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**Developing indicators for the protection,
respect and promotion of the rights of the
child in the European Union**

November 2010

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Foreword

Article 3 of the Treaty on European Union enshrines the European Union's obligation to promote the protection of the rights of the child. Despite the general character of this reference, its impact can be expected to be large. It has been felt in the adoption of the Stockholm Programme, in which the European Council sets out the guidelines within the area of freedom, security and justice for the years 2010 to 2015.

The Stockholm Programme devotes a specific section to the rights of the child, noting that these rights concern all European Union policies and that they must be systematically and strategically taken into account with a view to ensuring an integrated approach. In this Programme, the European Council requests the development of an ambitious EU strategy on the rights of the child. It also calls on the European Commission to identify measures to which the EU can bring added value in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, referring specifically to children who are victims of sexual exploitation and abuse, as well as children who are victims of trafficking and unaccompanied minors in the context of immigration policy.

Article 24 of the Charter of Fundamental Rights of the European Union explicitly recognises the rights of the child. Moreover, the fundamental rights of the child represent a horizontal, cross-cutting issue, touching on multiple dimensions, and must therefore be mainstreamed as a cross-cutting priority into all relevant European and national policies.

The development of indicators for the protection, respect and promotion of the rights of the child in the European Union by the Agency for Fundamental Rights of the European Union (FRA) aims at assessing the impact of Union law and policies that have been adopted so far, identifying their achievements and revealing their gaps on EU provisions for children. Their purpose is to enable EU institutions, Member States, and organisations and individuals concerned to develop appropriate legal and policy responses, which enhance the protection and promotion of children's rights by the EU. Accordingly, it is important to emphasise that these indicators are neither intended to scrutinise the Member States' implementation of their obligations under EU law, nor as another means of monitoring Member States' compliance with the UN Convention on the Rights of the Child. The first is a task that corresponds to the European Commission as guardian of the Treaties, while the second is a task of the Committee on the Rights of the Child, which is the international body responsible for monitoring the implementation of the UN Convention.

Establishing a workable and robust method for developing children's rights indicators is a long-term process and demands significant attention to legal developments, both at the national and international levels, as well as sensitivity to the institutional and political dynamics of the EU and its decision-making processes. With this in mind, these indicators constitute a starting point rather than a definitive result, requiring continued refinement and expansion in response to emerging data, and legal and policy developments. In this light, this FRA report is as much about process as it is about product.

Morten Kjærøum,
Director

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Introduction

Although the impact of EU action on children has been a matter of attention for the EU institutions for some years, the protection of the rights of the child in the EU has acquired a new dimension with the adoption and entering into force of the Treaty of Lisbon.¹ Article 3 of the Treaty on European Union (TEU) explicitly contains the European Union's obligation to promote the protection of the rights of the child among the 'Common Provisions' in Title I of the Treaty, thereby becoming a fundamental commitment of the EU. Further, Article 24 of the Charter of Fundamental Rights of the European Union,² which has acquired a legally binding, treaty-like value with the adoption of the Treaty of Lisbon, introduces explicit protection thresholds. The Charter states that children have the right to such protection and care as is necessary for their well-being and that both public authorities and private institutions have to primarily consider the child's best interests in all actions relating to children.

In view of this key development, it is important to take stock of the level of achievement of the EU in protecting the rights of the child. Only through the appropriate measurement of what the EU has already developed, it is possible to identify new policy priorities and set new targets for implementation. Important steps in this regard were taken with the adoption of the European Commission Communication *Towards an EU Strategy on the Rights of the Child*:

"All relevant EU action, legislative as well as non-legislative, should be examined to review their impact on children. The assessment would be made on the basis of a set of appropriate indicators. The indicators would be both qualitative and quantitative and would cover the internal as well as the external dimension. They would include, amongst others, the effect on children's health, economic situation, education, participation, living conditions and the enjoyment of civil rights. This study on these effects would be updated every five years in order to check for progress. To remain realistic, the study would gradually tackle some critical areas, rather than attempting to cover all areas of relevance from the start."³

The European Commission Communication also represented a turning point, being the first attempt by an EU institution to develop a coherent, considered approach to the development, monitoring and review of EU law and policy affecting children.

¹ Treaty of Lisbon amending the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), signed in Lisbon on 13 December 2007 (2007/C 306/01), available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML> (all hyperlinks referenced in this report have been accessed on 18 November 2010).

² Charter of Fundamental Rights of the European Union of 18 December 2000 (2000/C 364/01), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>.

³ See European Commission staff working document accompanying the European Commission Communication, *Towards an EU Strategy on the Rights of the Child*, COM (2006) 367 final, Brussels, 4 July 2006, p. 19.

Currently, the European Commission is in the process of adopting a specific strategy on the rights of the child, which will set a number of priority areas where it will focus its work.

The indicators presented in this report provide an initial toolkit to evaluate the impact of already adopted EU law and policy on children's status and experience across various fields. They highlight the limitations of and gaps in current provisions and data, providing a springboard for future legal, policy and research development. The indicators cover several areas of substantive law and policy, and complement and build on other efforts to develop child indicators and monitoring processes at EU level.⁴ They adopt a pragmatic approach respecting the boundaries of the EU competence, which has been exercised so far,⁵ and recognising the individual and collective roles of the local, national, European and international authorities in addressing different aspects of the protection, promotion and fulfilment of the rights of the child.

This report adopts the provisions, principles and processes enshrined in the United Nations (UN) Convention on the Rights of the Child (CRC)⁶ as a fundamental starting point for monitoring and developing children's rights at EU level. This is based on the assumption that EU mechanisms as they currently exist do not provide a sufficiently robust framework to independently achieve this. For instance, at a very basic substantive level, there is still no concrete, consistent definition of 'child' under EU law;⁷ very little formal EU legislation is directly concerned with accommodating children's interests and needs; and most relevant EU provisions are framed in rather vague and optional terms. Furthermore, while coherent sets of indicators that have some relevance to children are being developed at EU level, they are not generally grounded in a children's rights approach.⁸ As the Committee of the Regions has noted, the CRC could be used as a framework that would not just come into play where rights are being

⁴ See Atkinson *et al*, 2005; Frazer and Marlier, 2007; and Begg and Marlier, 2006. See also Thematic Comment No. 4 of the EU Network of Independent Experts on Fundamental Rights, 'Implementing the Rights of the Child in the European Union', 2006.

⁵ The report presents an account of the law as of 25 July 2010.

⁶ United Nations (UN) Convention on the Rights of the Child, A/RES/44/25 of 20 November 1989, available at: <http://www.un.org/documents/ga/res/44/a44r025.htm>.

⁷ For instance, the free movement of persons provisions, enacted on the basis of Articles 39 and 18 EC and fleshed out in Council Directive 2004/38/EC (OJ L 158/77) defines 'child' as a direct descendant (of the adult EU migrant or their spouse or partner) who is under the age of 21 years or is dependant. Other areas of EU law impose a much lower age threshold on children's rights than the age of majority, such as Article 4 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251).

⁸ For instance, the child poverty indicators, developed by the European Union Social Protection Committee Indicators Subgroup (2008) *Child Poverty and Well-Being in the EU - Current status and way forward*, are clearly concerned with children but we suggest ways in which they might adopt a more children's rights-based approach. See also the work of the Indicators Subgroup on the Social OMC process in 2008 (European Commission, Directorate-General (DG) Employment, Social Affairs and Equal Opportunities).

violated, but also be broadly applied to promote the development and opportunities of all children and young people.⁹

The report also adopts the definition of indicators followed by the UN report on indicators for monitoring compliance with international human rights instruments. The UN report defines the indicators as specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.¹⁰

The report focuses on specific areas of EU activity which impact in a measurable way on children, giving priority to depth over breadth, enabling a detailed exploration of how EU law and policy affect children's rights, and whether they comply with and reinforce the international standards set by the CRC. These criteria assisted in identifying the following four core areas of analysis, which capture a significant proportion of existing EU provisions of direct relevance to children:

- family environment and alternative care (Section 4.1);
- protection from exploitation and violence (Section 4.2);
- adequate standard of living (Section 4.3);
- education, citizenship and participation in activities related to school and sport (Section 4.4).

The core indicator areas identified correspond to the reporting clusters developed by the Committee on the Rights of the Child, which is the international body responsible for monitoring the implementation of the CRC.¹¹ However, in order to adhere as closely as possible to EU competence and to reflect existing EU activity, not all areas covered under the CRC clusters are represented fully or systematically. For instance, the indicators on protection from exploitation and violence correspond, under the Committee's reporting clusters, partly to family care (abuse and neglect, rehabilitation, Articles 19 and 39 CRC) and partly to special protection measures (sexual and economic exploitation, rehabilitation, Articles 32-36 and 39 CRC). However, they have been grouped just under one core area to reflect the fact that the various aspects of EU activity on abuse, violence, exploitation and trafficking are often interrelated, and relevant legislation at EU level is adopted on the same legal bases. Similarly, citizenship is included in the same core area as education to reflect the activities of DG Education and Culture in promoting youth participation and civic responsibility, notions that are key to the articulation of citizenship.

⁹ See Opinion of the Committee of the Regions on local and regional cooperation to promote the rights of the child in the European Union, 9-10 June 2010 (CdR 54/2010 fin).

¹⁰ UN Document, HRI/MC/2006/7, p. 3.

¹¹ See General Guidelines Regarding the Form and Contents of Initial Reports (CRC/C/5) and Revised Guidelines Regarding the Form and Contents of Periodic Reports CRC/C/58/Rev.1. See also Article 44 CRC.

Prior to presenting the indicators in Chapter 4, the methodology and conceptual approaches used in developing them are presented in Chapter 1, which also outlines the key phases of the project. Chapter 2 outlines the scope of the project and its key concepts, and Chapter 3 briefly highlights some of the challenges associated with data availability and comparability in developing children's rights indicators. Finally, Chapter 5 reflects on the indicators developed and introduces possible steps forward in their future application and development.

1. Methodology and key approaches

The development of the indicators involved a detailed review of the existing normative and conceptual framework, extensive consultation with a broad range of EU, international and national stakeholders, policy makers and children's rights specialists, and an analysis of data availability and comparability. This was done in two phases: mapping of the conceptual framework and expert consultation. Research for this report was conducted by the Centre for the Study of the Child, the Family and the Law of the University of Liverpool (United Kingdom) in partnership with the Ludwig Boltzmann Institute of Human Rights in Vienna (Austria).¹²

1.1. Mapping of the conceptual framework

This phase involved a detailed mapping and analysis of the relevant conceptual framework, notably the legal, sociological, methodological, ideological and ethical issues surrounding children's rights. A specific emphasis was placed on children's rights indicator research, and EU child law and policy. The resulting key features of the indicators can be characterised as follows.

1.1.1. The indicators are firmly grounded in the UN Convention on the Rights of the Child

The CRC provides the starting point and the normative framework for this project. The CRC is the first international legally binding treaty specifically devoted to children¹³ – who are defined under its Article 1 as all human beings below the age of 18 years, unless under the law applicable to the child majority is attained earlier. The CRC treats children as subjects and holders of human rights, enshrining a comprehensive set of standards on child participation, provision and protection. As already mentioned, it also grants specific monitoring competences to the UN Committee on the Rights of the Child.¹⁴

¹² The FRA is particularly grateful to Helen Stalford, Helmut Sax, Eleanor Drywood, Helmut Wintersberger, Iris Golden, Renate Kränzl-Nagl, Beatriz Barquero, Christian Alt, Sandy Ruxton, Tony Dobson and Mike Jones.

¹³ The CRC was adopted in 1989.

¹⁴ The Committee on the Rights of the Child consists of 18 experts acting in their individual capacity. It has competence to receive periodic reports from States Parties on their measures to implement the CRC. The Committee is also responsible for monitoring compliance with two optional protocols to the CRC, respectively, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

The Committee on the Rights of the Child has identified four main general principles of the CRC to be taken into account in all efforts aimed at child rights implementation:

- primary consideration to the best interests of the child in all actions affecting children (Article 3(1));
- the child's right to participation in all matters affecting the child (Article 12);
- the child's right to life, survival and development (Article 6);
- the child's right to non-discrimination (Article 2).

The Committee has also issued detailed guidance on how the CRC should be interpreted and applied through a series of 'General Comments'. These include General Comment No. 5 (2003) on 'General measures of implementation of the Convention on the Rights of the Child', which offers invaluable guidance for the States Parties, including guidance with regard to:

- ratification of other relevant human rights treaties;
- review of existing legislation;
- provision of effective remedies;
- the development of comprehensive child rights-based national strategies;
- coordination mechanisms, particularly in relation to decentralised States;
- safeguards for compliance following the privatisation of services;
- impact assessment, evaluation and other monitoring activities;
- making children visible in budgets;
- training, child rights education and awareness-raising;
- establishment of independent human rights/ombudsman institutions;
- cooperation with civil society;
- international cooperation;
- working together with children directly.

Most importantly for these indicators, the Committee explicitly identifies monitoring and assessment - including indicator development and data collection - as a fundamental prerequisite for effective implementation of the CRC.¹⁵

While the EU is not a signatory to the CRC, it has long been recognised that fundamental rights form an integral part of the 'General Principles' of Community law and must be upheld and protected within the framework of the EU.¹⁶ Since the 1970s, the Court of Justice of the European Union (CJEU; previously the European Court of Justice (ECJ)) has recognised the significance of international human rights treaties (on which EU Member

¹⁵ General Comment No. 5, 'General measures of implementation of the Convention on the Rights of the Child', UN Document CRC/GC/2003/5, 27 November 2003, paragraph 48.

¹⁶ Among the initial, relevant jurisprudence, see CJEU, Case 11/70, *Internationale Handelsgesellschaft*, [1970] ECR 1125.

States have collaborated) in providing guidance on how Community law should be developed and applied.¹⁷ More specifically, in its judgment of 27 June 2006 on the case *European Parliament v. Council of the European Union supported by Commission of the European Communities and by Federal Republic of Germany*, the Court noted that the Convention on the Rights of the Child, which binds each of the EU Member States, is one of the international instruments for the protection of human rights “of which it takes account in applying the general principles of Community law”. Indeed, in recent years, the CRC has been used as a legal basis by EU Member States, private parties and the European Parliament to hold the EU accountable for alleged violations of the rights of the child.¹⁸

1.1.2. The indicators respond to the EU legal and policy context and respect the limits of EU competence

The aim in applying these indicators is to evaluate the impact of EU law and policy on children in the Member States. In adopting the EU framework for the development of these indicators, attention has been given to adhering to areas in which the EU is competent and in which there is already an identifiable body of law and policy of which the impact can be measured.

Determining EU competence in relation to the rights of the child is by no means a straight-forward exercise. The absence of any explicit reference to children in the Treaties until the Treaty of Lisbon, which came into force in December 2009, has meant that, traditionally, ‘hard’ EU law relating to children has been introduced either indirectly (embedded in more generic legislation relating to the free movement rights of family members or vulnerable immigrant groups), or through EU health and safety legislation with its distinctly protection-focused agenda (such as toy safety, television advertising). In addition, a large range of measures have been introduced by less formalised means, often in areas in which the EU merely seeks to complement and support state activities: such as soft law measures (in the field of education); coordinated action plans (in the domains of health, poverty and family policy), and intergovernmental initiatives (in the field of child protection). ‘EU children’s rights’ have therefore originally emerged as a regulatory patchwork, with diverse legal bases and motives, and varying degrees of consideration of children’s interests and needs.

By adopting a child rights-based approach the indicators can measure the extent to which EU law and policy affect children’s social experiences, their legal status and their life opportunities; whether EU law and policy espouse

¹⁷ CJEU, Case 4/73, *Nold v. Commission*, [1974] ECR 491.

¹⁸ CJEU, Case C-148/02 *Carlos Garcia Avello v. État Belge*, [2003] ECR I-11613; and Case C-540/03, *Parliament v. Council*, [2006] ECR I-5769; [2006] 3 CMLR 28. The CJEU declined to attach persuasive force to the UN CRC in both of these cases, but has recognised Community law’s breach of international children’s rights in the subsequent free movement of goods decision of Case C-244/06, *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, decision of 14 February 2008.

and reinforce the children's rights principles and practices as enshrined in the CRC; and how they are applied at national level. Essentially, therefore, the indicators adopt the CRC as an 'auditing tool' for measuring the value and effects of EU provision on children in practice.

An important aspect in indicator development is its relevance and usefulness for Local and Regional Authorities (LRAs). In its 'Opinion on local and regional cooperation to protect the rights of the child in the European Union', the Committee of the Regions calls on all relevant stakeholders to gather more complete sources of information and further improve the data collection and analysis techniques of the rights of the child indicators. It notes that LRAs should be consulted at all stages of this process, both as providers of quantitative and qualitative input as well as in their capacity as key final users of this tool.¹⁹ Taking into account the lack of comprehensive information on the protection of the rights of the child in the EU Member States, the Committee of the Regions calls on the European Commission to develop, publish and regularly update a "rights of the child scoreboard", as a tool covering the improved rights of the child indicators and providing reliable, comparable and up-to-date information on the level of the rights of the child in the Member States. The Committee suggests that the scoreboard is based on the methodology of the already-existing internal market scoreboard, indicating the transposition of internal market directives. This tool could then serve not only as a reference point for research, but also - by highlighting best practice - promote policy change in the EU Member States, overcoming thereby the lack of a mandatory *acquis*, acting through the Open Method of Coordination (OMC), as promoted in the White Paper on European governance.²⁰

1.1.3. The indicators focus on the child's societal status

In accordance with contemporary sociological approaches to researching childhood, the indicators' primary focus is on children and childhood's perceptions and experiences. Their principal aim is to highlight the distinct situation of children compared with that of adults, and to reveal divergences of status and experience among children in the light of differentiating factors such as age, gender, ethnic origin, disability and other variables. The indicators also focus on the extent to which EU law empowers children to exercise their rights 'here and now' rather than on their potential to become 'productive' adults in the future.

¹⁹ Opinion of the Committee of the Regions on local and regional cooperation to protect the rights of the child in the European Union, 9-10 June 2010 (CdR 54/2010 fin), No. 12 and 25, available at:

http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdR/civex-v\dossiers/civex-v-001\cdr54-2010_fin_ac.doc&language=EN.

²⁰ Opinion of the Committee of the Regions, No. 26.

1.1.4. Children's rights indicators

The indicators are specifically *children's rights* indicators as distinct from *child well-being* indicators. The latter reveal the 'state' of children's lives, while children's rights indicators consider the interaction between children, the state and society on matters concerning children.²¹ While the two issues are clearly interlinked – in the sense that the level of provision for children impacts upon their objective and subjective sense of well-being – a children's rights approach takes as its starting point a normative framework (at international, European and/or national level).

Specifically, the following key features characterise *children's rights* indicators.

- **Children's rights indicators are based on clearly defined legal and policy concepts** (in this case, the CRC and the EU legal and policy framework) A primary objective of a rights-based approach to indicator development is, therefore, to evaluate the impact of these provisions on children's social experiences, their legal status and life opportunities. Rights-based indicators are grounded in particular human/children's rights norms. They take into account principles such as empowerment and accountability, the indivisibility and inter-relatedness of rights, participation and non-discrimination, and pay particular attention to the regulatory and structural mechanisms in place (at EU and national level) to implement those standards and principles. Consequently, a child rights approach looks beyond indicators based on existing outcome-oriented, quantitative data towards the existence and effects of legal, policy and institutional measures on children's lived experiences.
- **Children's rights indicators serve an evaluative function** The indicators developed here are designed largely with a comprehensive impact assessment function in mind - to enable the EU institutions to evaluate the impact of EU activity on children with a view to informing future law and policy development.²² There is currently no mechanism in place for routinely testing the effect of EU measures on children. This study is based on the assumption that **not all EU law and policy necessarily benefit children**; in fact it may operate to their detriment, either because it does not include sufficient provision to protect or empower children, or because it does not place sufficiently clear or persuasive obligations on EU Member States. The indicators are intended to screen the impact of EU measures on children, with a view to highlighting areas for change, development and refinement in accordance with the CRC.

