

1. CHILD RIGHTS AT EU LEVEL

- As a first step, we will overview the policy areas in which the EU plays a role as regards children and then go on to examine the different types of action which the EU can take. After understanding where and how it can act generally, we will focus on specific safeguards EU law establishes for child friendly justice.

1.1 *In what areas does the EU play a role which affects children?*

- The European Union is founded on a division of powers between the European Union and the Member States, with policy areas of exclusive competence for the EU, policy areas of shared competence between the EU and Member States and policy areas reserved for Member State action, but where the EU may play a role in coordinating, supporting or supplementing national policies such as education and health.
- Some of the areas in which the EU shares competence with the Member States directly concerns children, including justice and home affairs issues. This can include issues which arise when EU citizens move from one Member State to another, such as cross border parental disputes. It includes issues of serious crime with a cross border dimension such as child sexual abuse and trafficking. It covers the establishment of common victims' rights and as well as common rights of children suspected or accused of crime. The common European international protection regime creates common standards as regards asylum and subsidiary protection as well as measures addressing irregular migration.
- For many years, the European Court of Justice has recognised that all EU actions must respect fundamental rights and in this regard, has noted that due account should be given to the UN Convention on the Rights of the Child.
- More recently, the Treaty of Lisbon introduced an objective for the EU to promote and fulfil children's rights. This step did not in itself create any general competence for the EU to deal with the situation of children but it increased the visibility and political prioritisation of children's rights in those fields where the EU has competence to act.
- Moreover the Charter of Fundamental Rights of the European Union, which is legally binding since the entry into force of the Treaty of Lisbon, inter alia guarantees the protection of children's rights by EU institutions, as well as by EU Member States when they implement EU law. Article 24 is focused on the rights of children and provides inter alia that:
 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
- The Lisbon Treaty also provided a basis for a stronger EU legal framework in key areas where children find themselves involved in justice systems. As an example, prior to the Lisbon Treaty, the EU had been permitted to adopt so-called Framework Decisions in the area of trafficking of human beings and sexual abuse of children, but not EU Directives. Unlike Directives, Framework Decisions were not capable of direct effect, nor could the European Commission pursue Member States for failure to implement Framework Directives properly. Post the adoption of the Lisbon Treaty, the EU was able to adopt Directives in both fields.

1.2 What types of action may the EU take?

Depending on the policy area involved, the EU can take a range of different actions, including law, policy, practical measures of support and funding.

(a) EU law

- EU law takes a number of different forms, including primary law (the EU Treaties) and secondary law (EU regulations, directives and decisions). We have just looked at some of the primary law provisions. EU secondary law generally takes three forms: decisions, regulations and directives.
- Decisions are typically taken by the Commission in relation to individual acts or bodies, for example, competition case decisions by the Commission in relation to the transactions of particular companies.
- Regulations become law in all Member States the moment they come into force, without the need for any national implementing measures, and they automatically override conflicting domestic provisions.
- As mentioned above, Directives require Member States to achieve a certain result while leaving them discretion as to how to achieve the result. This recognises the different legal and technical ways in which national systems are set up and the need to choose the appropriate means within those systems to fulfil the general EU legal obligation.

EU law that is most directly relevant to child friendly justice and which has taken the form of Directives includes: [suggest inclusion of hyperlinks and titles which explain what the instruments do rather than their formal and often long titles]

- Brussels II bis Regulation on conflict of law issues in family law between Member States; in particular those related to divorce, child custody and international child abduction.
- Victims Directive,
- Trafficking Directive
- Sexual Abuse Directive
- International Protection instruments
- Return Directive
- Proposal in relation to safeguards for child suspects and children accused of crime (draft legislation)

(b) EU policy

- EU policy documents typically set out a framework for EU action in a particular field, by reference to particular principles and key objectives. These are important channels through which institutional and EU agency resources are focussed on particular outcomes and they may also invite stakeholder engagement. These policy frameworks can help inform and shape EU law and its implementation and can prove useful in practice interpreting how it should be applied.
- In February 2011, the European Commission adopted the EU Agenda for the rights of the child which reaffirmed the commitment of all EU institutions and all EU Member States to promote, protect and fulfil the rights of the child in all relevant EU policies.
- The EU Agenda underlines that the standards and principles of the UN Convention on the rights of the child will guide EU policies and actions that have an impact on the rights of the child. It also identified a number of concrete priorities on which the EU would focus including

child-friendly justice and the protection of children in vulnerable situations. The role of EU law in this field was noted, as well as the role of non-legislative measures. The need for better data on the situation of children in justice across Europe was also emphasised. The EU Agenda also included a commitment to promote the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice, and to take them into account when proposing legal instruments in the field of civil and criminal justice.

