</i>	Accessibility of education	Adaptability of education	Personal development	Citizenship and participation

Data availability and comparability

Each group of indicators aims to identify the most relevant, reliable and comparable EU data available. Key to this endeavour is isolating age-disaggregated data that embrace, as far as possible, a child-centred approach at the point of gathering. The cross-national, child- focused nature of the indicators presents a number of challenges in terms of data availability and comparability.

First, in spite of EUROSTAT's progress towards collecting comparable data, gathering statistics specifically relating to children is not an EU priority such that it is still difficult to identify children within such data. Following the Commission's 2006 Communication it is expected that data disaggregated in accordance with age may become more available. The possibility for EUROSTAT to adopt this approach, so that children will become more prominent in data sets, would greatly facilitate the application of the indicators. The FRA intends to work closely with EUROSTAT to achieve this.

Secondly, there is significant variation in the quality, availability and clarity of data between EU Member States pointing to the need for the development of a standardised method of gathering relevant data based on consistent classifications and data collection methodologies to improve comparability.

Thirdly, it should be noted that central to the effective application of the indicators is that the existing diverse range of data sources is fully exploited. This calls for a more nuanced approach drawing on diverse sources to build up a more complete picture of the interests and experiences of children than what a straight-forward analysis of statistical data might provide. To reflect this, we have integrated a more prominent subjective element into the indicators to expose, where possible and appropriate, children's perspectives, either through quantitative or qualitative sources.

Finally, where secondary data, either official, non official or deriving from academic research is either not available or very limited consideration will be given to obtaining such data directly by engaging in centrally administered primary fieldwork research. This perhaps the more ambitious aspect of our proposal, on which we have already embarked through a first pioneering project, currently under way, that investigates the experiences of separated asylum seeking children in twelve Member States directly through interview based techniques.

Applying the Indicators

No indicator set can ever be definitive: thus these indicators are very much a starting point for the FRA to be tested and further refined. As they guide the Agency's research and data collection they will be under constant review based on input that is expected to be provided by the forthcoming **EU Strategy for the Rights of the Child**, and the FRA's ongoing consultation with key stakeholders. Since last year the Agency has launched two major research projects, outlined below, related to child rights:

1. Child trafficking in the EU - Challenges, perspectives and good practices

In April 2008 the FRA launched its first research project based on the work on indicators focusing on child trafficking, a serious problem for the EU and beyond it. The findings published in July 2009 (with country data referring up to 2008) are alarming. As the FRA's Director Morten Kjaerum stated: "Human trafficking is part of the modern slave trade. Every year, a significant number of children in the EU fall victim to trafficking for sexual exploitation, labour exploitation, adoption and organ extraction. These are alarming signals. We must make every possible effort to protect and support these children".

The European Union Charter of Fundamental Rights provides in Article 5 that no one shall be held in slavery or servitude, or be required to perform forced or compulsory labour. Article 5 (3) expressly prohibits trafficking in human beings.

In recent years, trafficking has been addressed by many specific international instruments, both at the level of the UN and the Council of Europe. The level of ratification by EU Member States is encouraging, but leaves room for improvement and the report invites all Member States to become party to the **Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography**, the **UN Convention against Transnational Organised Crime**, the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**, the **Council of Europe Convention on Action against Trafficking in Human Beings (2005)** and the **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)**.

In recent years the EU has increasingly paid attention to the fight against trafficking, notably through two Framework Decisions: the Council Framework Decision on combating trafficking in human beings of 2002 (2002/629/JHA) and the 2003 Council Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA). For both mentioned instruments new proposals were made by the European Commission in 2009. Another key instrument in the area is Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Several European Union initiatives include the combating of trafficking within their scope, in particular STOP, DAPHNE and AENEAS. Nevertheless, the FRA report finds that current EU legislation should be updated and supplemented. It would be advisable to have one central piece of legislation addressing trafficking in human beings in the EU in order to avoid differences in definition and terminology.

The report also stresses that the primary consideration for EU child trafficking legislation should be the best interests of the child victims. As a central principle of the UN CRC the principle of best interests of the child has acquired the status of a general principle also of Community law by virtue of Article 6(2) of the EU.

States have an important interest in prosecuting child traffickers and in regulating immigration. However, these policy goals should not be allowed to overshadow the best interests of child victims of trafficking.

The FRA report also highlights that child trafficking lacks a uniform definition at the Member State level. For instance, in some EU Member States intra-state trafficking is explicitly made punishable under national law, while in others intra-state trafficking is not covered. According to the law in some Member States the consent of the (child) victim in the trafficking is irrelevant to its classification as an offence. However, in other Member States prosecution services or courts will not consider an offence to have been committed, where the consent of the child has been obtained.