²¹ See further, Hanafin and Brooks 2005a, p. 16; Haydon and Boyce, 2007.

²² In this sense, the indicators provide a valuable complement to and component of broader EU impact assessment activities, see Communication from the European Commission on *Impact Assessment* (2002); *Impact Assessment Board - Report for the year* (2007) and accompanying Commission staff working document (2009).

Equally, these indicators are designed to highlight advancements in children's rights as a result of EU measures and to **enhance awareness**, at international, EU, national, regional and, indeed, personal level, of how EU law and policy affects children for the better. Hence, the indicators **move beyond an exclusive preoccupation with deficit orientation** - focused on finger-pointing at the EU and Member States' for failing to meet their obligations - towards a more positive and constructive tracking of progress in fulfilling the aims of the CRC.

- **Obtaining the views of children** is central to the application of children's rights indicators. Child participation, enshrined in Article 12 CRC, is an axiomatic principle of children's rights. Genuine child participation demands active engagement of children in decision-making processes or, at the very least, effective representation of children through appropriate intermediaries. It implies not just listening to children's views, but ensuring that their views inform decisions. Acknowledging that children's perspectives and interests often differ from those of adults, direct consultation with children are critical means to ensure that laws and policies are appropriately tailored to their needs. This approach is distinctly empowering and symptomatic of a shift beyond the traditional, paternalistic view of children as objects of care and protection.

Limited research exists (especially of a cross-national comparative nature) informing about which issues young people feel should be addressed through law and policy.²³ However, every effort has been made to consult with a range of professionals in the non-government organisation (NGO) and welfare sector who work with children. This 'adult proxy' approach to representing children's views should give way to increasingly child-led approaches, especially in the course of the further development and implementation of the indicators.²⁴

1.1.5. The indicators seek to build on, complement and add value to existing indicator sets

These indicators draw on an extensive body of indicator research and literature, conducted in the broader fields of human rights and development,²⁵ at EU level,²⁶ and specifically in relation to children's rights

²³ Some examples are cited in footnote 4.

²⁴ It is worth noting that some of the data referred to in the indicators on children's rights to an adequate standard of living and children's right to education are based on surveys conducted directly of young people aged 11-15 years, notably the World Health Organization (WHO) study on 'Health Behaviour in School-aged Children (HBSC)' and the Programme for International Student Assessment (PISA) by the Organisation for economic co-operation and development (OECD).

²⁵ Including efforts undertaken by the UN Office of the High Commissioner for Human Rights (OHCHR) and the UN Treaty Bodies. See, for instance: the report on *Indicators for Monitoring Compliance with International Human Rights Instruments*, UN Document HRI/MC/2006/7, 11 May 2006; indicators developed among the UN Human Rights Council's

and well-being.²⁷ While the specific EU context of these indicators distinguishes them from others previously developed, their aim has been to provide added value. To this end, these indicators take their place alongside other children's rights and well-being indicators, offering fresh insights into the interaction between EU law and policy and children's rights. To ensure complementarity, established structures and methodologies have been utilised, capitalising in particular upon synergies between the CRC State reporting process²⁸ and monitoring and data collection processes at EU level. This aims to facilitate that EU structures and processes can use the indicators.

The following figure illustrates how the various dimensions outlined above came into play for the establishment of a framework for child rights-based indicator development.²⁹

Special Rapporteurs, such as those proposed by the Special Rapporteur on Health, UN Document E/CN.4/2006/48, 3 March 2006; 2005 Nordic Network Seminar in Human Rights Research, 10-13 March 2005, Turku, more information available at: <http://web.abo.fi/institut/imr/research/seminars/indicators/>; 2006 Oslo Workshop on 'Developing Justice and Human Rights Indicators', available at: <http://www.jus.uio.no/forskning/grupper/humrdev/indicators.html>; the *User's Guide on Indicators for Human Rights Based Approaches to Development in UNDP Programming*, available at: <http://www.undp.org/oslocentre/docs06/HRBA%20indicators%20guide.pdf>; indicators for assessing implementation of the OHCHR Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, available at: <http://www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx>; the International Labour Organization (for example recent Delphi exercise (with partners) on trafficking indicator development); indicators developed as part of the Millennium Development Goals (<http://mdgs.un.org/>), which bear relevance to child-related issues (see, for example, MDG 2 (education) and MDG 4 (child health)).

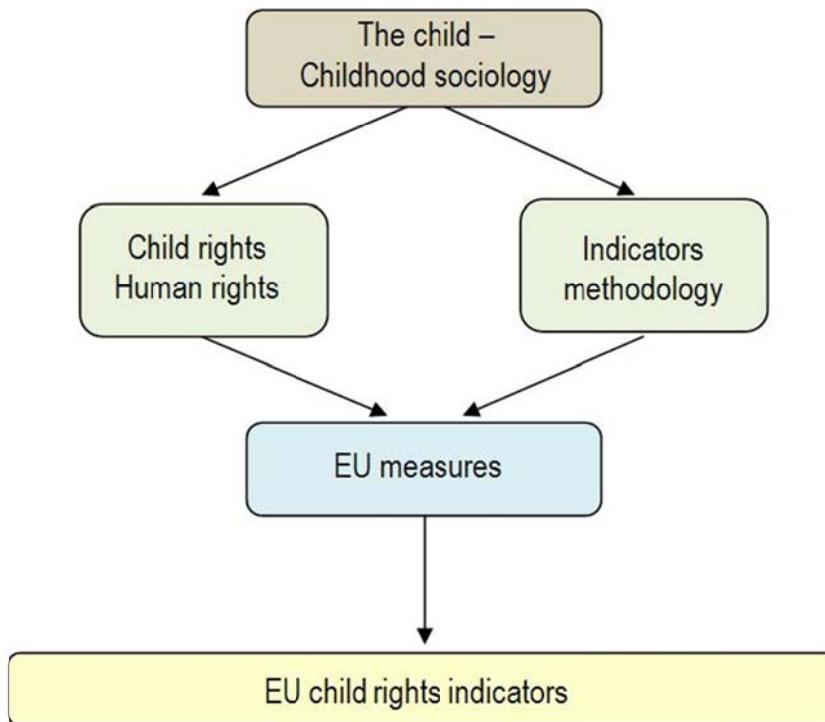
²⁶ EU Social Protection Committee Indicators Subgroup, *Child Poverty and Well-Being in the EU - Current status and way forward*, January 2008; *Report on Indicators in the field of poverty and social exclusion*, October 2001. See also the guidelines 'Generating Impact Indicators', completed under the European Initiative for Human Rights and Democracy (http://ec.europa.eu/europeaid/what/human-rights/index_en.htm); and the Guidelines developed for the Social Inclusion process by the European Commission DG Employment, Social Affairs and Equal Opportunities, 'Portfolio of Overarching Indicators and Streamlined Social Inclusion, Pensions, and Health Portfolios', April 2008 update; as well as the guidance developed for the Social OMC in the European Commission Communication *A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion – Impact Assessment*, COM (2008) 418 final.

²⁷ Ennew *et al*, 1996; Save the Children, 2004; UNICEF (including work carried out by the Innocenti Research Centre); Bradshaw, 2007; Ben-Arieh *et al*, 2001; Ben-Arieh 2008, Council of Europe, to name but a few.

²⁸ Including guidelines and data collection requirements established by the UN Committee on the Rights of the Child. See Articles 4 (implementation obligations), 42 (making the Convention widely known) and 44(6) (making reports widely available) CRC. Specific guidance is provided by General Comment No. 5 'General Measures of Implementation of the Convention on the Rights of the Child (2003)', UNCRC/GC/2003/5, 27 November 2003. See further Hodgkin, R. and Newell, P., *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF (2007, 3rd edition).

²⁹ A more general checklist that could be applied to the development of children's rights indicators is included in Annex 1 of this report.

Framework for child rights-based indicator development



1.2. Expert consultation

The second phase of indicator development identified and engaged with a network of children's rights experts at international, EU and national level to draw on their experience of developing indicators and of conducting research and developing policies involving children and young people. To ensure the study's comprehensiveness in terms of perspectives and experience, experts were drawn from a variety of disciplinary backgrounds.

The consultation continued throughout the duration of the project and was made up of the following four linked components.

Online discussion forum

Over a six-week period, 140 experts were invited to contribute to a discussion centred around six thematic headings: indicators and the rights of the child; the EU and the rights of the child; indicators in a wider context; child trafficking; children and cross-national family break-down; child poverty and social exclusion.

Online survey

The online survey sought to capture broader ranging contributions from professionals in the field. A quantitative snapshot of views in relation to the key issues was taken in order to complement those garnered by the Expert Discussion Forum. An online survey method was deemed the most appropriate vehicle, in terms of time, access and coverage. The survey was used to test opinion and reaction to a number of ideas and statements by the team and provided some direction and clarity for the next phase of the work.

Consultation meeting

The initial findings of the online discussion forum and survey, as well as some preliminary thoughts on the indicators were presented to an invited group of representatives from the UN, NGO and EU institutions at a meeting held in Vienna on 25 April 2008. This meeting focused on the more substantive aspects of the indicators, provided the opportunity for some debate on their ultimate purpose and application, and explored data availability and collection issues. The meeting also served to establish collaborative links with those engaged in parallel activities conducted by the UN and Council of Europe with a view to synchronising activities and children's rights campaigns in the future.

One-to-one key actor interviews

In the course of the project, 16 interviews were conducted with officials from the European Commission, the United Nations Children's Fund (UNICEF) Innocenti Research Centre, individual experts and representatives from European networks such as ChildONEurope, the European Children's Network and several NGOs. These interviews provided an opportunity to:

- draw on the detailed technical knowledge and expertise of key actors;
- follow up in greater depth issues emerging from the conceptual mapping phase and the online consultations;
- ensure that key actors seeking to employ child rights indicators in the EU policy context were aware of and engaged in the study;
- identify obstacles to the development and implementation of child rights indicators at EU level, and how these may be overcome.

2. Scope and key concepts

2.1. Content of indicators

The indicators seek to measure the following aspects.

- Whether and to which extent EU law and policy is positively impacting on children's rights?
- Whether EU law and policy espouse and reinforce the children's rights principles and practices of the CRC?
- Whether and to which extent these practices and principles are appropriately discharged at the national level?³⁰

The content of the indicators is defined by the **four general principles** of the CRC outlined by the Committee on the Rights of the Child, namely: non-discrimination; child's best interests; right to life, and participation. This aims to reflect the comments of the European Parliament in its Resolution on the European Commission's Communication *Towards an EU Strategy on the Rights of the Child*:

"[...] any strategy on the rights of the child should be rooted in the values and four basic principles enshrined in the UN Convention on the Rights of the Child: protection against all forms of discrimination; the best interests of the child as a primary consideration; the right to life and development; and the right to express an opinion and to have that opinion taken into account, in any matter or procedure affecting the child."³¹

Non-discrimination (Article 2 CRC)

Adherence to this principle demands recognising the fact that children's lives vary significantly according to age, ethnic origin, socio-economic situation, disability, gender and other factors. The indicators accommodate this diversity to capture a variety of childhood experiences and needs whilst acknowledging children's shared status and treatment as 'non-adults'.

The indicators explore how accessible formal provision of protection and services and processes is to **all** children, in the light of financial, physical and cultural differences. They also explore whether this provision is sufficiently adaptable to the evolving needs and capacities of the child. The indicators aim to achieve this by integrating especially vulnerable target groups such as Roma and asylum-seeking children, and by obtaining and drawing on appropriately disaggregated data.

³⁰ It is important to reiterate the point that these indicators are not intended to scrutinise EU Member States' implementation of their obligations under EU law, nor are they intended as another means of monitoring Member States' compliance with the UN CRC.

³¹ European Parliament Resolution of 16 January 2008: *Towards an EU strategy on the rights of the child* (2007/2093(INI)), paragraph 18. A similar approach has been adopted by Save the Children in its extensive work in developing children's rights indicators.

The incorporation of such considerations into the indicators is all the more pertinent in the light of recent EU developments in the field of discrimination. Firstly, the EU signed the UN Convention on the Rights of Persons with Disabilities (CRPD) on 30 March 2007.³² This is the first UN Human Rights Treaty to which the European Community is a party and it includes substantial provision for children with disabilities.³³ Secondly, proposals have been issued by the European Commission for a new directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.³⁴ If adopted, this will extend existing EU anti-discrimination protection beyond the workplace to the provision of goods, facilities and services, education and healthcare. Crucially the proposed directive seeks to outlaw discrimination on the grounds of age and could therefore more directly benefit children. However, there is a strong need to consider discrimination on the grounds of age not only from the perspective of old age, but also from the perspective of those under 18 years of age.

Best interests (Article 3 CRC)

The **best interests** principle, as set out in Article 3 CRC is the main anchor for mainstreaming child rights, ensuring that the interests of the child are a paramount concern in all stages of the decision-making and implementation process. In other words, the potential effects of decisions and processes on children should routinely be considered, and States should be held accountable for interventions that compromise their welfare.

Right to life, survival and development (Article 6 CRC)

Linked to this, any efforts for rights protection become void if the framework ensuring the child's right to **life, survival and development** is not ensured. This goes beyond the aspects usually contemplated in addressing the civil right to life (for example protection from summary executions or arbitrary killings) and implies guaranteeing the best possible conditions for the personal development of the child. This broad perspective is reflected in the indicator development, which moves beyond traditional quantitative indicators and data on child mortality, and considers broader notions of access to services and quality of life.

³² Adopted on 13 December 2006 and entered into force on 3 May 2008.

³³ Article 3(h) (general principles); Article 4(3) (child consultation); Article 7 (equality, best interests, participation); Article 8(2)(b) (respect); Article 16(5) (freedom from exploitation, violence and abuse); Article 18(2) (nationality and identity); Article 23 (family); Article 24 (education); Article 25 (health); Article 30(5)(d) (participation in leisure and sport).

³⁴ Proposal for a Council Directive of 2 July 2008 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age of sexual orientation, COM (2008) 426.

Child participation (Article 12 CRC)

Reference has already been made to the importance of engaging children directly in research, decision-making and monitoring processes that concern them. In short, any monitoring process that seeks to support children's status as rights holders has to provide a space for listening to children's freely expressed views. This is further reinforced by Articles 14 and 15 of the CRC, which include the child's freedom to manifest his/her religion or beliefs and freedom of association and peaceful assembly. Participation is reflected in the indicators' development in two main ways:

- by measuring the extent to which EU provision facilitates child participation in legal, political and civil processes;
- by requiring attention to data that is driven and generated by participatory methods, notably data of a qualitative and quantitative nature that elicits the views of children and young people or those who represent them;³⁵ and by introducing subjective indicators (that seek to enquire children's personal views and experiences, whether represented quantitatively or qualitatively).

2.2. Types of indicators

In determining whether the CRC principles are effectively implemented through EU measures it is important not just to interrogate whether appropriate laws and processes are in place, but also to scrutinise the level of specific knowledge, training and expertise of professionals engaged in the application of law and policy at the national level, and whether they are equipped to address and accommodate the distinct needs and interests of children and young people.³⁶ This is one key element for the implementation of the CRC provisions and principles, and Article 4 of the CRC, concerning the implementation of the rights recognised in the Convention in particular.

Accordingly, the formulation of the indicators follows a widely recognised and used matrix, consisting of structural, process and outcome measures: Structural indicators are indicators that reflect the ratification and adoption of legal instruments, as well as the existence of basic institutional and budgetary mechanisms deemed necessary for facilitating realisation of the particular children's rights provision. Process indicators measure efforts made at state and regional level to implement the structural provisions. They include the implementation of policy measures, programmes of action, training initiatives, campaigns and other activities that are aimed at realising particular children's rights. They are often progressive in nature and are therefore more amenable to measuring progress towards achieving particular goals over time. Finally, outcome indicators capture individual and

³⁵ See HBSC and PISA survey data noted in footnote 25. Quantitative data capturing the views of younger children (under the age of 11 years) is still lacking.

³⁶ This notion is described as 'Accommodation' by Carvalho (2008) in her matrix of children's rights indicators.

collective attainments that reflect whether children's rights have been realised in a given context as well as the extent to which children have benefited from interventions and programmes of action. This tripartite model has been adopted by, among others, the Office of the High Commissioner for Human Rights (OHCHR)³⁷ and Save the Children³⁸ in their indicators work. Its use reflects the transition away from indicators focused purely on outcomes - a particular feature of child *well-being* indicators - towards indicators which 'better reflect the action and impact of policies'.³⁹

An effort has been made to arrive at a consistent and balanced approach to classifying the indicators into these three indicator categories. However, in some of the core areas (such as *Adequate standard of living* and *Education, citizenship and cultural activities*) there is a stronger focus on outcome indicators, while in others (*Family environment and alternative care*, and *Violence and exploitation*) process indicators dominate. This varied approach reflects partly the availability or the lack of comparable data for each indicator group, but also lends itself to a more evaluative and qualitative approach to measuring the impact of EU provision on children's lives.

³⁷ See UN OHCHR, *Indicators for Promoting and Monitoring the Implementation of Human Rights*, HRI/MC/2008/3, 6 June 2008.

³⁸ See Haydon and Boyce, 2007. These categories of indicators should also incorporate Baseline indicators (indicators that measure the current situation so that progress can be monitored from that starting point, for example girls in primary school as a percentage of total pupils) and target indicators (benchmarks setting down a particular standard or goal that should be achieved within a particular time period, for example increasing the proportion of 5 year olds in compulsory education to 95 per cent by 2010). For further information about approaches and typologies of indicators from a human rights perspective, see Malhotra and Fasel, 2006.

³⁹ See the work of the Indicators Subgroup on the Social OMC process, 2008 (DG Employment, Social Affairs and Equal Opportunities).

3. Data availability and comparability

Each cluster of indicators presented below aims at identifying the most relevant and reliable international and comparable data available. Key to this endeavour is isolating age-disaggregated data that embraces a participatory, child-centred approach at the point of gathering. This task presents a number of challenges. The lack of attention to children in comparative policy analysis reflects to some degree the relatively low political priority given to children's issues at EU level. In turn, this has stifled the demand for transparent and coherent data, creating a vicious circle: without reliable data, the situation of children is obscured, justifying the continuing sidelining of children's rights issues in favour of more 'pressing' and visible adult issues.

In recent years the EU's official data-gathering body, Eurostat, has made considerable progress in collecting more EU demographic, migration and labour force data, but it is still difficult to identify children within such data. This is notwithstanding the fact that there is a growing body of statistical evidence of child poverty, education and generational inequalities, as well as wealth of data on the family at both national and international levels. These statistics rarely adopt children as unit of analysis and, when they do, they often focus on young people aged 11 years of age or above, to the exclusion of younger children.⁴⁰ The position of children is routinely subsumed within more general statistical groupings; any child-related data is rarely disaggregated further to reveal the distinct experiences of different childhood age-groups.

Such issues are highlighted by the European Commission in its 2006 Communication on *Towards an EU Strategy on the Rights of the Child*.⁴¹ The plea for better, more comparable child-focused data is also reinforced by the European Parliament in its 2008 resolution on the strategy. The resolution calls on the European Commission, the FRA and the EU Member States:

"[...] to work in cooperation with relevant UN agencies, international organisations and research centres towards improving the gathering of comparable statistical data on the situation of children in the EU, if necessary by extending Eurostat's mandate, with a view to developing and including a larger number of indicators relating specifically to children, on child poverty and social exclusion, for example; children's participation in the collection of data should be ensured. [...]"

Asks the Commission to provide a breakdown by gender and age of data on all types of discrimination and violence against children, to integrate

⁴⁰ See, for instance, the EU Statistics on Income and Living Conditions (SILC) and the WHO Health Behaviour in School-Age Children (HBSC) data sets.