- Much of the EU agenda focussed on activities that were to be undertaken between 2010 and 2015; however it can be expected that child friendly justice will continue to be a priority given the range of EU competences in the area.
- Other EU policy frameworks have also been very pertinent to children in particular contexts, including the EU Action Plan on Unaccompanied Minors (2010-2014). The latter included a range of actions that are relevant to child friendly justice in immigration and asylum contexts, including the appointment of guardians. The Commission has also been exploring the adoption of a Communication on integrated child protection systems, with a reflection paper on the topic adopted for the annual EU Child Rights Forum in 2015. The Reflection Paper contains a series of principles, starting with the right of the child to be involved in decisions that involve them, “with measures to empower children to protect themselves and their peers and to claim their rights”.

(c) EU Practical Measures of Support

- The EU has a wide portfolio of activities which are intended to serve as practical measures of support to achieving its goals, and these are often identified in the policy framework. They include research, action plans, guidance and project funding.
- They may be undertaken by EU agencies, in particular the Fundamental Rights Agency (“FRA”), the European Asylum Support Office (“EASO”) and Frontex as well as Europol in the area of crime control. Again, these should be viewed as resources for actors in the field of child friendly justice, whether that be policy makers or practitioners.

Some illustrations of practical measures in the area of child friendly justice

- The Commission regularly hosts meetings allowing for and exchange of national experiences, including both expert meetings on thematic issues and so-called contact committee bringing together national authorities involved in implementing EU measures. It is from this context that Guidance on a particular directive often emerges, such as the Guidance on the Victim’s Directive, which we will look at in a moment.
- The EU agencies, including the Fundamental Rights Agency, the European Asylum Support Office (EASO), Europol and Eurojust, all play a very practical operational role supporting the implementation of EU law.
- Examples include:
 - Work of the EU agencies:
 - FRA (e.g. Child Friendly Justice research; Handbook on Guardians for Children Deprived of Parental Care)
 - EASO (e.g. Interviewing Children Training Modules; Age Assessment)
 - Frontex (e.g. Training for Border Guards)
 - EU funded projects
 - Training & Clinics
 - Tools (e.g. CONNECT)

- As an example, the EU-funded CONNECT Project included a tool developed from the UK context which sets out standards to ensure that unaccompanied children can participate in procedures concerning them.
- It deals concretely with the following situation: “an unaccompanied migrant child may have to engage with a wide range of legal procedures, courts and tribunals after his or her arrival in a country of destination. These may include a criminal court, if he or she is a victim of human trafficking, sexual abuse or labour exploitation. In the alternative, he or she may have been wrongly charged with a criminal offence connected with his or her entry into the country or his or her exploitation as a victim of human trafficking. He or she may also have to take legal action in order to dispute an assertion that he or she is over 18, if he or she has been placed in unsuitable accommodation or has not been recognised as victims of human trafficking. Or he or she may be a party to family proceedings because child protection concerns have arisen about his or her previous treatment by a parent or relative. At the same time, he or she may have been refused asylum or other international protection and be appealing against that decision. Some unaccompanied migrant children may also be seeking compensation from the relevant court or tribunal for false imprisonment, assault or exploitation as a victim of human trafficking.”
- It underlines the fact that “The failure on the part of different actors to understand that they are part of this wider child protection system and that they should co-operate with each other in order to ascertain the particular need of unaccompanied migrant children may ultimately lead to the wrong decision being made in legal and judicial proceedings to the detriment of individual unaccompanied migrant children.”
- The UK tool sets out standards which actors, particularly in the decision making procedures, should observe. These include standards concerning the exchange of information and evidence by all actors, reliance on expert evidence, special measures during court procedures, professional accreditation and supervision.

In our conclusions, we will look at some more specific EU guidance and reference material.