Furthermore, not all Member States have included the forms of exploitation listed in the Palermo Protocol in their national laws for the purposes of criminalising trafficking. For instance exploitation by the removal of organs or tissue is not covered by the national laws of some Member States. In addition to the forms of exploitation that are covered by the definitions in the Palermo Protocol and the Framework Decision, a small number of Member States also made trafficking for the purpose of begging punishable.

Despite the paucity of official data, there is evidence that every year a significant number of people, largely women and children, fall victim to trafficking for sexual exploitation, labour exploitation or other purposes. Action to combat trafficking in human beings is receiving more and more attention, both at the level of law-making and policy implementation. The report suggests that EU legislation should ensure that all Member States should develop data collection mechanisms, coordinated at governmental level. Good practices in this regard were identified in Ireland and Romania.

In some Member States statistics concerning the convictions for child trafficking are conflated with statistics for convictions for trafficking in human beings in general or other offences like smuggling and prostitution. Thus it is not possible to state how many child trafficking cases ended in conviction in these countries. Final convictions based on child trafficking could only be detected in four Member States in the period 2000-2007. These available figures indicate that there are generally very few final convictions in child trafficking cases. In five Member States it emerges that no final convictions were issued in the period 2000-2007. In one Member State no case of child trafficking was even identified and/or prosecuted during this period. The FRA report identifies good practices regarding the identification of victims in Finland and in the Czech Republic. These good practices should form a basis for the elaboration and implementation of EU-wide minimum standards. The report suggests that EU legislation should guarantee minimum standards regarding the collection of relevant criminal justice data and provide guidelines for the identification of child trafficking victims.

According to official figures, the disappearance of children from shelters in the EU Member States is widespread, with their destinations largely unknown. It is well known, that the children most likely fall into the hands of traffickers. However, this problem remains widely ignored, due to a severe lack of monitoring

by Member State authorities. Specialised shelters for victims of child trafficking are not provided in most Member States. Children are sent to shelters for adult victims of trafficking, specialised shelters for unaccompanied minors or other facilities for vulnerable children. The FRA report proposes minimum standards for shelters, and policies to prevent disappearances of children.

The report also suggests that the socio-economic rights (standard of living, healthcare, education) of children trafficking victims need to be guaranteed by EU legislation. Currently the main protection measure provided for child trafficking victims is Council Directive 2004/81/EC that provides guarantees for victims regarding subsistence standards of living, access to emergency health care and access to the education system. However, vis-à-vis children this directive is only optional and only if Member States choose to extend the application of this directive to children are they obliged to provide them with socioeconomic rights. Admittedly, child victims of trafficking may fall under the more general provisions in EU law on social assistance to unaccompanied minors who are asylum seekers. However, these provisions are not specifically tailored to the specific situation of child victims of trafficking. In some Member States the socio-economic rights of child trafficking victims depend on the children's residence status. Thus, a refusal to grant temporary residence to victims of child trafficking in these Member States will most likely also have repercussions for access to socio-economic rights, such as health care and education.

The European Commission's Proposal for a Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA adopted in 25 March 2009 greatly improves EU legislation and the FRA strongly urges the European Council to adopt this proposal, which would represent an important step in the protection and care of trafficking victims in the EU.

The FRA report is available on line at:

http://www.fra.europa.eu/fraWebsite/products/publications_reports/pub_child_trafficking09_en.htm

2. Separated children seeking asylum in the EU

In December 2008 the FRA launched its second research project drawing from the work on indicators that will examine the views and experiences of separated asylum seeking children accommodated in different care settings in 12 EU Member States. The aim of this project, which is ongoing and expected to be published in early 2010, is to provide EU and national policy makers, agencies and services with a valuable insight into separated asylum seeking children's views and perspectives that will assist them in improving the quality of living conditions, as well as the relevant legal procedures. In this context the research investigates the views, experiences and perspectives of these children, and, in addition, those of officials and staff involved with these children. As children's perspectives and interests often differ from those of adults, exploring children's views and experiences directly is a critical means to assess the effectiveness of current practices and to identify the changes necessary to ensure that they are appropriately tailored to their needs.

The research takes up the Inter-Agency (ICRC, IRC, SCUK, UNICEF, UNHCR, WVI) definition of separated children as "those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members". It covers children seeking asylum, as well as those staying irregularly in the host country.

At the core of the research is a child-centred methodology that has been especially designed to meet the needs of this specific target group avoiding structured or survey styled interviewing and developed in close cooperation with key experts, as well as young adults who themselves were separated asylum seeking children. This reflects the participatory ethic underpinning Article 12 of the UN Convention on the Rights of the Child: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child". The methodology is designed to be sufficiently malleable to accommodate the diverse range of variables that shape the experience of these children, account for different linguistic and cultural contexts, whilst ultimately yielding comparable data in order to ensure that the research produces real value both in the eyes of children themselves, and in terms of informing legal and policy development.

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