⁴¹ COM (2006) 367 final, 4 July 2006, p. 8.

equality between women and men into all the policies and instruments of its future strategy [...] and to follow up and evaluate these policies, inter alia, by means of gender budgeting.”⁴²

The adoption of Regulation 862/2007 on the compilation of statistics on foreign workers,⁴³ responds to some of these recommendations, at least as far as migration and asylum data is concerned. The regulation establishes common rules for the collection and compilation of Community statistics on migration and international protection. In particular, Article 1(c) of the regulation specifies that common rules should be established for the collection and compilation of Community statistics on “[...] administrative and judicial procedures and processes in the Member States relating to immigration, granting of permission to reside... asylum and other forms of international protection and the prevention of illegal immigration.” The instrument also imposes an obligation on Member States to disaggregate such statistics in accordance with age (Article 3(1)). However, this process should be carefully managed and further guidance provided. In particular, steps need to be taken to overcome the diversity in age-classifications currently applied at Member State level, either through the introduction of a uniform classification system, or through more refined disaggregation of existing data.

Other challenges arise by virtue of the cross-national, comparative nature of the work. For instance, concerns relate to the routine ‘sanitisation’ of international data. This concept describes the tendency to detach data from the political, economic and cultural context from which it derives, which can undermine the importance of national or regional context in favour of statistical comparability. Similar challenge derives from the need to place such issues firmly within a particular national, cultural, and policy framework. For example, the structural and process indicators relating to separated children’s involvement in immigration procedures reveal different approaches according to whether the Member State deals with this question under its immigration or its child protection system. While analysis of these various approaches should be firmly rooted in the CRC principles outlined above, any subsequent recommendations for reform (either at EU or Member State level) should acknowledge the distinct policy and welfare contexts in which such reform will be implemented. Similarly, the concepts and terminology used by the indicators should be translated and adapted to the different systems in place in each particular EU Member State.

Notwithstanding these difficulties, this study attempts to provide a comprehensive review of existing data sources (and gaps) for each of the indicator areas. An effort has been made to develop indicators for which there is already a robust and comparable body of data in place, while

⁴² European Parliament Resolution of 16 January 2008 ‘Towards an EU Strategy on the Rights of the Child’, paragraphs 12 and 13.

⁴³ Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing; Council Regulation (EEC) No. 311/76 on the compilation of statistics on foreign workers.

avoiding an exclusively data-led approach to prioritising issues.⁴⁴ In some domains of child rights, there is a distinct lack of accessible data available. Hence, providing appropriate responses demands investment in gathering new data, if the implementation of child rights is to be effectively monitored in a more participatory manner.

The analysis of statistical data alongside other forms of information and research is central to the development of the indicators. In adopting a child-rights approach, these indicators draw on a range of non-statistical research and information allowing scrutinising the legal and institutional infrastructure of the Member States. Equally important, therefore, are laws, policies, and capacity-building (training/ inter-service collaboration) and monitoring programmes that enable EU child-related measures to be applied effectively on the ground.

⁴⁴ This is particularly the case for more ‘invisible’ groups of children such as victims of trafficking, for whom there is very limited data available.

4. The indicators

The indicators presented in this chapter constitute an initial consolidation to be applied and tested. Each indicator is accompanied by an outline of the specific area of EU law and policy to which the indicator relates, the specific CRC principles that the indicator seeks to measure (as well as other relevant CRC provisions), and the specific data and information sources that can be used in connection with the indicator. Unless otherwise stated, disaggregation is made on the basis of: gender, age group, ethnicity (for example, Roma children), location (urban or rural), as well as on the basis of disability and asylum-seeking status.

Consistent with the child-rights based approach, the indicator groups largely correspond to the reporting clusters developed by the Committee on the Rights of the Child.⁴⁵

Table 1: Scope of each indicator core area by indicator groups

Indicator area	Indicator group			
Family environment and alternative care	Family justice: cross-national divorce and parental separation	Rights and welfare of children separated from their family due to migration	Family reunification	
Protection from exploitation and violence	Child trafficking	Sexual and economic exploitation	Violence against children	
Adequate standard of living	Child income poverty	Impact of government response	Aspects beyond income poverty as well as children's subjective perceptions	
Education, culture, citizenship and participation in activities related to school and sport	Accessibility of education	Adaptability of education	Personal development	Citizenship and participation

Within the four core areas of analysis, the following set of indicator groups and subgroups was developed.

⁴⁵ See General Guidelines Regarding the Form and Contents of Initial Reports, CRC/C/5 and Revised Guidelines Regarding the Form and Contents of Periodic Reports, CRC/C/58/Rev.1; see also Article 44 CRC. For more detailed examples of indicator datasheets, see the samples annexed to the UN Treaty Monitoring Bodies report on human rights indicators, UN Document HRI/MC/2008/3, Annex II.

Family environment and alternative care

- Separated children due to cross-national divorce and parental separation
 - Existence of child-sensitive family justice processes
 - Enforcement of custody, access and maintenance orders
 - Mechanisms to monitor the welfare of children following cross-frontier abduction
- Separated children due to migration
 - Participation of children in immigration processes
 - Adaptability of immigration processes to the vulnerabilities of separated children
- The family reunification process
 - Existence of provisions favouring family reunification for children where it is in their best interest
 - Existence of expedited family reunification procedures for cases involving children
 - Existence of provisions to safeguard the welfare of the child following family reunification

Protection from exploitation and violence

- Child trafficking
 - Identification of victims
 - Protection of victims
 - Prosecution of perpetrators
 - Prevention of child trafficking
- Protection from sexual and economic exploitation
 - Identification of victims
 - Protection of victims
 - Prosecution of perpetrators
 - Prevention of child exploitation
- Violence against children
 - Identification of victims
 - Protection of victims
 - Prosecution of perpetrators
 - Prevention of violence against children

Adequate standard of living

- Child income poverty
- The impact of government intervention
- Aspects beyond income poverty as well as children's subjective perceptions

Education, culture, active citizenship and participation in activities related to school and sport

- Accessibility of education
- Adaptability of education
- Children's personal development
- Children's active citizenship and participation in school, cultural and sport-related activities.

4.1. Indicator area: Family environment and alternative care

Introduction

Any study of children's rights and experiences, and particularly one as far-reaching as this project, cannot overlook the family as a central component of children's lives. A wealth of research and literature explore and highlight the role of the family in shaping children's sense of personal and cultural identity, assuring their safety and well-being, and nurturing the life-skills needed to aid their integration and attainment in the immediate and long term.⁴⁶

This cluster of indicators adds a new dimension to the existing work on child rights and well-being indicators much of which include, as an indicator 'domain', the subject of children's personal or family relationships.⁴⁷ Important methodological lessons can be drawn from these studies (and particularly those of a cross-national nature), but they are not tailored to the legal and policy framework underpinning family rights. In addition, much of the existing work conducted on family indicators tends to focus on adult concerns – relating for instance to parental employment or relationship dysfunction.⁴⁸ While these issues will be considered in the present indicators, their primary aim is to assess the impact of EU intervention on the quality and dynamics of children's family life. By framing the indicators within an explicit children's rights framework, they adopt a more

⁴⁶ For example, see Duvall, 1977; Dollahite, 1991; Lindhert, 1977; Dollahite and Rommel, 1993; Quilgars, Searles, and Keung, 2005.

⁴⁷ Lipman, 2004; Hanafin and Brooks, 2005; Stevens *et al*, 2005; Tubbs *et al*, 2005; Bradshaw, 2006; Lahikainen *et al*, 2008; UNICEF Innocenti, 2006.

⁴⁸ See for example the OECD family indicators; Milan *et al*, 2006.

empowering perspective of children as active, distinctive and contributing members of the family unit.

Summary of legal and policy context

A range of general international provisions reflect the sanctity of family life. These include Article 7 CRC (right to know and be cared by one's own parents); Article 8 (right to preserve family relations as part of child's identity); and Article 16 CRC (right to protection against arbitrary or unlawful interference with family). These are underpinned by the general principles enshrined in Articles 2, 3, 6 and 12 CRC and authoritatively interpreted by the various General Comments of the Committee on the Rights of the Child. Additionally, Articles 2, 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),⁴⁹ as well as the 1996 European Convention on the Exercise of Children's Rights, provide notable examples of the Council of Europe's endorsement of the family. Indeed, Article 8 ECHR has become a source of rich jurisprudence over the past half century, endorsing the extension of the family concept beyond the traditional nuclear, heterosexual model that used to dominate family discourse, policy and law.⁵⁰

Traditionally, in the EU framework, however, family rights protection has been constrained by the EU's traditional preoccupation with securing economic and political integration. This, in turn, limited the EU's legal competence or, indeed, inclination to legislate on family matters *per se*. Until the turn of the century, EU institutions supported a basic right to family life principally in the application of free movement law and policy - extending rights of entry and residence to those family members who move with workers or other economically active citizens under the free movement provisions. Subsequently, family rights have been recognised in other contexts, extending not only to EU citizens, but also to third country national migrants. Thus, a number of instruments adopted under Title IV EC of the Amsterdam Treaty (an aspect currently addressed under Article 81 TFEU)⁵¹ deal with the conditions under which either 'voluntary' or 'involuntary' migrants can be joined by their family members in the host state.

Aside from the migration context, EU regulation of family life is apparent in other contexts: directly, under cross-national divorce and parental

⁴⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), available at: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

⁵⁰ The 2008 FRA report *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis* made a similar point about the need to adopt a broad interpretation of family to reflect the diversity of modern family practices and constellations. See also the FRA report *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part II – The Social Situation*, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/pub_cr_homophobia_p2_0309_en.htm, as well as the 2010 update of the comparative legal analysis. See further Bonner, Fenwick and Harris-Short, 2003; and Stevens *et al*, 2005.

⁵¹ Title V, Chapter III TFEU: Area of Freedom, Security and Justice – Judicial Cooperation in Civil Matters. Before the entering into force of the Treaty of Lisbon, the legal basis for measures relating to cross-border migration was Title IV, Part III of the EC Treaty.

responsibility proceedings, through legislation adopted on the basis of Title IV EC (again, an aspect currently addressed under Article 81 TFEU),⁵² and more indirectly, by dealing with the issue of parental employment and equality law.⁵³

Underpinning these developments in the EU framework is the gradual shift from the exclusively economic imperative family entitlement towards a rights-based approach. This is largely the result of a growing acknowledgement that protecting family life is central to the achievement of the broader European Union project; curbing demographic decline whilst maximising labour market participation (by introducing more flexible, family friendly employment and childcare policies); and encouraging ongoing circulation of people, knowledge and services (by extending mobility rights to family members as well). The position of children in this process, however, remains overshadowed, primarily because children were never a primary consideration, or even a significant factor, when family provision was proposed, formulated and implemented. Growing political concerns around the impact of access to immigration on national security and welfare regimes abound, serving to further marginalize families and undermine the right to family life.

The Stockholm Programme devotes specific attention to the question of parental child abduction, calling for the effective implementation of existing legal instruments in this area, and for exploring the possibility of using family mediation at international level, while taking account of good practices in the EU Member States. According to the European Council, the European Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems.⁵⁴

The Stockholm Programme also highlights that the situation of unaccompanied children arriving in the EU Member States from third countries requires special attention and dedicated responses.⁵⁵ The European Council welcomes the European Commission's intention to develop an action plan, as announced in its June 2009 Communication *An Area of Freedom, Security and Justice serving the Citizen*.⁵⁶ The European Commission Action Plan on Unaccompanied Minors for the years 2010–2014⁵⁷ envisages three main strands of action:

- the prevention of unsafe migration and trafficking;
- reception and procedural guarantees in the EU – also encompassing age assessment and family tracing issues;
- identification of durable solutions – including family reunification issues.

⁵² *Ibid.*

⁵³ Developed also in the context of the EU Social Inclusion Strategy and the Laeken Indicators, primarily through the Open Method of Coordination (OMC).

⁵⁴ Stockholm Programme, Section 2.3.2 on the rights of the child.

⁵⁵ Stockholm Programme, Section 6.1.6 on unaccompanied minors.

⁵⁶ COM (2009) 262 final.

⁵⁷ The Commission's Action Plan on Unaccompanied Minors (COM) 2010 313/3.

Bearing in mind EU legal measures adopted in this field, this core area of indicators consider children's rights and the family environment in three contexts:

- the impact of cross-national divorce and parental separation on children (Section 4.1.1);
- children separated from parents as a result of migration (Section 4.1.2);
- children and the family reunification process (Section 4.1.3).

During the earlier stages of this project, some indicators were drafted in relation to the EU strategy on reconciliation of work and family life. Following consultation with key experts in the field, however, it was concluded that developing a set of indicators in this domain would add little to work already done by the Council of Europe⁵⁸ and the Organisation for Economic Co-operation and Development (OECD).⁵⁹ Furthermore, in the absence of detailed qualitative work in this domain, current data sets are unlikely to shed light on the impact of EU employment measures on the status and experiences of children. A particular concern has been to measure whether the EU employment strategy (including among others the possibility of more flexible working patterns, extended maternity leave and parental leave) has impacted positively upon the amount of time children are spending with their parents. However, there is limited data available relating to these issues. For instance, data on rates of take-up of maternity and paternity leave might tell us how much time parents are spending away from work, but it does not allow us to assess whether this corresponds with the amount of quality time spent with children. To unearth detailed information would demand further empirical investigation over a sustained period, which may prove costly and unworkable.

4.1.1. The impact of cross-national divorce and parental separation on children

Background

Social science research has traditionally underlined the negative impact of parental relationship dysfunction on children. Such presumptions are reflected in and, to some extent, reinforced by child indicator research.⁶⁰ Empirical research conducted over the past decade, however, has led to the conclusion that it is not just conflict relating to divorce, parental separation or family reconfiguration (for example re-marriage and step-family formation) that impacts negatively upon children's well-being, but also the incapacity of parents and professionals to involve children in decisions and

⁵⁸ See the Council of Europe's Social Cohesion Indicators relating to children, available at: http://www.coe.int/t/dg3/socialpolicies/socialcohesiondev/source/Indicators/Cdrom2/site/page_12342.html#.

⁵⁹ See the OECD indicators relating to families and children, available at: http://www.oecd.org/department/0,3355,en_2649_34819_1_1_1_1_00.html.

⁶⁰ Bradshaw *et al.*, 2007. See the subsequent comparative study by Bradshaw and Chzhen, 2009 on lone parent families.

processes surrounding such change.⁶¹ The communication between family members, achievable only through spending time together on a regular basis, is also crucial. This inevitably presents challenges where family relationships have a cross-border nature.

Parental separation can be a source of economic hardship, particularly for custodial parents and children, raising questions as to how child maintenance agreements can be enforced, particularly across borders where legal and administrative divisions may introduce barriers to effective enforcement and facilitate evasion. As noted in the previous section, this area has been object of rather broad and controversial EU regulation in recent years. These indicators consider the extent to which the existing body of legislation adopted incorporates the protection and promotion of the rights of the child.

Regulating custody and access

The legal basis for the EU intervention in cross-national family breakdown is Article 81 TFEU,⁶² which authorises the adoption of measures concerning civil disputes with a cross-national element. The principal piece of legislation in this domain is Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility⁶³ (commonly referred to as ‘Brussels II bis’). This regulation is formally limited to *procedural* harmonisation (as opposed to harmonisation of substantive family law measures), setting out the conditions determining the choice of jurisdiction for cross-national divorce, judicial separation, marriage annulment (Article 3), disputes relating to parental custody (Article 8), as well as **subsequent recognition and enforcement** of these decisions.

Brussels II bis embodies a range of provisions that reflect domestic systems’ commitment to upholding the rights of the child in family proceedings, by stating in Paragraph 33 of its preamble:

“This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union [...].”

The regulation therefore governs parental responsibility proceedings involving *all* children, regardless of whether or not they are the children of both spouses, and regardless of whether the parental responsibility issues are linked to divorce or separation proceedings (Article 1(1)(a)).

⁶¹ Smart and Neale, 2001.

⁶² Former Article 65 EC.

⁶³ Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, which repeals Regulation (EC) No. 1347/2000, OJ L 338/1 and Council Regulation (EC) No. 2116/2004 of 2 December 2004 amending Regulation (EC) No. 201/2003.

The **best interests** principle features prominently in Brussels II bis, particularly where parents initiate competing proceedings in different Member States. The standard rule of the regulation is that jurisdiction to determine the case will lie with the Member State of the child's habitual residence. The regulation departs from this standard rule only where it is in the best or 'superior' interests of the child (Articles 12(1)(b); 12(3)(b); and 15(1)).

Perhaps one of the most important aspects of the Brussels II bis Regulation is the prominence given to the child's participation in family proceedings. The importance of involving children in decisions concerning where they will live has potentially greater implications for those children involved in cross-national custody disputes than for those involved in cases where the parents live in the same country. These decisions may result in the child residing in an unfamiliar cultural and linguistic environment. They may also result in significant geographical distance between the child and the non-custodial parent and relatives, leading to lengthy but irregular periods of contact⁶⁴. Paragraph 19 of the preamble of Brussels II bis asserts:

"The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable."

The regulation includes some important procedural amendments to facilitate the application of this principle, particularly in the context of parental child abduction. Article 11(2) of Brussels II bis obliges EU Member States to ascertain the wishes of the 'competent' children, competence being assessed according to the child's age and maturity, in applications for return of the child to his/her country of habitual residence. Moreover, hearing the views of the child is one of the preconditions imposed by the regulation for the abolition of the *exequatur* procedure for access rights and decisions entailing the return of the child (Articles 41 and 42).⁶⁵ It is also possible to oppose the recognition and enforcement of a judgment relating to parental responsibility on the basis that the child concerned was not given the opportunity to be heard (see Article 23).

Child maintenance

EU legislation in the field of maintenance is more developed than in the field of divorce and parental responsibility. Until the end of 2008, maintenance was pursued as part of a broader agenda aimed at ensuring cross-national enforcement of commercial and civil obligations, under the general provisions of Regulation 44/2001 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (otherwise referred to as the 'Brussels I' Regulation).⁶⁶ Article 5(2) of the regulation dealt with decisions relating to spouse and child maintenance including in connection with

⁶⁴ Ackers and Stalford, 2004, p. 197.

⁶⁵ *Exequatur* is a court order that authorises a judgment made in one Member State to be enforced in another Member State.

⁶⁶ 22 December 2000, (2001) OJ L 12/1.

periodic and lump sum payments.⁶⁷ This was superseded by Council Regulation (EC) No. 4/2009 of 18 December 2008, which is devoted to issues concerning jurisdiction, enforcement, recognition and, for the first time, applicable law, relating to maintenance obligations.⁶⁸ This new instrument streamlines, simplifies and clarifies procedures for enforcing maintenance decisions cross-nationally, potentially reducing the time and financial costs associated with cross-national maintenance proceedings, with likely benefits for any children involved.

Mediation

The EU activities with regard to mediation are worth mentioning as well. At national level, mediation is widely advocated by family law practitioners as the most positive means of resolving matrimonial and parental responsibility disputes, not least because it can avoid much of the trauma, acrimony and, indeed, financial cost, associated with judicial proceedings. The Council of Europe has advocated this form of alternative dispute resolution for over a decade now, promoting it as the most appropriate and effective means of reaching decisions in the interests of children.⁶⁹ Similarly, an EC Directive on mediation in civil and commercial matters has recently been adopted.⁷⁰ This directive includes family-related matters within its scope and offers some (albeit limited) acknowledgement of the specific vulnerabilities of children. Notably, the provision on confidentiality in mediation (Article 7) expressly refers to the best interests of the child as one of the grounds on which a mediator may be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process. In stark contrast to the Brussels II bis Regulation, the directive makes no reference to the importance of involving children in mediation proceedings.

The Stockholm Programme also advocates this form of dispute resolution in family matters. The European Council has called on the European Commission to explore the possibilities to use family mediation at international level. In addition, the Council has emphasised the importance of respect for the children's right to express their opinion and to be genuinely heard in all matters concerning them.⁷¹

The following tables outline the indicators of each group within the indicator area 'Family environment and alternative care', highlighting their EU

⁶⁷ Case C-220/95, *Antonius Van den Boogaard v Paula Laumen* (1997) ECR I-01147. See also Harper, 2006.

⁶⁸ OJ L 7, 10 January 2009, p. 1.

⁶⁹ The European Convention on the Exercise of Children's Rights recommends the use of mediation to resolve *all* disputes affecting children. ETS 160, 25 January 1996, Article 13.

⁷⁰ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24 May 2008, p. 3.

⁷¹ The Stockholm Programme, Section 2.3.2 (Rights of the Child). See also European Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme*, COM/2010/0171 final, Brussels, 20 April 2010.

relevance, CRC reference and other international provisions, as well as the availability of primary and secondary data.

Table 2: Indicator group – Existence of child-sensitive family justice processes

Indicator group	Existence of child-sensitive family justice processes
Indicator type	Structural/Process
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 7 (right to family life), 24 (right to maintain personal relationship and direct contact with parents) and 47 (right to fair trial) of the Charter of Fundamental Rights of the European Union • Article 81 TFEU • Section 2.3.2 (rights of the child) Stockholm Programme • Regulation 2201/2003 (Brussels II bis) – specifically Articles 23(b), 11(2), 41(2)(c) and 42(2)(a)⁷² • Mediation Directive 2008/52⁷³ (Article 7(1)(a))
Why it is important to measure	<p>The Brussels II bis Regulation affords significant prominence to the involvement of children in family proceedings. The importance of involving children in decisions as to with whom they will live has potentially greater implications for children involved in international custody disputes than it does for those involved in cases where the parents live in the same country. It may result in the child residing in an unfamiliar cultural and linguistic environment. It may also result in significant geographical distance between the child and the non-custodial parent and relatives, leading to lengthy but irregular periods of contact.</p> <p>The Mediation Directive makes no explicit reference to the importance of involving children in mediation proceedings. However, Article 7 expressly refers to the best interests of the child as one of the grounds on which a mediator may be compelled to give evidence in judicial proceedings regarding information arising out of or in connection with a mediation process.</p> <p>The Stockholm Programme also notes the importance of family reunification and emphasises that respect for childrens’ right to express their opinion and to be genuinely heard in all matters</p>

⁷² Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, OJ L 338/1.

⁷³ 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters in OJ L 136, 24 May 2008, p. 3.

	<p>concerning them. In addition, it introduces a plan to explore the possibilities to use family mediation at international level.</p>
CRC reference	<p>Articles 2, 3, 6, 12 (CRC general principles, in particular non-discrimination and, child participation), 13 (child right to freedom of expression), 16 (respect for child's privacy), 9 (rights in family separation cases), 18 (joint parental responsibilities), 20/21 (alternative family environment/adoption) and 30 (rights of minorities, including in relation to language).</p>
Other relevant international provisions	<ul style="list-style-type: none"> • ECHR: Articles 2 (right to life); 3 (prohibition on torture); 6 (fair trial); and 8 (right to respect for private and family life) • European Convention on the Exercise of Children's Rights 1996 (Articles 3, 4, 5, 6 and 13) • European Convention on the Legal Status of Children born out of Wedlock 1975 • European Convention on Contact concerning Children 2003 (Article 6) • Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children 1996 (Article 23(2)(b)) • 1980 Hague Convention on Abduction (Article 13)
Indicators	<ul style="list-style-type: none"> ➤ Existence of national law that affords equal status to children born outside of wedlock (for example relating to contact with non-custodial parent and right to maintenance). ➤ Existence of legal obligation to consult directly with children in custody, access and abduction cases in accordance with their age and capacity. ➤ Existence of legal obligation to provide specialist representation of children in family processes and/or provision for independent consultation with the child. ➤ Existence of recommendation or obligation to involve children directly in mediation processes in accordance with their age and capacity. ➤ Existence of legal obligation and process to adapt the family justice environment to the needs/rights of children, such as: age and capacity sensitive procedures, use of child appropriate techniques and technologies, and adequate translation for non-native speakers. ➤ Existence of specialist training in child consultation for legal practitioners adapted to the diverse needs (linguistic, age, cultural, disability) of children.

	<p>➤ Proportion of child abduction cases in which child's objections are considered in determining return/non-return.</p>
<p>Key data Secondary data</p>	<p>ECHR, especially Article 6 (right to a fair trial) and derived jurisprudence, including regarding the determination of civil rights, and with particular reference to limitations on publicity in limited respects connected with the protection of the interests of juveniles or private life.</p> <p>The diverse and often non-public nature of family proceedings at national level makes the collection of data difficult, particularly in relation evidence of child consultation and the weight attached to children's views. Some data can be obtained from the Ministry of Justice in each Member State.</p> <p>More detailed non official qualitative data can be found in comparative empirical research work in the field, examples are: the comparative surveys conducted by the Commission for European Family law⁷⁴; the 2007 comparative study, funded by the European Commission, on enforcement procedures in EU Member States regarding family rights⁷⁵; Surveys conducted by the Permanent Bureau of the Hague Conference.</p>
<p>Key data Primary data</p>	<p>Existing data and academic research are limited. Consideration should be given to obtaining data through targeted surveys of key practitioners across the EU in order to ascertain how often children are consulted and the proportion of cases in which decisive weight is given to their views (possibly through the European Judicial Network). A good example of such work is the 2007 European Commission funded work on enforcement procedures mentioned above. In addition, a periodic, cross country investigation of how children and their parents experience such processes would greatly enhance understanding of the effectiveness of these procedures and their impact. A great deal of work in this regard has been conducted in the UK but this is not paralleled in all the other Member States.</p>

⁷⁴ See: <http://www.ceflonline.net/>.

⁷⁵ See: http://ec.europa.eu/civiljustice/publications/publications_en.htm#5.

Table 3: Indicator group – Enforcement of custody and maintenance orders

Indicator group	Enforcement of custody, access and maintenance orders
Indicator type	Process/Outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 24 Charter of Fundamental Rights of the European Union • Article 81 TFEU • Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.⁷⁶ This instrument covers maintenance obligations arising from a family relationship, parentage, marriage or affinity (Article 1(1)). Articles 16-43 relate specifically to enforcement. • Articles 28-45 Regulation 2201/2003 (Brussels II bis) relating to enforcement of decisions concerning divorce, custody and access.
Why is it important to measure	<p>Central to the operation of EU family law is the issue of enforcement. Where a decision as to access (contact), custody and maintenance has been reached in one Member State, it will be automatically enforceable in any other Member State to which any of the parties move creating certainty and security for children.</p>
CRC reference	<p>Articles 2, 3, 6 and 12 (CRC general principles, in particular non-discrimination and child participation), Articles 9 (rights in family separation cases), 11 (illicit transfer/non-return of children), 13 (child right to freedom of expression), 16 (respect for child’s privacy), 18 (joint parental responsibilities), 20-21 (alternative family environment/adoption), 27(4) (maintenance) and 30 (rights of minorities, including in relation to language).</p>
Other relevant international provisions	<ul style="list-style-type: none"> • ECHR: Articles 2 (right to life) and 8 (right to respect for private and family life) • European Convention on the Legal Status of Children born out of Wedlock 1975 (Articles 6 and 8) • European Convention on Contact concerning Children 2003 (Articles 4, 7, 8, 9 and 14) • 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance

⁷⁶ 18 December 2008, OJ L 7, 10 January 2009, p. 1. This replaces Regulation 44/2001 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, of 22 December 2000, (2001) OJ L 12/1.

	<ul style="list-style-type: none"> • 2007 Hague Protocol on the Law Applicable to Maintenance Obligations
Indicators	<ul style="list-style-type: none"> ➤ Existence of simple, swift and inexpensive enforcement procedures (in accordance with the Hague 2007 guidelines).⁷⁷ ➤ Availability of advice and information which addresses the special difficulties arising from unfamiliarity with legal systems, procedures and linguistic differences. ➤ Accessible, specialist legal advice and financial support for proceedings regarding non compliance with orders.
Key data Secondary data	<p>Official data from EU Member State Justice Ministries.</p> <p>More detailed non-official qualitative data can be found in comparative empirical research work in the field. Examples include: The 2007 comparative study, funded by the European Commission, on enforcement procedures in EU Member States regarding family rights (as above); Information and Data from the Permanent Bureau of the Hague Conference, used in the empirical work of Lowe, Patterson and Horosova.⁷⁸</p>
Key data Primary data	<p>Existing data and academic research are limited, particularly at cross-national comparative level. Consideration should be given to obtaining the data through targeted surveys of key practitioners across the EU to ascertain how often children are involved in decisions relating to custody and access. This could be distributed to members of the judiciary through the European Judicial Network.</p>

Table 4: Indicator group – Mechanisms to monitor the welfare of children following cross-frontier abduction

Indicator group	Mechanisms to monitor the welfare of children following cross-frontier abduction
Indicator type	Process
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 7 (right to family life) and 24 (right to maintain personal relationship and direct contact with parents) of the Charter of

⁷⁷ The Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I, Central Authority Practice, HCCH, 2003 and Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice, HCCH, 2008 (see for example section 3.4).

⁷⁸ ‘Good Practice Report on Access under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction’, National Center for Missing and Exploited Children, 2007.

	<p>Fundamental Rights of the European Union</p> <ul style="list-style-type: none"> • Article 81 TFEU • The Stockholm Programme - Sections 2.3.2 (rights of the child) and 6.1.6 (unaccompanied minors) <p>The Stockholm Programme touches on the issue of parental child abduction, stating that: “The Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems”.</p> <ul style="list-style-type: none"> • Brussels II bis Regulation <p>Child abduction provisions were incorporated into the Brussels II legislation in 2003 by the Brussels II bis Regulation. The 1980 Hague Convention on Abduction provisions will continue to regulate return orders even in EU internal cases, subject to amendments introduced into Article 11 of the Brussels II bis Regulation. Notably, under Article 13(b) of the Hague Convention, a court can refuse to order the return of a child to his/her habitual residence on the basis of the child’s objections (subject to an assessment of the age and capacity of the child). However, Article 11(4) of the Brussels II Regulation weakens this exception by stating that “A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention, if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.”</p>
<p>Why it is important to measure</p>	<p>This indicator group will test the application of child protection arrangements across the Member States in the context of family justice to ascertain whether insistence on return is compatible with Article 3 and Article 6 of the CRC.</p>
<p>CRC reference</p>	<p>Articles 2, 3, 6, 12 (CRC general principles, in particular non-discrimination and child participation), 11 (illicit transfer/non-return of children), 9 (rights in family separation cases), 13 (child right to freedom of expression), 16 (respect for the privacy of the child), 18 (joint parental responsibilities), 20/21 (alternative family environment/adoption), 27/4 (maintenance), 30 (rights of minorities, including in relation to language) and 35 (prevention of child abduction); General Comment No.8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.</p>
<p>Other relevant international provisions</p>	<ul style="list-style-type: none"> • European Convention on Contact concerning Children 2003 (Articles 12-16) • Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children 1996 (Article 11-13)

	<ul style="list-style-type: none"> • 1980 Hague Convention on Abduction (Article 13(b))
Indicators	<ul style="list-style-type: none"> ➤ The existence of specialist counselling and support for children provided by specially-trained professionals, which is adapted to meet the age, capacity and linguistic needs of the child. ➤ Existence of transparent and accessible legal information for young people about their rights that is provided in a language that they can understand. ➤ The existence of effective cross-border communication and cooperation between the national authorities on matters relating to contact in connection with situations of abduction. ➤ The existence of safe and appropriate means of sustaining regular contact with the ‘absent’ parent/custodian following abduction (for example through contact centres, the use of technology and issuing of mirror orders), in accordance with the best interests of the child. ➤ Existence of accessible emergency help (for example specialist helpline, websites).
Key data Secondary data	<p>Official data from the national local authorities/social services departments.</p> <p>Other data and information can be obtained from International Social Services⁷⁹ and The Hague Conference on Private International Law - International Child Abduction Database (INCADAT).⁸⁰</p>
Key data Primary data	<p>Comparative study by Lowe, Patterson and Horosova.⁸¹</p> <p>Recent empirical studies have been carried out by: the Reunite-International Child Abduction Centre.⁸²</p>

4.1.2. Children separated from parents as a result of migration

Background

‘Separated children’ is a broad concept referring to:

⁷⁹ In particular their work on ‘Parents and Children Separated by Family Conflict’: http://www.issuk.org.uk/what_we_do/conflict.php – a useful resource for finding out about services rather than for obtaining international statistics.

⁸⁰ See: <http://www.incadat.com/index.cfm>.

⁸¹ Enforcement of Orders Made Under the 1980 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - An Empirical Study, 2006, Permanent Bureau of the Hague Conference, the Netherlands.

⁸² See: *The Outcomes For Children Returned Following An Abduction*, 2003, pp. 39-40, available at: <http://www.reunite.org/edit/files/Outcomes%20Report.pdf>.

"[...] children under 18 years of age who are outside their country of origin and separated from both parents or previous/legal customary primary care giver. Some children are totally alone, while others may be living with extended family members or other adults. As such, some may appear to be 'accompanied' but the accompanying adults are not necessarily able or suitable to assume responsibility for their care. This concept recognises that children suffer physically, socially and psychologically as a result of being without the care and protection of their parents or previous primary care giver(s). Separated children may be seeking asylum because of fear of persecution or lack of protection due to human rights violations, armed conflict or disturbances in their own country."⁸³

Inclusion of this issue is part of our endeavour to mainstream child refugees, asylum seekers, unaccompanied minors, and other children who are separated as a result of migration processes, into each cluster of indicators. While asylum-seeking unaccompanied minors will be the principal focus of this set of indicators (to reflect the focus of EU law and policy),⁸⁴ included also within this cluster of indicators are the growing number of (EU national) children who have been 'left behind' in a Member State (often in one of the more recent accession countries) following their parents' decision to move to and work in another Member State under the free movement provisions for a period of time.⁸⁵

Table 5: Indicator group – Participation of children in immigration processes

Indicator group	Participation of children in immigration processes
Indicator type	Structural/Process
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 18 (right to asylum) and 24 (rights of the child including the right to maintain personal relationship and direct contact with parents) of the Charter of Fundamental Rights of the European Union <p>EU Council Resolution on unaccompanied minors who are nationals of third countries.⁸⁶</p> <p>A number of EU directives specify that separated children, defined in</p>

⁸³ Save the Children, Separated Children in Europe Programme Definition, http://www.separated-children-europe-programme.org/separated_children/about_us/separated_children.html; see also Separated Children in Europe Programme, *Statement of Good Practice*, 2004 (3rd edition), and the UNHCR Handbook, *Guidelines on Protection and Care of Refugee Children* and the 1997 Guidelines.

⁸⁴ See, most recently, European Commission, Action Plan on Unaccompanied Minors (2010-2014), COM (2010) 213/3, Brussels.

⁸⁵ This domain does not include data relating to child victims of trafficking who are covered in the indicators relating to 'Child's right to protection against exploitation.

⁸⁶ OJ C 221, 19 July 1997.

	<p>particular as unaccompanied asylum-seeking minors, have a right to adult assistance and representation during immigration processes. Such provision includes:</p> <ul style="list-style-type: none"> - Article 19(1) of Council Directive 2003/9⁸⁷ - Article 30(1) of Directive 2004/83⁸⁸ - Article 10(c) of Directive 2001/55⁸⁹ - Article 17(1)(b) of Directive 2005/85⁹⁰ <ul style="list-style-type: none"> • Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010–2014).⁹¹ The European Commission Action Plan on Unaccompanied Minors calls for higher standards of protection for these children, noting in particular the lack of EU legislation on the appointment of a representative from the moment of arrival regardless of the immigration status of the individual child. Where this yields future legislative and policy activity, these indicators can be used to assess its impact. • JHA Council Conclusions on Unaccompanied Minors of 3 June 2010⁹² • The Stockholm Programme – Sections 2.3.2 (rights of the child) and 6.1.6 (unaccompanied minors) and the European Commission Action Plan Implementing the Stockholm Programme.⁹³
<p>Why it is important to measure</p>	<p>Assistance for separated children in ensuring their voices are heard while navigating complex and unfamiliar legal systems is essential if immigration procedures are to protect the rights of children. The abovementioned measures on legal representation impose clear obligations on EU Member States in accordance with their national procedures. As far as <i>legal</i> representation is concerned access to free services is of particular importance, alongside the provision of</p>

⁸⁷ 27 January 2003 laying down minimum standards for the reception of asylum seekers OJ L 31/18, 6 February 2003.

⁸⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12, 30 September 2004.

⁸⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12, 7 August 2001.

⁹⁰ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13, 13 December 2005. COM (2010) 213 final, 6 May 2010.

⁹¹ 3018th Council meeting, Justice and Home affairs, Luxembourg, 3-4 June 2010.

⁹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme*, COM (2010) 0171 final, Brussels, 20 April 2010.

	<p>specialist training for those offering support, information and advice to separated children.</p>
CRC reference	<p>Articles 2, 3, 6, 12 (CRC general principles, in particular child participation and non-discrimination), 9 (rights in family separation cases), 10 (family reunification), 13 (child right to freedom of expression), 8 (identity documentation), 16 (respect for child's privacy), 18 (joint parental responsibilities), 20/21 (alternative family environment/adoption), and 30 (rights of minorities, including in relation to language); General Comment No.6 (2005) on treatment of unaccompanied and separated children outside their country of origin.</p>
Other relevant international provisions	<p>ECHR Article 6 (fair trial)</p> <p>European Convention on the Exercise of Children's Rights 1996, Articles 3-6.</p> <ul style="list-style-type: none"> • The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996) Article 3 and Article 6 (jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, including refugees), and 23(2)(b) (right of the child to be heard).
Indicators	<ul style="list-style-type: none"> ➤ Existence of national laws ensuring ongoing and independent legal representation of separated children in all immigration processes, regardless of their status. ➤ Existence of assessment and review mechanisms to ensure that legal representation for separated children is both empowering and operates in their best interests. ➤ Provision of training for individuals in representing the rights and needs of separated children. ➤ Existence of legal obligation to provide information to separated children on their rights, including social and civil. ➤ Existence of financial and other support to assist children in accessing legal representation.

<p>Key data Secondary data</p>	<p>Two recent research projects provide some data on the participation of children in immigration processes:</p> <ul style="list-style-type: none"> • FRA (2010) <i>Separated, Asylum-Seeking Children in European Union Member States</i> • European Migration Network (EMN) (2010) <i>Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU Comparative Study</i> <p>Official data and information can be obtained through EU Member State reports on implementation of Directives 2003/9, 2004/83, 2005/85 and 2001/55, all of which contain provisions on representation of children.⁹⁴</p> <p>CRC national monitoring reports and concluding observations of the Committee relating to the implementation of Article 22.</p>
<p>Key data Primary data</p>	<p>Other data and information can be obtained through the Separated Children in Europe Programme. Their national assessment reports on law and policy in relation to separated children across Europe contain a section on the ‘appointment of a guardian or adviser’.⁹⁵</p> <p>In addition and in order to ensure the children’s participation in the collection of relevant data, particularly regarding separated children, appropriate cross-national qualitative child centred participatory research would yield significant information.</p>

⁹⁴ Note that such reports will not include information on those States that have, under the Protocols agreed with Denmark, Ireland and the UK, opted out of the legislation: Denmark has opted out of all asylum and immigration legislation; Ireland has opted out of Directive 2003/9; and the UK has opted out of all the above mentioned relevant legislation.

⁹⁵ See: http://www.separated-children-europe-programme.org/separated_children/publications/assessments/index.html. The most recent national assessments were completed in 2003; however, plans are underway to update them.

Table 6: Indicator group – Adaptability of immigration processes to the vulnerabilities of separated children

Indicator group	Adaptability of immigration processes to the vulnerabilities of separated children
Indicator type	Process/Outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 18 (right to asylum) and 24 (rights of the child including the right to maintain personal relationship and direct contact with parents) Charter of Fundamental Rights of the European Union. <p>This indicator group reflects the EU’s general competence to determine the conditions for accessing different immigration statuses (Articles 78 and 79 TFEU). More specifically, the indicator will measure the impact of the Procedures Directive (Directive 2005/85), which outlines minimum guarantees in the asylum process, including:</p> <ul style="list-style-type: none"> - Articles 8(2)(a) and 9(2): Regardless of age, reasoned, individual, objective and impartial decisions must be communicated to the asylum applicant; - Articles 10(1)(a) and (b): Asylum procedures must also be sensitive to the native language of the applicant; - Articles 12 and 17(4)(a): Asylum applicants have the right to a personal interview with the competent authorities which, in the case of children, must be carried out by an official who has necessary knowledge of minors’ needs; - Article 17: Includes ‘guarantees for unaccompanied minors’. <ul style="list-style-type: none"> • Communication from the European Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010–2014)⁹⁶ • The European Commission’s recent Action Plan on Unaccompanied Minors calls for further legislative action in this area, the result of which could be subject to scrutiny using these indicators. • JHA Council Conclusions on Unaccompanied Minors of 3 June 2010⁹⁷ • The Stockholm Programme – Sections 2.3.2 (rights of the child) and 6.1.6 (unaccompanied minors) and European Commission Action Plan Implementing the Stockholm Programme • Council Decision of 12 July 2010 authorising enhanced

⁹⁶ COM (2010) 213 final, 6 May 2010.

⁹⁷ 3018th Council meeting, Justice and Home affairs, Luxembourg, 3-4 June 2010.

	<p>cooperation in the area of the law applicable to divorce and legal separation (2010/405/EU)</p> <ul style="list-style-type: none"> • Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents • Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries • Communication from the European Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union (INTI Programme) COM/2005/0389 final • Communication from the European Commission to the Council and the European Parliament on the common asylum policy, introducing an open coordination method COM (2000) 755 final of 22 November 2000
<p>Why is it important measure to</p>	<p>The very fact that many of these provisions are age-neutral, makes it all the more important to consider how they impact upon children specifically, especially in light of the obligation to implement guarantees for unaccompanied minors in the best interests of the child (Article 17(6) Directive 2005/85). The transient nature of childhood, and the impact of prolonged immigration procedures upon children, makes it crucial that a decision is reached within the shortest time possible.</p>
<p>CRC reference</p>	<p>Articles 2, 3, 6, 12 (CRC general principles, in particular non-discrimination and child participation), 9 (rights in family separation cases), 10 (family reunification), 13 (child right to freedom of expression), 8 (identity documentation), 16 (respect for child's privacy), 18 (joint parental responsibilities), 20/21 (alternative family environment/adoption), and 30 (rights of minorities, including in relation to language); General Comment No.6 (2005) on treatment of unaccompanied and separated children outside their country of origin.</p>
<p>Other relevant international provisions</p>	<ul style="list-style-type: none"> • ECHR: Articles 3 (inhuman or degrading treatment), 8 (family life) and 5 (liberty) • The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996) Article 3 and Article 6 (jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, including refugees), and 23(2)(b) (right of the child to be heard).

<p>Indicators</p>	<ul style="list-style-type: none"> ➤ Existence of child (including age and gender) sensitive procedures for identifying separated and left behind children. ➤ Existence of data on the number of children who have gone missing after having been registered with the State authorities. ➤ Evidence of immigration procedures that are adapted to the age, gender and linguistic and cultural background of the child. ➤ Regular monitoring and review of immigration procedures to ensure that they are operating in the best interests of all categories of separated children (regardless of age, gender, linguistic and cultural background and immigration status). ➤ Provision of specialist training for personnel involved in determining the immigration status of children (for example legal professionals, interpreters, officials of the competent authorities). ➤ Average length of time lapsing between a child lodging an asylum application and receiving a decision. ➤ Existence of national laws/policies prohibiting the detention of separated child asylum-seekers in connection with their immigration status. ➤ Separated children held in detention (disaggregated by age and gender and incorporating data on length of time in detention) as a proportion of identified separated children. ➤ Existence of national laws and/or policies obliging local authorities to house separated siblings together. ➤ Proportion of separated children accommodated in institutionalised settings/ foster care/with friends or relatives in any one year period. ➤ Number of alternative care placements available for foreign separated children (as a proportion of the total number available for children with the State's citizenship and the number of identified separated children) in any one region. ➤ Evidence of policies/practices that enable interim care arrangements to be adapted to respond to disability, age, gender and cultural needs of child (for example placement with a family of the same minority ethnic background). ➤ Existence of specialist counselling and support services to assist separated and left behind children.
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<p>Key data Secondary data</p>	<p>Analysis of national asylum and immigration law and policy, particularly the implementation of Article 17 of Directive 2005/85 which must have been transposed into Member State law by 1 December 2007.⁹⁸</p> <p>Other official data and information can be obtained from the UNHCR Statistical Handbook (produced annually).⁹⁹</p> <p>Article 1(c) of Regulation 862/2007 on the compilation of statistics on foreign workers¹⁰⁰ specifies that common rules are to be established for the collection and compilation of Community statistics on</p> <p style="padding-left: 40px;"><i>“[...] administrative and judicial procedures and processes in the Member States relating to immigration, granting of permission to reside [...] asylum and other forms of international protection and the prevention of illegal immigration.”</i></p> <p>Such data should shed light on the relative status of children within asylum processes, particularly as the instrument requires Member States to disaggregate migration statistics in accordance with age (Article 3(1)).</p> <p>The Separated Children in Europe Programme reports on law and policy in relation to separated children across Europe contain a section on the ‘asylum or refugee determination process’.¹⁰¹</p> <p>The UNHCR database of reports relating to refugee determination procedures includes national reports on the legal and policy framework.¹⁰²</p> <p>Local authority data relating to the interim care arrangements for separated children. In this regard, two recent research projects provide some insight and lay the groundwork for future research:</p> <p>FRA (2010) <i>Separated, Asylum-Seeking Children in European Union Member States</i></p> <p>EMN (2010) <i>Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU Comparative Study</i></p>
<p>Key data Primary data</p>	<p>It would be important to conduct comparative cross-national surveys periodically, to examine the relevant perceptions and attitudes of separated children and immigration officials and professionals responsible for separated child care.</p>

⁹⁸ Note that such reports will not include information on those states that have opted out of the legislation (Denmark, Ireland and the UK).

⁹⁹ See: <http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html>.

¹⁰⁰ Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No. 311/76 on the compilation of statistics on foreign workers.

¹⁰¹ See: www.separated-children-europe-programme.org/separated_children/publications/assessments/index.html.

¹⁰² See: www.refworld.org.

4.1.3. Children and the family reunification process

Background

Family life is of fundamental importance to migrants' capacity to integrate into the host society, as it provides the security and nurturing that is essential for well-being and development.

In spite of widespread acknowledgement of the right to respect for family life by international human rights instruments, the individual right to family reunification *per se* is not recognised and protected under international law. The most far-reaching endorsement of family reunification - without expressly guaranteeing it as an individual right - is provided by the CRC. It states in Article 10(1) that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner". This provision clearly goes beyond other treaties by calling upon states to actively facilitate family reunification in favour of children.

At EU level, provisions that enable family units to stay together are aimed primarily at facilitating 'valuable' incoming economic migration and circulation, while limited family rights discourage migration into the EU of the less economically profitable (usually forced migrants).

Before presenting a more detailed overview of the EU legal context for each of these areas, it is important to note that there are different routes of facilitating family life in a migration context that can be summarised as follows:

- **family tracing** – it allows migrants to trace members of their family from whom they have become separated because of migration;
- **family reunification** – it allows families to be reunited following migration, which in the sense of the Council Directive on the right to family reunification¹⁰³ means the entry into and residence in an EU Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;
- **family unity** – it ensures families to remain together in a State following migration).

In determining the rights of children to be reunited and remain with family members, one has to first consider who precisely the EU recognises as 'family' for immigration purposes. The EU definition of 'family' for the purposes of family reunification is a highly contested concept that shifts according to the context in which family rights are being determined. Indeed, commentators have criticised the distinctly nuclear, heterosexual and Western ideal ascribed to family under different areas of EU law. It has been

¹⁰³ Council Directive 2003/86/EC of 22 September 2003, Article 2 (d) in particular.

argued that this does not correspond to the modern reality of family relationships and fails to accommodate the rich variety of family constellations across the world.¹⁰⁴ The narrow definition of family carries potentially significant consequences for children, particularly those who enter the EU as asylum seekers from culturally diverse regions; they may well be prevented from being reunited with certain key relatives simply because they do not fit within the narrow category of 'family' entitled to associated rights.

For the purposes of clarity, the following table summarises how 'family' is defined under each aspect of EU immigration and free movement law.

¹⁰⁴ See: McGlynn, 2005; 2006a; 2006b; Stalford, 2002.

Table 7: Definition of ‘family’ in EU immigration and free movement law

EU citizens	Third-country nationals			
	Long-term residents ¹⁰⁵	Refugees	Asylum-seekers	Temporary protection
Article 2(2) Directive 2004/38	Article 4(1) family reunification Directive (2003/86)	Article 4(1) Family Reunification Directive (2003/86)	Article 2(d) Reception Directive (2003/9)	Article 15(1) Temporary Protection Directive (2001/55)
<p>=> Spouse</p> <p>=> Registered / civil partner (where recognised by host state legislation)</p> <p>=> Children of citizen and spouse/partner must be under 21 years of age or dependent.</p> <p>=> Dependent parents of citizen or spouse/partner</p>	<p>=> Spouse</p> <p>=> Children of sponsor and spouse (including adopted)</p> <p>=> Children of sponsor only, if economically dependent.</p> <p>=> Children of spouse only, if economically dependent.</p> <p>=> Children referred to here must be under the age of majority.</p> <p>[NB1: Further age-based restrictions placed on children who wish to join parents in host state – see Case C-540/03 <i>Parliament v Council</i>]</p> <p>[NB2: There is a possibility of allowing parents to join a child in host state (where the child cannot be cared for in country or origin); (Article 4(2))]</p>	<p>=> As for long-term residents</p> <p>=> Article 10(3)(a) Family Reunification Directive</p> <p>=> If refugee is an unaccompanied minor, can be joined by first degree relative (usually parent) in ascending line or legal guardian if parent not alive or cannot be traced.</p>	<p>=> Spouse</p> <p>=> Partner (where recognised by host state legislation)</p> <p>=> Unmarried minor children of sponsor and spouse or of sponsor only (including adopted).</p> <p>[NB: Does not include children of spouse/partner only]</p>	<p>=> Spouse</p> <p>=> Partner (where recognised by host state legislation)</p> <p>=> Minor unmarried children of sponsor or spouse (including adopted).</p> <p>=> Other close relatives who lived as part of family unit, where wholly or fully dependent on sponsor.</p> <p>[NB: If the family members are living in different EU Member States, there is an obligation to reunite them; where family members are outside the EU, Member States have the option of reuniting them with the person who has gained temp protection in the EU]</p>

¹⁰⁵ In this case, long-term residents refer to those holding a residence permit valid for at least one year, with reasonable prospects of obtaining a permanent residence (that is within the meaning of Article 3(1) of the Family Reunification Directive, rather than the Long-term Residents Directive).

The most specific piece of legislation governing children's rights to family reunification is Directive 2003/86 on the right to family reunification.¹⁰⁶ This is a relatively narrow instrument in that it only governs the family reunification entitlement of third country nationals who are legally resident in the host state. It does not apply to asylum seekers or those who have been granted temporary or subsidiary protection (Article 3).¹⁰⁷

'Children' who qualify for family reunification with legally resident third country nationals in the host state are essentially any children of the sponsor and of his/her spouse, including adopted children who are under the age of 18. However, Article 4 imposes more stringent criteria on children who have not moved with the parents in the first instance, but who seek to be reunited with family members in the host state later (that is 'joiners'). Thus, where a child over the age of 12 seeks subsequent access to the host state for the purposes of family reunification, Article 4(1) grants Member States discretion to verify whether that child meets 'a condition for integration' before authorising their entry and residence. Moreover, Article 4(6) allows Member States to "request that applications concerning family reunification of minor children be submitted before they reach the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive."¹⁰⁸

It is worth noting that the legality of these specific provisions was challenged before the European Court of Justice on the basis that, *inter alia*, they breached the CRC.¹⁰⁹ Even though the application for annulment of the provisions was rejected, the case was significant in that it was the first instance in which the status of the CRC was acknowledged properly as an influential source of human rights protection at this level.¹¹⁰

Refugees and asylum seeking children's family related rights are scattered across other pieces of legislation. The Qualification Directive¹¹¹ in particular acknowledges the vulnerability of refugees' family members and of the need

¹⁰⁶ OJ L 251/12. Note that Denmark, Ireland and the UK are not bound by the terms of this Directive.

¹⁰⁷ Pursuant to the Stockholm Programme, the European Council invites the Commission to submit proposals for evaluation and, where necessary, review of this Directive, taking into account the importance of integration measures. See Section 6.1.4 (Proactive policies for migrants and their rights) of the Stockholm Programme.

¹⁰⁸ The last sentence of Article 4(6) concedes that "If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification". The provision fails, however, to provide any enlightenment as to what those alternative grounds might be.

¹⁰⁹ CJEU, Case C-540/03, *Parliament v Council* [2006] I-5769.

¹¹⁰ Drywood, 2007.

¹¹¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 261/19, 6 August 2004. Two different levels of international protection – refugee status and subsidiary protection - are covered: subsidiary protection is granted to those who need humanitarian protection but fall outside the scope of the Geneva Convention. See the definition in Article 2(e).

to maintain family unity.¹¹² A welcome feature of this instrument is the broad interpretation it attaches to 'family', allowing Member States to decide that the associated benefits equally apply "[...] to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time"(Article 23(5)). Special provision is made for unaccompanied minors, with Article 30 prioritising the need to ensure, where possible, that the child is placed with adult relatives in the host state, that he or she remains with any siblings, and that absent family members are located in a sensitive and safe manner as soon as is practicable (Article 30).

The Dublin II Regulation, which sets out the criteria for determining the Member State in which an asylum application lodged within the EU will be heard,¹¹³ also endorses the child's right to family life. The default position is that the first Member State in which an application for asylum is lodged will have responsibility for examining it (Article 13). However, the regulation contains a hierarchy of criteria that may supersede this position, at the top of which is a provision for unaccompanied minors stating that a Member State in which a member of his/her family is legally present will have responsibility for examining the child's asylum application (Article 6). Additionally, the Dublin II Regulation makes special provision for family reunification in the event that families who had lived together in their country of origin become separated through the asylum process (Article 15).

Notwithstanding the clear importance attached to children's family life in the context of forced migration, an underlying feature of this body of legislation is that Member States' obligations in relation to family reunification are, to a large degree, discretionary. In addition, there is no reference to Member States' obligations to monitor the health and welfare of the child following deportation for such purposes.

¹¹² Recital 27 of the Preamble acknowledges that family members will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status due to their relation to the refugee. Article 23(1) and (2) oblige Member States to ensure "that family unity can be maintained" and that they can claim benefits "as far as it is compatible with the personal legal status of the family member."

¹¹³ Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 24 February 2003.

Table 8: Indicator group – Existence of provision favouring family reunification for children where it is in their best interests

Indicator group	Existence of provision favouring family reunification for children where it is in their best interests
Indicator type	Structural/Process
EU relevance	<p>This indicator group will test how the EU provisions on family reunification are reflected in national law and whether national law extends the definition of ‘family’ in a way that reflects more accurately the reality of children’s family life. Specifically, this indicator corresponds with:</p> <ul style="list-style-type: none"> • Articles 4 and 10(3) Directive 2003/86¹¹⁴ • Articles 6 and 15 Regulation 343/2003¹¹⁵ • Article 23(5) and 30 Directive 2004/83¹¹⁶ • Articles 5 and 10 Directive 2008/115¹¹⁷ <p>Equally, the European Commission paves the way for future EU cooperation on family tracing in its Action Plan on Unaccompanied minors ((COM)2010 213/3).</p> <ul style="list-style-type: none"> • Article 3 TEU • Articles 7 (respect for private and family life) and 24 (rights of the child, including the right to maintain personal relationship and direct contact with parents) of the EU Charter of Fundamental Rights • Sections 2.3.2 (rights of the child), 6.1.4. (proactive policies for migrants and their rights) and 6.1.6 (unaccompanied minors) of the Stockholm Programme and the Action Plan Implementing the Stockholm Programme

¹¹⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 03 October 2003, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>.

¹¹⁵ Council Regulation 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25 February 2003, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>.

¹¹⁶ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12, 30 September 2004, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

¹¹⁷ Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98, 24 December 2008.

<p>Why it is important to measure</p>	<p>The EU has formulated a number of provisions to facilitate family reunification but the scope of these differ according to nationality, economic capacity of the migrant, and the nature of the relationship between the family members. Much of the EU legislation allowing family members to be reunited ascribes to a narrow definition of 'family' which has been criticised for endorsing a distinctly nuclear, heterosexual and western stereotype. The narrow EU definition of 'family' could have consequences for children, particularly those from culturally diverse regions where dependent family life can include members of the wider community, including those with no biological or legal tie to the child. In addition, the EU makes provision for the return of illegally staying children to their families in either the country of origin or a third country, whilst maintaining relatively weak safeguards in relation to their welfare following return.</p>
<p>CRC reference</p>	<p>Articles 2, 3, 6, 12 (general principles, in particular non-discrimination and child participation), 10 (family reunification in a positive, humane and expeditious manner), 9 (rights in family separation cases), 13 (child right to freedom of expression), 8 (identity documentation), 16 (respect for child's privacy), 18 (joint parental responsibilities), 20 (alternative family environment), and 30 (rights of minorities, including in relation to language); General Comment No.6 (2005) on treatment of unaccompanied and separated children outside their country of origin.</p>
<p>Other relevant international provisions</p>	<ul style="list-style-type: none"> • ECHR - Article 8 (family life) and Article 3 (protection against cruel, inhuman or degrading treatment). • 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - Article 44.
<p>Indicators</p>	<ul style="list-style-type: none"> ➤ Existence of law/policy allowing <i>de facto</i> family members to be reunited with the child in the host state, independent of biological connection. ➤ Existence of clear guidelines to assist in determining how and where family reunification can be achieved in the best interests of the child, including a full risk and security assessment.
	<p>The Separated Children in Europe Programme compiles extensive comparative reports (national assessments) on the legal and policy</p>

<p>Key data</p> <p>Secondary data</p>	<p>framework governing the rights of separated children. These include specific consideration of family reunification provision.¹¹⁸</p> <p>The International Organisation for Migration has recently completed a comparative study on the laws of the 27 Member States relating to illegal immigration (March 2008, European Parliament funded). This includes an assessment of the conditions and formalities imposed by each Member State for newcomers. This research includes an examination of admission conditions for the purposes of family reunification.</p> <p>The European Migration Network Family Reunification Report (January 2008) compares the family reunification process across nine Member States (Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, the Netherlands and the United Kingdom). This work is funded by the European Commission (JLS). This is a particularly useful evaluation of the transposition of the obligatory and optional provisions of the family reunification directive.</p> <p>The European Commission (DG JLS) has also commissioned research assessing the extent to which national legislation conforms to EU immigration and asylum law. This is being carried out through the ODYSSEUS network.¹¹⁹</p> <p>The International Centre for Migration Policy Development (ICMPD) completed a study on <i>Civic Stratification, Gender and Family Migration Policy in Europe</i> in December 2007. This project examines family migration policies in eight European countries both in terms of the legal and policy framework, and makes a more qualitative evaluation of the impact of such measures on migrants' family life.¹²⁰ Although it is not explicitly child focused, it should provide data that is relevant to this indicator set.</p> <p>Analysis of national immigration law - particularly measures transposing the Directive on the right to family reunification (2003/86).¹²¹ A comparative study of this has already been undertaken by the Centre for Migration Law of the University of Nijmegen.¹²²</p>
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¹¹⁸ See: www.separated-children-europe-programme.org/separated_children/publications/assessments/index.html. The most recent national assessments were completed in 2003 but plans are currently underway to update them.

¹¹⁹ See: <http://www.ulb.ac.be/assoc/odysseus/Technical%20specification%20v5.pdf>.

¹²⁰ See: http://www.icmpd.org/687.html?&no_cache=1&tx_icmpd_pi1%5barticle%5d=1044&tx_icmpd_pi1%5bpage%5d=1045.

¹²¹ No data will be available for Denmark, the UK and Ireland who have each opted out of Directive 2003/86.

¹²² See: <http://cmr.jur.ru.nl/cmr/Qs/family/>.

Table 9: Indicator group – Existence of expedited family reunification procedures for cases involving children

Indicator group	Existence of expedited family reunification procedures for cases involving children
Indicator type	Process/Outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 7 (respect for private and family life) and 24 (rights of the child, including the right to maintain personal relationship and direct contact with parents) Charter of Fundamental Rights of the European Union • Sections 2.3.2 (Rights of the Child), 6.1.4. (Proactive policies for migrants and their rights) and 6.1.6 (Unaccompanied minors) of the Stockholm Programme and the Action Plan Implementing the Stockholm Programme • Directive 2003/86 on the right to Family Reunification <p>The Family Reunification Directive contains specific measures in relation to minors, both those who wish to join their parents (Article 4(1) Directive 2003/86) and those who wish to be joined by their parents (Article 10(3) Directive 2003/86). The directive states that Member State authorities must consider the best interests of minors when examining an application for family reunification (Article 5(5) Directive 2003/86).</p> <p>Regulation 343/2003.¹²³ Articles 6 (child’s claim must be heard in Member State where member of family legally present), 7 and 8 (relating to asylum seekers’ entitlement to have their claim examined by the same Member State as a family member).</p>
Why it is important to measure	Family is critical for children’s development. Sustained periods of separation from immediate family which are exacerbated by time consuming family reunification processes can impact significantly on children’s well-being and development.
CRC reference	Articles 2, 3, 6, 12 (CRC general principles, in particular non-discrimination and child participation), 10 (family reunification in a positive, humane and expeditious manner), 9 (rights in family separation cases), 13 (child right to freedom of expression), 7 (right to be cared by parents), 8 (identity documentation), 16 (respect for

¹²³ Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 24 February 2003.

	<p>child's privacy), 18 (joint parental responsibilities), 20 (alternative family environment), and 30 (rights of minorities, including in relation to language); General Comment No.6 (2005) on treatment of unaccompanied and separated children outside their country of origin.</p>
Other relevant international provisions	<p>ECHR - Article 8 (family life) and Article 6 (fair trial)</p> <p>1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - Article 44 (obligation to uphold unity of family)</p>
Indicators	<ul style="list-style-type: none"> ➤ Existence of agencies/bodies to advise and support children seeking family reunification. ➤ Rates of family reunification involving children achieved in a one year period, as a proportion of all applications involving children (disaggregated by age/gender/nationality/ethnicity of the child). ➤ Average length of time lapsing between initial application and the accomplishment of reunification in cases involving children (disaggregated by age/gender/nationality/ethnicity of the child). ➤ Rates of reunification with relatives/children living in another Member State accomplished in a one year period, under Dublin II Regulation (disaggregated by age/gender/nationality/ethnicity of the child).
Key data	<p>Official data and information can be obtained from the UNHCR Statistical Yearbook¹²⁴ and statistical online population database. Currently there is limited data on family reunification but data-gathering mechanisms could be reviewed to allow for more information in this regard.</p> <p>Following the introduction in July 2007 of Regulation 862/2007¹²⁵ more comparable and disaggregated migration statistics should become available. This data will eventually reveal how many children have been admitted to an EU Member State for the purposes of family reunification and will presumably be available through EUROSTAT.</p> <p>The European Council on Refugees and Exiles (ECRE) have produced a comparative survey of provision for refugee family reunion in the</p>

¹²⁴ Most recently, UNHCR, *2007 Yearbook: trends in displacement, protection and solutions*, Geneva, December 2008.

¹²⁵ Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, and repealing Council Regulation (EEC) No. 311/76 on the compilation of statistics on foreign workers.

	<p>European Union dating back to 1999, but the template it contains could be updated and adapted for the purposes of this indicator.¹²⁶</p> <p>International Social Services and Red Cross co-ordinate international tracing and support for children seeking family reunification and could provide important comparative information on national family reunification procedures.</p>
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Table 10: Indicator group – Existence of provision to safeguard the welfare of the child following family reunification

Indicator group	Existence of provision to safeguard the welfare of the child following family reunification
Indicator type	Structure and Process
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 24 (rights of the child) of the EU Charter of Fundamental Rights • The Stockholm Programme - Sections 2.3.2 (rights of the child) and 6.1.6 (unaccompanied minors) and Action Plan Implementing the Stockholm Programme • Articles 5 (non-refoulement, best interests of the child, family life and state of health) and 10 (return and removal of unaccompanied minors) Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals • Directive 2003/86 on the right to family reunification
Why it is important to measure	Notwithstanding the clear importance attached to children’s family life in the context of forced migration, and the emphasis on family reunification, EU law makes no reference to Member States’ obligations to monitor the health and welfare of the child following family reunification or deportation. This indicator group will test whether such provision is in place at national level or whether children would benefit from more explicit reference at EU level of the importance of monitoring their welfare in the longer term.
CRC reference	Articles 2, 3, 6, 12 (CRC general principles, in particular non-discrimination and child participation), 10 (family reunification in a positive, humane and expeditious manner), 20 (alternative family environment), 9 (rights in family separation cases), 13 (child right to freedom of expression), 7 (right to be cared by parents), 8 (identity documentation), 16 (respect for child’s privacy), 18 (joint parental responsibilities), 24 (right to health), 27 (adequate standard of living), 28 (right to education), and 30 (rights of minorities, including

¹²⁶ See: www.ecre.org/resources/Policy_papers/346.

	in relation to language); General Comment No.6 (2005) on treatment of unaccompanied and separated children outside their country of origin.
Indicators	<ul style="list-style-type: none"> ➤ Provision requiring the appointment of a specially-trained social worker or other professional to offer support and information and monitor the welfare of the child following family reunification in an EU Member State. ➤ Existence of a right for children to immediate access to key services (education, health care, financial support, counselling) by children, following family reunification in an EU Member State. ➤ Existence of national procedures to assess the adequacy of reception conditions for children who are returned to their country or origin, or to a third country, for the purposes of family reunification.
Key data Secondary data	<ul style="list-style-type: none"> • Policies and practices of the competent national social services departments • National assessments of the Separated Children in Europe Programme • Reports from the International Social Services Network¹²⁷

¹²⁷ See: <http://www.iss-ssi.org>.

4.2. Indicator area: Protection from exploitation and violence

Introduction

Widespread concerns to protect children have generated and perpetuated a perception of children as vulnerable and passive objects of adult care. A child rights approach, however, emphasises children as subjects, as competent agents and as active contributors to their environment. The tension between rights and needs is particularly pertinent to discussions around exploitation and violence.

Child protection standards in particular demonstrate a preoccupation with protecting children from adults. The key State obligation of Article 19 CRC clearly reflects this assertion, by requiring States parties to protect children “from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, **while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.**”

The CRC requires governments and societies to strike a balance between protection, on the one hand, and rights for self-determination, participation and emancipation, on the other. When applied to situations of violence, neglect or exploitation, formal measures should be aimed at providing children with the necessary resources to empower them to break away from cycles of destructive dependency.

This particular set of indicators originates from an earlier set that focused exclusively on exploitation in the context of child trafficking. Following consultation and further analysis of the conceptual framework, the scope was broadened to cover child prostitution, child pornography/child abuse images and aspects of economic exploitation. Alongside this, the broader issue of violence against children has been included.

As a consequence, this set of indicators covers three main indicator domains, namely **child trafficking**, (sexual and economic) **exploitation** and **violence** against children. As in the other areas of indicators, certain cross-cutting issues will be addressed particularly in relation to age, gender, ethnicity and nationality.

Legal and policy context

Of the 54 Articles comprising the CRC, a considerable number of them are aimed at protecting the child from all forms of violence and exploitation.¹²⁸ As stated above, Article 19 is the key reference, obliging States Parties to

¹²⁸ Important measures have also been implemented in the broader human rights field particularly in relation to gender-based violence. Examples include the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as well as the 1993 Declaration on the Elimination of Violence against Women (UN GA Resolution 48/104 of 20 December 1993).

“take all appropriate legislative, administrative, social and educational measures” for child protection. Articles 32 and the following further elaborate on standards in relation to different forms of exploitation, including economic and sexual exploitation and child trafficking. Included measures also highlight the need for state intervention into family affairs, for example by removing a child from a violent/neglectful home setting if it is in his/her own best interests (Article 9), providing for alternative care arrangements (Articles 20 and 21), ensuring quality standards for child care/child protection institutions (Article 3(3)), and regularly reviewing decisions to place children in institutions (Article 25).

Guidance on the scope of States Parties CRC obligations to protect children against violence can be found in the CRC Committee General Comment No.8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Under the heading of ‘Monitoring and evaluation’ the Committee reiterates the need for the “[...] development of appropriate indicators and the collection of sufficient and reliable data’ on violence against children.”¹²⁹ As with all other areas of child rights indicator development, the Committee’s Guidelines for Periodic Reporting give some examples on relevant indicators and data requested from all States Parties.¹³⁰ These measures are reinforced by the recommendations of the 2006 UN Study on Violence against Children,¹³¹ which identifies a clear need for more effective preventative and protective measures.

The 2000 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) to the CRC provides more specific guidance for governments on issues of sexual exploitation and trafficking. Furthermore, Article 32 CRC provides for the integration into the child rights context, of standards against economic exploitation of children developed by the International Labour Organization (ILO).¹³²

As far as child trafficking is concerned, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (‘Palermo Protocol’), supplementing the United Nations Convention against Transnational Organized Crime (2000), provides a broad definition of human trafficking. According to Article 3(a), trafficking in persons shall mean:

“[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position

¹²⁹ UN Document CRC/C/GC/8, 2 March 2007, paragraph 50.

¹³⁰ General guidelines regarding the form and content of periodic reports, UN Document CRC/C/58/Rev.1, 29 November 2005, see on data collection requirements, in particular, the Annex.

¹³¹ Report of the independent expert for the United Nations study on violence against children, UN Document A/61/299, 29 August 2006, and the more elaborate 2006 World Report on Violence against Children, available at: <http://www.unviolencestudy.org/>.

¹³² In particular ILO Conventions No. 138 (1973) concerning a Minimum Age for Admission to Employment and ILO Convention No. 182 (1999) on the Worst Forms of Child Labour.

of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Further, Article 3(b) specifies that “[...] the consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means set forth in subparagraph (a) have been used” and Article 3(c) widens the scope for children by considering the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation as ‘trafficking in persons’ even if this does not involve the means listed in subparagraph (a). The focus of the Palermo Protocol, however, is on criminal justice and law enforcement aspects, as this instrument aims at fighting organised crime.

At European level, the Council of Europe Convention on Action Against Trafficking in Human Beings (2005), adopts the trafficking definition of the Palermo Protocol, but extends its scope to cover all forms of trafficking, “whether national or transnational, whether or not connected with organised crime” (Article 2).¹³³ Furthermore, it adds a human rights approach to trafficking by specifically focusing on the rights of victims.¹³⁴

Implementation of this Convention will be monitored through a specific Group of Experts on action against trafficking (GRETA), elected for the first time at the beginning of December 2008. Also relevant to this area is the (revised) Council of Europe’s European Convention on the Adoption of Children, which was adopted in November 2008 and which provides for general standards of adoption, both on the national and the inter-country level.¹³⁵

Apart from the trafficking context, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 has been opened for signature, with a strong emphasis on prevention, child participation in policy development and victim assistance and intervention.¹³⁶ This instrument refers to the general child protection standards developed through the European Court of Human Rights’ case

¹³³ This broader definition of trafficking brings trafficking that is perpetrated by more informal, family networks (usually for the purposes of domestic labour) more firmly within the scope of international protection. See further Scullion, 2009.

¹³⁴ Including specific measures on the identification of victims, protection of private life, assistance to victims, recovery and reflection period, residence permit, compensation and legal redress, repatriation and return of victims, and gender equality.

¹³⁵ The latter complements the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and is intended as a safeguard to prevent child trafficking for the purposes of adoption.

¹³⁶ This Convention requires States Parties to take action on prevention (for example through education for children, including participatory approaches for children, civil society and the media), protection (for example Helplines) and intervention, criminalisation of sexual exploitation and various standards on the procedural level (as on how to appropriately interview a child, Article 35).

law,¹³⁷ and through the European Committee on Social Rights.¹³⁸ On the policy level the Council of Europe has long been an advocate for eliminating violence against children, which is an integral part of its 'Building a Europe for and with children Programme'. This programme has recently been extended to the period 2009-2011 (Stockholm strategy) and retains "Eradication of all forms of violence against children" as one of its strategic objectives.¹³⁹

At European Union level, the Charter of Fundamental Rights of the European Union of 7 December 2000¹⁴⁰ contains several provisions that are relevant to violence and exploitation: Article 24 reflects basic CRC principles and rights on protection and care, the right to participation, and states that in all actions relating to children, taken by public authorities or private institutions, the child's best interest must be a primary consideration; Article 5 prohibits slavery and forced labour, and explicitly trafficking in human beings; and finally Article 32 prohibits child labour, minimum age for employment, and the protection of young people admitted to work against economic exploitation.¹⁴¹

In addition, EU child protection provision has evolved in a number of contexts and in a comparatively piecemeal fashion: through research initiatives aimed at tackling violence against vulnerable groups,¹⁴² former 'pillar three' activities relating to human trafficking, child sexual exploitation, sex tourism and child pornography and, to a more limited degree, free movement, immigration and asylum law.¹⁴³ Despite the fragmented nature of activity in this area, however, the EU boasts a rather extensive array of measures spanning various aspects of child-protection.

In the context of **child trafficking**, the 1997 Treaty of Amsterdam placed the issue of human trafficking firmly on the EU agenda by introducing a new Article 29 into the former Treaty on European Union (TEU). Article 29 identifies trafficking in persons and offences against children as particular priority areas for closer cooperation between Member States in the context

¹³⁷ Particularly relating to Articles 2, 3, 4 and 8 of the 1950 European Convention on Human Rights (ECHR).

¹³⁸ See also Articles 7 (the right of children and young persons to protection) and 17 (the right of mothers and children to social and economic protection) of the 1996 Revised European Social Charter.

¹³⁹ See: www.coe.int/children.

¹⁴⁰ Charter of Fundamental Rights of the European Union, OJ 2000/C 364/01, 18 December 2000.

¹⁴¹ It is also significant that Article 3 of the Lisbon Treaty declares "protection of the rights of the child" as one of the EU's fundamental objectives.

¹⁴² Decision No. 779/2007/EC of 20 June 2007, on establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women.

¹⁴³ The EU Network of Independent Experts on Fundamental Rights identified domestic violence, the fight against trafficking and sexual exploitation and detention of juvenile offenders as priorities for its 'protection of the child' agenda (Thematic Comment No. 4: Implementing the Rights of the Child in the European Union, 25 May 2006, Chapter IV). It should be noted that aspects of child safety, product safety and consumer protection have not been included in this context, because they require quite different actors and approaches, which may become difficult to reconcile with the dimensions addressed in this already broad and multi-faceted indicator package.

of police and judicial cooperation in criminal matters. Until the Lisbon Treaty was adopted, Article 29 TEU contained the only explicit reference to children in the treaties. The Treaty of Lisbon has bolstered EU's role in this area by including an explicit legal basis within the TFEU (Articles 79(2)(d) and 83(1) TFEU). This enables the European Parliament and the Council to adopt enforceable secondary legislation aimed at combatting the sexual exploitation of and trafficking in children.

This legal framework on trafficking has generated a number of noteworthy initiatives:

- The principle piece of legislation in this area is the Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.¹⁴⁴ The focus of this legislation is the harmonisation of criminal law, while provision on the *protection* of victims is relatively weak. cursory reference is made to the standing of children as vulnerable victims in the context of criminal proceedings¹⁴⁵ and requires (rather vaguely) that all Member States ensure appropriate measures are in place to assist child victims and their families.¹⁴⁶ As it stands, Article 10 of the Framework Decision obliges the European Commission to report on its implementation, offering a potentially useful context for developing and applying child indicators in this area.¹⁴⁷ Further analysis of the Framework Decision and other relevant aspects of Member States' legislation are contained in the FRA report on *Child Trafficking in the European Union - Challenges, perspectives and good practices*.¹⁴⁸ Currently, proposals for a new directive to replace the Framework

¹⁴⁴ Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings OJ L 203/1. Note that following the introduction of the Lisbon Treaty, Framework Decisions will gradually be replaced with a more streamlined set of legal acts (regulations, directives and decisions) covering all of the Union's activities. Other relevant texts are the Opinion of the Committee of the Regions on Combating the sexual abuse, sexual exploitation of children and child pornography and Combating trafficking in human beings, and protecting victims, 2010/C 141/10; the Council Decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea, 2001/87/EC; the Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, COM (2006) 187 final; the Commission staff working document - Annex to the Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, SEC (2006) 525; the Communication from the Commission to the European Parliament and the Council - Fighting trafficking in human beings: an integrated approach and proposals for an action plan, COM (2005) 514 final.

¹⁴⁵ Article 7(2).

¹⁴⁶ Article 7(3). This assistance must be provided in accordance with Article 4 of Framework Decision 2001/220/HJA of 15 March 2001 on the standing of victims in criminal proceedings (2001), OJ L 82/1. See also Articles 2(2) and 8(4) of that Framework Decision.

¹⁴⁷ See the comments of the Save the Children Europe Group on the Revision of the 2002 EU Trafficking Framework Decision, 14 October 2008, available at: http://www.savethechildren.net/alliance/europegroup/europegrp_pubs.html.

¹⁴⁸ See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/pub_child_trafficking09_en.htm.

Decision are being considered. If adopted, this will enhance the level of protection available to victims of trafficking.¹⁴⁹

- The EU has also addressed trafficking through its competence in visas, asylum and immigration,¹⁵⁰ with Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.¹⁵¹ Children are excluded from the scope of this provision, unless the Member State chooses to apply a derogation (Article 3). Thus, the initiative is very much left to individual nation states, such that provision for children will vary significantly from country to country. In the event that a Member State does chose to incorporate some protection for minors, the directive specifies that due account must be taken of their best interests when applying the directive.¹⁵²

Notwithstanding the emergence of concrete legal measures in relation to child victims of trafficking, the provisions are deficient in two respects: first of all, any provision referencing children is absorbed within legislation of which the primary focus is the criminalisation of trafficking rather than the protection of its victims; and secondly, the measures impose no binding obligations on the Member States, but instead, leave a very broad margin of discretion as to the scope and nature of child-focused protection to be enforced. These limitations highlight the need to design indicators that have the capacity to expose such gaps in provision and implementation at both EU and domestic level.¹⁵³ An important step in this direction has been taken with the adoption of the Operational Indicators of Trafficking in Human Beings resulting from the Delphi survey implemented by the ILO and the European Commission first published in March 2009 and revised in September of the same year. These indicators include indicators sets of trafficking of children for labour exploitation and for sexual exploitation.¹⁵⁴

In relation to **exploitation and violence**, several EU documents have been developed, mostly in the area of sexual exploitation and abuse.

¹⁴⁹ Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, COM (2010) 95 final, 29 March 2010, Brussels.

¹⁵⁰ Formerly Articles 61-69 EC Treaty, now Articles 77-80 TFEU.

¹⁵¹ OJ L 261/19, 06 August 2004. In addition trafficking appears in the Tampere Council Conclusions, 15-16 October 1999.

¹⁵² The Directive provides scope for enhanced national provision on education, family reunification and legal representation, as well as an obligation to make efforts to establish the minor's identity (see Article 10).

¹⁵³ Of course, with the introduction of the revised directives in this area, there will be more explicit provision relating to victim protection, the implementation of which could be measured at the domestic level through the application of these indicators.

¹⁵⁴ See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

- **Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography**¹⁵⁵ is aimed, first and foremost, at criminalising acts which sexually exploit children, particularly child pornography. To achieve this, it seeks to harmonize legal and regulatory provisions of the Member States governing police and judicial activities by introducing common provisions to regulate the creation of offences, penalties, aggravating circumstances, jurisdictions and extradition. Article 9 (2) of the Framework Decision states that children who are victims of sexual exploitation should be considered as particularly vulnerable victims pursuant to the Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹⁵⁶. The European Commission has submitted a report on the implementation of this Decision in 2007,¹⁵⁷ which identifies the need to extend its scope to cover more recent forms of internet use for sexual exploitation of children. In the current review process such views have been echoed by children's rights organisations, improved victim identification, prevention efforts and more child-sensitive judicial procedures. Currently proposals for a new Directive to replace the Framework Decision are being considered. If adopted, this will enhance the level of protection available to child victims of sexual exploitation.¹⁵⁸
- **Council Decision of 29 May 2000 to combat child pornography on the Internet**¹⁵⁹ deals with the role of the internet in relation to sexual exploitation and provides for improved cooperation of Member States concerning the facilitation of investigation and prosecution of relevant offences, cooperation with Europol, constructive dialogue of Member States with industry, and adapting criminal law to account for technological developments. To support EU policies in this area, the Safer Internet Programme has been established, offering funding to support initiatives against illegal and harmful internet content and conduct on the internet (for example grooming in chat rooms and social networking platforms) for the period of 2009 – 2013.¹⁶⁰
- **An EU-wide hotline and alert system** has been set up to respond to missing and sexually exploited children.¹⁶¹

¹⁵⁵ OJ L 13/44, 21 January 2004.

¹⁵⁶ OJ L82/1, 22 March 2001.

¹⁵⁷ Report from the Commission, based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography, COM(2007) 716 final, 16 November 2007.

¹⁵⁸ European Commission Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, COM (2010) 94 final, 29 March 2010, Brussels.

¹⁵⁹ 2000/375/JHA, OJ L 138/1, 9 June 2000.

¹⁶⁰ For further information, see: http://ec.europa.eu/information_society/activities/sip/index_en.htm.

¹⁶¹ Commission Decision of 15 February 2007 on reserving national six-digit telephone numbers beginning with '116' for harmonised services of social value included the EU-wide common number (116 000); see also Council Resolution on the contribution of civil society in finding

As far as **economic exploitation** is concerned, most EU measures are concentrated in the area of external relations, for example in the context of child labour and development cooperation.¹⁶² This issue was identified explicitly within the EU Guidelines on Children and Armed Conflict in 2003, and has been further prioritised in the recent European Commission's Communication 'A Special Place for Children in EU External Action'.¹⁶³ The accompanying EU Action Plan on Children's Rights in External Action refers to almost all child protection areas, including child labour, child trafficking and violence (including sexual violence) perpetrated against children.¹⁶⁴

Internal measures to address child economic exploitation have traditionally been rather limited, essentially focusing on health and safety issues for young people by virtue of Directive 94/33 on the protection of young people at work.¹⁶⁵ This primarily covers formal employment relationships as defined by national law (Article 2), although Member States have a discretion to extend the protection offered by the directive to "occasional work or short term work involving domestic service in a private household" (Article 2(2)(a)).

However, recent developments evidence a stronger focus on child economic exploitation within the EU Charter of Fundamental Rights includes a prohibition of child labour and the obligation to protect children against economic exploitation.

In addition, Council Conclusions on Child Labour have been adopted by the Foreign Affairs Council at its meeting on 14 June 2010.¹⁶⁶ In its conclusions, the Council supports the approach by the European Commission that there is room for stepping up EU efforts towards eliminating child labor, based on a comprehensive policy approach. The Council invites the Commission and the Member States to work with partner countries to ensure that children's rights (and also the fight against child labour) are mainstreamed in poverty reduction strategies and addressed in all relevant sectors.

Finally, a range of EU legislation and policy has been enacted in areas closely related to some of the child protection issues referred to above, notably in the context of EU asylum and migration law.

- **Directive 2003/9 laying down minimum standards for the reception of asylum seekers**¹⁶⁷ provides for respect of the best interests principle (Article 18) and obliges Member States to ensure that unaccompanied

missing or sexually exploited children (9 October 2001), by addressing for example information exchange of tracing missing children.

¹⁶² See for instance the press release by the External Relations Commissioner on the occasion of the international World Day Against Child Labour, 12 June 2008, IP/08/926.

¹⁶³ COM (2008) 55 final, 5 February 2008.

¹⁶⁴ See the website of the European Commission Directorate General Development at: http://ec.europa.eu/development/policies/9interventionareas/humandev/humandevchildren_en.cfm.

¹⁶⁵ OJ L 216/12, 20 August 1994.

¹⁶⁶ Council conclusions on child labour, 3023rd Foreign Affairs Council meeting, Luxembourg, 14 June 2010.

¹⁶⁷ OJ L 31/18, 06 February 2003.

minors are represented in immigration proceedings and lodged in a child friendly environment (Article 19).¹⁶⁸

- **Directive 2004/83¹⁶⁹ (also referred to as Qualification Directive)** allows for consideration of “acts of physical or mental violence, including acts of sexual violence” or “acts of a gender-specific or child specific nature” (Article 9) as forms of persecution either by state or non-state actors.¹⁷⁰

Unfortunately, despite a general reference to the child's best interests principle in the most recent ‘Return Directive’,¹⁷¹ provision to ensure children’s protection against exploitation and violence, particularly following return, is distinctly lacking.¹⁷²

The Stockholm Programme, however, puts the issue of trafficking and sexual exploitation and abuse of children high on its agenda. The programme addresses the issues of ‘trafficking in human beings’, and ‘sexual exploitation of children and child pornography’ from a rights of the child perspective, and in connection with other main EU policy areas (such as. the combating of organised crime).¹⁷³ Pursuant to the European Commission Action Plan implementing the Stockholm Programme, the following actions are in the process of being implemented:

- promotion of partnerships with the private sector, namely the financial sector in order to disrupt the money transfers related to websites with child abuse content;
- promotion of relevant measures under the Safer Internet Programme 2009-2013.¹⁷⁴

Within this core area of children’s protection from exploitation and violence, we have developed the following set of indicator groups:

- child trafficking;
- protection from sexual and economic exploitation;
- violence against children.

¹⁶⁸ See also Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, which includes special (albeit optional) measures for the representation of unaccompanied minors during the immigration process (Article 18). Some of these issues are explored further through the indicators on family and alternative care.

¹⁶⁹ OJ L 304, 30 September 2004.

¹⁷⁰ OJ 326/13, 13 December 2005.

¹⁷¹ Council Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98.

¹⁷² See Save the Children’s comments on this instrument of June 2008, available at: http://www.savethechildren.net/alliance/europegroup/europegrp_pubs.html.

¹⁷³ The Stockholm Programme (2010/C 115/01) and the Action Plan implementing the Stockholm Programme of 20 April 2010 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2010) 0171 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0171:FIN:EN:PDF>.

¹⁷⁴ Action Plan implementing the Stockholm Programme, p. 35.

4.2.1. Child trafficking

Background

Trafficking in human beings is an extensively-debated issue at both international and European level (involving bodies such as the Organization for Security and Co-operation in Europe (OSCE), EU institutions and the Council of Europe). The joint working of international organisations and institutions, such as the United Nations Office on Drug and Crime (UNODC), UNICEF, International Labour Organization (ILO), International Organization for Migration (IOM), OSCE and the Office of the High Commissioner for Human Rights (OHCHR), as well as the adoption of several activities, protocols and conventions have ensured that this issue retains a high profile on the international agenda. The latter include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000, supplementing the United Nations Convention against Transnational Organized Crime; the Council of Europe Convention on Action against trafficking in Human Beings in 2005; and the introduction of annual EU Anti-Trafficking Days since 2007.

Further effort is needed, however, to engage stakeholders at the local level in addressing persistent problems.¹⁷⁵ Such problems include: identifying trafficked children (as distinct from separated children, refugee children and those who have been smuggled); lack of awareness among professionals of the locus and extent of intra-country trafficking; the role of families and relatives as traffickers; the diversity of child trafficking and exploitative arrangements; the gender dynamics of such abuses; the widespread lack of data;¹⁷⁶ and the poor coordination of referral systems.¹⁷⁷

Bearing these developments in mind, the following set of indicators combines assessment of trafficked child-centred protection measures with prevention of child trafficking and prosecution/criminal justice aspects. This

¹⁷⁵ Child trafficking: responses and challenges at local level, Vienna, 26-27 May 2008, see http://www.osce.org/conferences/child_2008.html.

¹⁷⁶ Such issues are highlighted in the FRA report *Child Trafficking in the EU - Challenges, perspectives and good practices*, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2009/pub_child_trafficking09_en.htm. IOM Vienna and the Austrian Federal Ministry of the Interior (together with other partners) also undertook an EU-funded project on 'Development of Guidelines for the Collection of Data on Trafficking in Human Beings including comparable indicators' in 2007, which will deal mostly, but not exclusively with indicators for identification of trafficked persons, including children, see: <http://www.iomvienna.at/index.php?module=Content&idc=11>. Further research on data collection is ongoing in the framework of United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), UNODC, IOM, ICMPD, ILO and other actors; on the difficulties of data collection see also UNICEF (2008) *Child Trafficking in Europe – A broad Vision to Put Children First*, available at: http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf.

¹⁷⁷ Such as those based on the OSCE originated National Referral Mechanism (NRM) concept.

framework is also informed by a number of existing international, European and EU monitoring projects relating to trafficking.¹⁷⁸

Table 11: Indicator group and subgroups – Child trafficking

Indicator group	Child trafficking
Why it is important to measure	<p>The EU has adopted a number of measures relating to child trafficking in recent years. These primarily reflect a criminal justice response to the issue, aimed at strengthening coordination and cooperation between investigative authorities. However, protecting children is not their primary focus; EU provision for child victims of trafficking, for instance, remains inadequate and ineffective.</p> <p>The proposals to replace the current Framework Decision with a new directive will introduce greater protection for victims of trafficking, and reinforces the need to measure effective implementation at the domestic level.</p> <p>The Stockholm Programme has placed the issue of the protection of children against child trafficking high on the EU agenda, not only when addressing the issue of ‘trafficking in human beings’, but also when addressing child trafficking from a child rights protection policy perspective and in connection with other main EU policy areas (such as the combating of organised crime).</p>
CRC reference	<ul style="list-style-type: none"> • CRC: Articles 32ff (protection from economic and sexual exploitation, sale of children), 2, 3, 6, 12 (CRC general principles), 19, 37 (protection from all forms of violence, exploitation, torture and other forms of inhuman treatment), 39 (rehabilitation), as well as 27, 24, 26, 28, 29, and 31 (adequate living standard, access to health services, social security, education, rest); CRC General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin (including prevention of trafficking and exploitation)

¹⁷⁸ Including European Commission, *Measuring Responses to Trafficking in Human beings in the European Union: an Assessment Manual*, October 2007. The assessment manual was written by Mike Dottridge in consultation with the EU Expert Group on Trafficking in Human Beings, October 2007, available at: http://ec.europa.eu/justice_home/news/events/events_2007_en.htm; the OSCE/ODIHR *Handbook on National Referral Mechanisms (NRM) – Joining Efforts to Protect the Rights of Trafficked Persons*, 2004, available at: http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf; and in light of the OSCE Action Plan to Combat Trafficking in Human Beings, in particular its 2005 Addendum addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, PC.DEC/685 of 7 July 2005; UNICEF Reference Guide on protecting the rights of child victims of trafficking in Europe (2006), available at: www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf; and UNHCR Guidelines on Formal Determination of the Best Interests of the Child, May 2008, available at: www.unhcr.org/protect/PROTECTION/4566b16b2.pdf.

	<ul style="list-style-type: none"> • Optional Protocol on the sale of children, child prostitution and child pornography (2000)
Other relevant international provisions	<ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (1979) • UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), supplementing the United Nations Convention against Transnational Organized Crime • ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) • Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993) • Council of Europe Convention on Action Against Trafficking in Human Beings (2005) • Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) • Council of Europe Convention on the Exercise of Children's Rights (1996) • European Convention on Human Rights (1950) • Revised European Social Charter (1996)
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 24 (Rights of the Child) of the EU Charter of Fundamental Rights • Articles and 79(2)(d) and 83(1) TFEU • Sections 2.3.2 (Rights of the Child) and 4.4.2 (Trafficking in Human Beings) of the Stockholm Programme, which deal with aspects of trafficking on children as well as European Commission Action Plan Implementing the Stockholm Programme • Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings • Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, Brussels, 29.3.2010, COM(2010)95 final, 2010/0065 • Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities • Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography • Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings • Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children

Indicator Sub-group	Identification of victims
Indicator type	Structural/Process/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Total number of children trafficked per EU Member State a year, in relation to the various forms of trafficking, disaggregated. ➤ Existence of a data collection mechanism, which is based on a comprehensive definition of trafficking, including child trafficking for sexual exploitation, economic exploitation (including begging), trafficking for illegal activities (for example for petty crimes, drug dealing), trafficking for forced marriages of children, trafficking for adoption of children, trafficking for organ trade and transplant. ➤ Evidence of specialised training for the identification of trafficked children, incl. for police forces (incl. border police), youth welfare officers and social workers (including those involved in inter-country adoption procedures), health professionals, NGO staff active in areas such as refugee protection and migration. ➤ Existence of a policy on age assessment of children, which includes presumption of status as a child in case of doubt. ➤ Existence of legal provisions aimed at immediate appointment of legal guardian (for example by youth welfare authority/court) for every separated child. ➤ Existence of Guidelines for the protection of personal data of the trafficked child for youth welfare authorities, police, shelter organisations and other involved actors.
Indicator Sub-group	Protection of victims
Indicator type	Structural/Process
Indicators	<ul style="list-style-type: none"> ➤ Existence of legal provisions ensuring a right to stay to victims of trafficking, irrespective of their cooperation with police/courts. ➤ Existence of legal provisions prohibiting administrative detention/detention pending deportation for children. ➤ Evidence of a formalised best interest determination process, which directly involves the child concerned, for identification of appropriate interim care and durable solutions, including risk and security

	<p>assessment prior to a possible return of the child to the country of origin.</p> <ul style="list-style-type: none"> ➤ Existence of mechanisms to assess the quality of services (accommodation, access to health care, access to education, meaningful occupation), including those that seek to obtain children's views. ➤ Existence of a comprehensive formalised National Referral Mechanism (or similar systematic, formalised and standardised instrument) for identification, cooperation and referral of trafficked persons, with specific procedures for children.
Indicator Sub-group	Prosecution of perpetrators
Indicator type	Outcome
Indicators	<ul style="list-style-type: none"> ➤ Number of convictions based on child trafficking cases per year/over the last five years, compared with cases reported to the police, disaggregated. ➤ Amount of compensation paid to trafficked children, on average of cases per year, disaggregated.
Indicator Sub-group	Prevention of child trafficking
Indicator type	Process
Indicators	<ul style="list-style-type: none"> ➤ Evidence of support programmes for the direct participation of local communities and/or "vulnerable" and minority groups, such as Roma and Travellers, in efforts to prevent child trafficking.
Key data (all subgroups)	<ul style="list-style-type: none"> • CRC/OPSC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database • UNODC 2009 Global Report on Trafficking and other UNODC/UN.GIFT data collection efforts • UNICEF IRC Trafficking Research Hub • ILO conventions and ILO/IPEC data on trafficking/worst forms of child labour • Results of the application of the Operational Indicators of Trafficking on Human Beings adopted by the ILO and the European Commission in 2009 as a result of the Delphi survey • Evaluation reports on national implementation of the Trafficking

	<p>Framework Decision</p> <ul style="list-style-type: none"> • FRA reports on child trafficking • Review of DAPHNE best practices reports • Council of Europe Conventions on Cybercrime and on the Protection of Children against Sexual Exploitation and Sexual Abuse • OSCE Decisions, Assessments, Legislative database • Information from international Trafficking databases (such as IOM's Counter Trafficking Module Database), ECPAT International Database and ECPAT National Monitoring Reports • National Rapporteur on Trafficking reports, National trafficking databases (as in Romania) • National statistics (police, courts, statistical offices – e.g. data on number of trafficked persons, where available and disaggregated by age group, data on residence permits • Review of relevant national laws and policies
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4.2.2. Protection from sexual and economic exploitation

Background

This indicator group captures two different areas of exploitation of children: sexual exploitation (including child prostitution, ‘sex tourism’, child abuse images/pornography and the impact of internet and other technologies); and economic exploitation of children within the EU. While issues relating to the former feature prominently on the national and European policy agenda, the latter issue receives rather less attention, at least *within* the EU.

While it is acknowledged that sexual and economic exploitation require quite specific approaches and engage different actors, they nevertheless share some common characteristics, which can be addressed using similar mechanisms. On a very general level activities against all forms of exploitation are linked to child protection measures, including the identification of victims, investigation and prosecution of perpetrators and the prevention of exploitation. The indicators have, therefore, been grouped along similar lines as the other child protection areas to reflect their common challenges and priorities.

In terms of data on economic exploitation, the ILO is a critical reference point;¹⁷⁹ however, most of the data available is focused on countries outside of the EU (with the exception of Portugal and Romania).¹⁸⁰ UNICEF is also an important source of data and statistics.¹⁸¹

¹⁷⁹ See, for instance, data collected by the Statistical Information and Monitoring Programme on Child Labour (SIMPOC), related to IPEC, at: <http://www.ilo.org/ipec/ChildlabourstatisticsSIMPOC/lang--en/index.htm>.

¹⁸⁰ For an excellent basic overview on availability of data, see the Understanding Children's Work – Inter-Agency Research Cooperation Project on Child Labour, available at:

Sexual exploitation covers a variety of situations, each of which demands quite specific responses. In the context of child prostitution, for instance, state legislation and policies are largely punitive, thereby inhibiting young people's access to effective protection. Moreover, legal regulation of this area has done little to curb the *demand* for sex services and break entrenched and abusive cycles of dependency.

As far as 'sex tourism' is concerned, both the CRC and EU legislation (as well as national legislatures) have established effective mechanisms for extraterritorial policing and prosecution of such offences. These are complemented by highly successful awareness raising programmes directed at the tourism industry and general public.¹⁸²

Recent debates on sex tourism at EU level have been interwoven with broader discussions on combating the sexual abuse, sexual exploitation of children and child pornography and combating trafficking in human beings. For instance, a recent Opinion of the Committee of the Regions on the latter topics notes that "rules on jurisdiction should be amended to ensure that child sexual abusers or exploiters from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called sex tourism".¹⁸³

Following previous conferences in Stockholm (1996) and Yokohama (2001) the recent third World Congress Against Sexual Exploitation of Children and Adolescents (25-28 November 2008) aimed at renewing the international commitment to addressing various forms of sexual exploitation. A particular focus of this Congress was the issue of child pornography/child abuse images and the role of the internet and other communication technologies. The provisional outcome document requested governments to "criminalize the production, distribution, receipt and possession of child pornography, including virtual images and the sexually exploitative representation of children, as well as the consumption, access and viewing of such materials where there has been no physical contact, extending legal liability to entities such as corporations and companies in case of responsibility for or involvement in the production and/or dissemination of such materials."¹⁸⁴ Interestingly, this reflected to a large extent discussion at EU level on the

<http://www.ucw-project.org/>. Similarly, data collected by UNICEF, for example in the Multiple Indicator Cluster Surveys (MICS) context, also mainly relates to countries in the South, see <http://www.childinfo.org/>.

¹⁸¹ See: <http://www.childinfo.org/labour.html>. Another important source of information is the data provided under the Child Rights Information Network (CRIN), which devotes one of its themes classifications to child labour, see: <http://www.crin.org/themes/viewtheme.asp?id=3>.

¹⁸² In particular, see the 'Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism', initiated by ECPAT International, UNICEF and industry partners, available at: <http://www.thecode.org/>.

¹⁸³ OJ C 141, 29 May 2010.

¹⁸⁴ See the Congress website at <http://www.iiicongressomundial.net/>.

review of Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography.¹⁸⁵

In the light of the priorities identified by the international community and the EU, the following list includes indicators relating to both prosecution and capacity building.¹⁸⁶ It also includes indicators measuring the nature and extent of support for children abused by child pornography/abuse images.¹⁸⁷

Table 12: Indicator group and subgroups – Sexual and economic exploitation of children

Indicator group	Sexual and economic exploitation of children
Why it is important to measure	This indicator domain captures two different forms of child exploitation within the EU context: sexual exploitation, (including child prostitution, ‘sex tourism’, child abuse images/pornography ¹⁸⁸), and economic exploitation. EU developments to facilitate migration within the EU through the gradual erosion of internal barriers, coupled with the emergence of ever more sophisticated and easily accessible technologies, make children ever more vulnerable to these forms of abuse.
CRC reference	<ul style="list-style-type: none"> • CRC: Articles 32ff (economic and sexual exploitation, sale of children); 2, 3, 6, 12 (CRC general principles), 17 (role of media), 19, 37 (protection from all forms of violence, exploitation, torture and other forms of maltreatment), 39 (rehabilitation), and 27, 24, 26, 28, 29, 31 (adequate living standard, access to health services, social security, education, rest); CRC General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin (including prevention of trafficking and exploitation) • Optional Protocol on the sale of children, child prostitution and

¹⁸⁵ The European Parliament Recommendation of 3 February 2009 to the Council on combating the sexual exploitation of children and child pornography (2008/2144(INI)) calls for effective protection against sexual exploitation of children by regarding child sex tourism as a crime in all Member States. See OJ C 67E, 18 March 2010.

¹⁸⁶ See also most recently, Baines, ‘Online Child Sexual Abuse: The Law Enforcement Response’, ECPAT International 2008, available at: http://www.iicongressomundial.net/congresso/arquivos/thematic_paper_ictlaw_eng.pdf; Quayle, Loof, Palmer, ‘Child Pornography and Sexual Exploitation of Children Online’, ECPAT International, 2008, available at: http://www.iicongressomundial.net/congresso/arquivos/thematic_paper_ictpsy_eng.pdf.

¹⁸⁷ See, Save the Children ‘Visible Evidence – Forgotten Children. The need for a child protection and children’s rights focus in identifying children who have been sexually abused for the production of child abuse images’, 2006.

¹⁸⁸ In line with a recent change in terminology, the term “Child abuse images” is used in this report instead of “child pornography”, see for instance the outcome document of the Rio III World Congress Against Sexual Exploitation of Children and Adolescents, November 2008.

	child pornography (2000)
Other relevant international provisions	<ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (1979) • Convention on the Rights of Persons with Disabilities (2006) • ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) • Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) • Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) • Council of Europe Convention on Cybercrime (2001) • Council of Europe Convention on the Exercise of Children's Rights (1996) • European Convention on Human Rights (1950) • Revised European Social Charter (1996)
EU relevance	<ul style="list-style-type: none"> • Article 3, 29 TEU • Article 24 (Rights of the Child), 32 (prohibition of child labour and protection of young people at work) of the EU Charter of Fundamental Rights • Article 83(1) TFEU • Section 2.3.2 (rights of the Child) and 4.4.3 (sexual exploitation of children and child pornography) of the Stockholm Programme and Commission Action Plan Implementing the Stockholm Programme • Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography • Proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, Brussels, 29.3.2010, COM(2010)94 final, 2010/0064 • Council Conclusions on child labour (3023rd Foreign Affairs Council meeting, Luxembourg, 14 June 2010) • Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children • Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings • Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work • Decision No 1351/2008/EC of the EP and the Council of 16 December 2008 establishing a multiannual Community programme on protecting children using the Internet and other

	<p>communication technologies (Safer Internet Programme 2009-2013)</p> <ul style="list-style-type: none"> • Council Conclusions of 21 December 1999/C 379/01 on the implementation of measures to combat sex tourism • European Parliament Resolution on the European Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the implementation of measures to combat child sex tourism¹⁸⁹ • Opinion of the Committee of the Regions on Combating the sexual abuse, sexual exploitation of children and child pornography and Combating trafficking in human beings, and protecting victims¹⁹⁰ • Opinion of the European Economic and Social Committee on Protection of children at risk from travelling sex offenders¹⁹¹
Indicator Sub-group	Identification of victims
Indicator type	Structural/Process
Indicators	<ul style="list-style-type: none"> ➤ Child sexual exploitation: Existence of data collection and detection mechanisms (for example through systematic training of youth welfare authorities and employees) to identify children at risk of sexual exploitation (for example in the context of missing children, children known to authorities or youth welfare employees with domestic violence background, children without legal stay), with disaggregation. ➤ Child sexual exploitation: Existence of specific mechanisms for data collection of cases of sexual exploitation of children through the internet (for example reporting hotlines, specific internet websites, Ministries of the Interior, specialised police units and others), allowing for disaggregation.¹⁹² ➤ Child economic exploitation: Existence of data collection and detection mechanism (such as through systematic training of youth welfare authorities and employees as well as personnel of the labour inspectorate) to identify children subjected to economic exploitation (such as in the context of children working in industry and the services sector, family farms and businesses,

¹⁸⁹ OJ C 378/80, 29 December 2000.

¹⁹⁰ OJ C 141, 29 May 2010.

¹⁹¹ OJ C 317, 23 December 2009.

¹⁹² Disaggregated by gender, age, ethnicity and technology used (internet in general/social network platform/chatroom/use of mobile phone).

	in the restaurant and hotel sector, children engaged in the competitive sports business, street children and children dropping out of school, separated children, trafficked children, children without residence permits in the country), with disaggregation.
Indicator Sub-group	Protection of victims
Indicator type	Structural/Process/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Child prostitution: Availability of social work support and rehabilitation services, for girls and boys, which include development of realistic economic alternatives, developed jointly with the child exploited in prostitution, disaggregated. ➤ Child prostitution - Availability of specialised health care (including free HIV testing) for children exploited in prostitution, disaggregated. ➤ Child prostitution - Existence of legal provisions aiming at de-criminalisation of children (boys and girls) exploited in prostitution (for example depending on legality of prostitution - exemption for children from criminal sanctions, administrative fines). ➤ Child abuse images: Existence of a policy on care and psychological support to children victims of child abuse images/child pornography (for example protection from right to privacy infringements by the media, psychological treatment), for girls and boys, and sensitive to the children's cultural and religious background, which directly involves the children concerned. ➤ Child abuse images: Existence of legal provisions requiring Internet service providers, mobile phone companies, search engines and other relevant actors to report to the authorities and remove websites and services containing child pornography/child abuse images, including chat rooms for 'grooming' children. ➤ Child economic exploitation: Number of labour inspection visits focusing on concerns about protection of young people at work (such as in relation to working hours, safety and health) in relation to total number of labour inspection visits, with disaggregation.¹⁹³
Indicator Sub-group	Prosecution of perpetrators

¹⁹³ Disaggregated by age groups (under 18 years and 15 years), gender, ethnicity and type of activity.

Indicator type	Structural/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Child sexual exploitation: Number of cases prosecuted under extraterritorial legislation addressing "sex tourism" (offences related to sexual exploitation of children committed abroad), with disaggregation.¹⁹⁴ ➤ Child sexual exploitation: Number of convictions for sexual exploitation and sexual abuse of children, including after the children have reached the age of majority (principle of non-limitation of prosecution), in relation to the total number of prosecuted cases of child sexual exploitation/abuse ➤ Child abuse images: Existence of legal provisions making the production, distribution, receipt and possession of child pornography/child abuse images including through virtual images (portraying acquiescence with abuse or sexually exploitative representation of children) a criminal offence. ➤ Child economic exploitation: establishment of adequate thresholds for the transition from civil to criminal responsibility in establishing penalties for the violation of labour provisions in connection with child labour.
Indicator Sub-group	Prevention of child exploitation
Indicator type	Process
INDICATORS	<ul style="list-style-type: none"> ➤ Child abuse images: 'Online safety' information and awareness raising as a mandatory component of the regular school curriculum (to coincide with IT training). ➤ Child sexual exploitation: Evidence of concerted action between the government and the private sector/tourism industry in prevention of 'sex tourism' (such as through cooperation on implementation of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism). ➤ Child economic exploitation: existence of a data collection and inspection mechanism focusing on protection of children at risk of economic exploitation.
Key data	<ul style="list-style-type: none"> • CRC/OPSC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database

¹⁹⁴ Disaggregated by gender, age group and country of commission of offence.

	<ul style="list-style-type: none">• UNICEF Multiple Indicator Cluster Surveys (MICS) 3 (child labour)• ILO SIMPOC surveys (as a model for EU Member States)• Understanding Child Work Inter-Agency project data• Council of Europe ESC Monitoring reports• ECPAT International Database, Reports published at ECPAT Code of Conduct website (on private sector compliance)• Reviews of Corporate Social Responsibility Statements by the private sector• Policy statements of internet service providers, telecommunication companies• Annual reports of hotlines for reporting online child abuse images;• Analysis of national legislation and case-law• National Action Plans, National policy documents• National statistics (police, courts, statistical offices; HIV prevalence data)• Labour inspectorate reports• (Annual) Reports of child welfare authorities, child ombudspersons, relevant NGOs (such as ECPAT National Monitoring Reports)• Review(s) of school/teacher training curricula• CRIN – Themes, Child labour
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4.2.3. Violence against children

Background

One of the most forceful recommendations of the 2006 UN *Study on Violence against Children* was the need for comprehensive data collection on violence against children. Under the heading ‘Develop and implement systematic national data collection and research efforts’, the UN Expert recommends that:

“States improve data collection and information systems in order to identify vulnerable sub-groups, inform policy and programming at all levels, and track progress towards the goal of preventing violence against children. States should use national indicators based on internationally agreed standards, and ensure that data are compiled, analysed and disseminated to monitor progress over time. Where not currently in place, birth, death and marriage data registries with full national coverage should be created and maintained. States should also create and maintain data on children without parental care, and on children in the criminal justice system. Data should be disaggregated by sex, age, urban/rural, household and family characteristics, education and ethnicity. States should also develop a national research agenda on violence against children across settings where violence occurs, including

through interview studies with children and parents, with particular attention to vulnerable groups of girls and boys.”¹⁹⁵

Numerous efforts have been undertaken to establish indicators on various dimensions of violence against children.¹⁹⁶ UNICEF, for instance, has started to include in its Multiple Indicator Cluster Surveys information about child protection and attitudes on child discipline. The UN Violence Study has developed a ‘Manual for the Measurement of Indicators of Violence against Children’, which includes indicators on violation and on protective environments.¹⁹⁷

As in the other areas of child protection, the following set of indicators is grouped into the core themes of identification, protection, prosecution and prevention. Guidance is taken in this regard from the legislation and policies developed in the exploitation and trafficking area, on the one hand, and from specific EU activities on violence against children on the other hand. The European Commission Communication *Towards an EU Strategy on the Rights of the Child* refers to violence against children as an “increasing concern within the EU in recent years” and of the need to “promote respect for children’s rights and protect children against all forms of violence”.¹⁹⁸

More recently, the recent Decision of the European Parliament and of the Council of 20 June 2007 on the Daphne III Programme “to prevent and combat violence against children, young people and women and to protect victims and groups at risk”¹⁹⁹ refers to important aspects of protection from and prevention of violence. Article 2 of the Decision sets out the main objective of the programme as follows:

“[...] to contribute, especially where it concerns children, young people and women, to the development of Community policies, and more specifically to those related to public health, human rights and gender equality, as well as to actions aimed at protection of children's rights, and the fight against trafficking in human beings and sexual exploitation.”

More specific objectives include: expansion of evidence-based information and the knowledge- base, awareness raising and promotion of the ‘adoption of zero tolerance towards violence’ (Article 3), encouraging support for victims and for the reporting of incidences of violence to the competent

¹⁹⁵ UN, *World Report on Violence Against Children*, 2006, p. 18.

¹⁹⁶ For instance, in the context of development of indicators for assessing implementation of child rights in early childhood, see the efforts of the Early Childhood Indicators Group in relation to CRC Committee’s General Comment 7; see also Consultative Group on Early Childhood Care and Development, *Early Childhood Indicators*, with rich references to data sources, available at: <http://www.ecdgroup.com/pdfs/cn25indicators.pdf>. On a national level, in South Africa, see, for instance the various indicators developed in the context of child protection, by Dawes, Bray and van der Merwe (eds.), ‘Monitoring Child Well-Being - A South African rights-based approach’, 2007.

¹⁹⁷ Available, together with other resources, for download at the UN Violence Study website, at: <http://www.unviolencestudy.org/>.

¹⁹⁸ COM (2006) 367 final, 4 July 2006, pp. 7-8. See also for a more comprehensive overview the Preliminary Inventory of EU Actions Affecting Children’s Rights, SEC (2006) 889, 4 July 2006.

¹⁹⁹ Decision No. 779/2007/EC, of 20 June 2007, ultimately based on Community competence enshrined in the public health sector, as mandated by Article 152 TEC.

authorities. The decision also acknowledges that often there is no clear divide between abuse, violence and exploitation. This highlights the importance of concentrating on prevention efforts and comprehensive measures. In turn, the latter could lead to effective child protection systems for all children.

Therefore, the indicator group that follows should be read in conjunction with the other indicator groups which are part of the indicator area on protection from exploitation and violence, even if references to regulation are limited here to some aspects only.

Table 13: Indicator group and subgroups– Violence against children

Indicator group	Violence against children
Why is it important to measure	<p>The EU has already invested considerable effort in developing measures aimed at protecting children from violence, notably through its Daphne funding programme. A recent Decision of the European Parliament and the Council on Daphne III²⁰⁰ stressed the need ‘to prevent and combat violence against children, young people and women and to protect victims and groups at risk’. Article 2 of the Decision sets out the EU’s general objective to “contribute, especially where it concerns children, young people and women, to the development of Community policies, and more specifically to those related to public health, human rights and gender equality, as well as to actions aimed at protection of children’s rights, and the fight against trafficking in human beings and sexual exploitation.” Some more specific objectives (Article3) include: expansion of evidence-based information and the knowledge-base, awareness-raising and promotion of “zero tolerance towards violence”, encouraging support for victims and for the reporting of incidences of violence to the competent authorities.</p>
CRC reference	<p>Articles 19 (protection from all forms of violence), 2, 3, 6, 12 (CRC general principles), 24 (right to health), 28/2 (school discipline without violence), 37 (protection from torture and other forms of inhuman treatment or punishment), 39 (rehabilitation), 9, 20 (separation from parents, alternative care), 25 (regular review of placement), and 27, 24, 26, 28, 29, 31 (adequate living standard, access to health services, social security, education, rest); General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.</p>
Other relevant international provisions	<ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (1979) • Convention on the Rights of Persons with Disabilities (2006) • Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) • Council of Europe Convention on the Exercise of Children's Rights (1996) • European Convention on Human Rights (1950) • Revised European Social Charter (1996)

²⁰⁰ Decision No. 779/2007/EC, of 20 June 2007, OJ L 173/19.

EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 24 (Rights of the Child) EU Charter of Fundamental Rights • Section 2.3.2 (Rights of the Child) of the Stockholm Programme and Commission Action Plan Implementing the Stockholm Programme • Article 152 EC • Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography • Council Decision of 29 May 2000 to combat child pornography on the Internet • Decision of the European Parliament and of the Council of 20 June 2007 on the Daphne III Programme²⁰¹
Indicator Sub-group	Identification of victims
Indicator type	Structural/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Existence of designated national budget line for data collection and research on prevalence/dimensions/forms of violence against children and impact of services for children. ➤ Number of children reported to child welfare authorities for reasons of neglect of children, as a proportion of the total number of child protection cases reported to the child welfare authorities, with disaggregation.²⁰² ➤ Number of police investigations conducted following reported cases of child deaths and ill-treatment, compared with the total number of police investigations following reported cases of death and ill-treatment of a person, with disaggregation.²⁰³

²⁰¹ Decision No. 779/2007/EC, of 20 June 2007, OJ L 173/19.

²⁰² Disaggregated by age group, gender, disability, ethnicity/Roma children, separated, asylum-seeking/refugee children and location (living in urban/rural areas).

²⁰³ Disaggregated by age group, gender, disability, ethnicity/Roma children, separated, asylum-seeking/refugee children and location (living in urban/rural areas).

Indicator Sub-group	Protection of victims
Indicator type	Structural/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Existence of legal provisions banning all forms of violence as a means of discipline for children at all settings (including at home, in schools, in care and justice institutions). ➤ Availability and accessibility to children of information and confidential counselling services in day care institutions, primary and secondary education (for example through specially trained teachers), disaggregated. ➤ Availability of child-focused, easily accessible (anonymous, free of charge, confidential) reporting and complaint mechanisms (such as Ombudspersons for Children, internal specialised child protection officers within institutions) to children. ➤ Existence of legal provisions/public funding granting a child victim of violence and exploitation the right to psychosocial assistance and therapeutic services. ➤ Evidence of decrease in the proportion of adults and of children who accept violence against children as a means of education at home/school, disaggregated.
Indicator Sub-group	Prosecution of perpetrators
Indicator type	Structural/Process/Outcome
Indicators	<ul style="list-style-type: none"> ➤ Number of cases of violence against children (including physical violence and sexual abuse) reported to police in relation to number of convictions on cases of violence against children, with disaggregation.²⁰⁴ ➤ Existence of legal provisions aimed at ensuring child- and gender-sensitive procedures in the course of legal proceedings for child victims/witnesses of violence (such as designated, adapted interview rooms, video statements to avoid direct contact with the perpetrator).

²⁰⁴ Disaggregated by age group, gender, disability, ethnicity/Roma children, separated, asylum-seeking/refugee children and location (living in urban/rural areas).

Indicator Sub-group	Prevention of violence
Indicator type	Structural/Process
Indicators	<ul style="list-style-type: none"> ➤ Evidence of designated public funding for positive parenting education campaigns (such as addressing non-violent forms of discipline, and aimed at reducing spanking of infants or shaking of babies), implemented with the active participation of children. ➤ Existence of a specific policy of cooperation among youth welfare authorities and employees, police, and the media on missing children, including children who have "gone into hiding" (removing themselves from services). ➤ Existence of legal provisions requiring schools to have adopted a child protection policy, addressing bullying of children and other forms of violence at schools and of a requirement to assess the implementation of such policies. ➤ Availability of anti-aggression training and counselling services, for children and employees responsible for youth welfare, disaggregated by gender of clients and location (in urban areas/outside major cities/rural areas). ➤ Evidence of systematic, regular and periodic training programmes for police officers, prosecutors, judges and law enforcement officials on preventing violence against children, child rights protection, child-sensitive interrogation and interviewing techniques.
Key data	<ul style="list-style-type: none"> • CRC/OPSC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database • UNICEF Multiple Indicator Cluster Surveys (MICS) 3 (child protection) • UNICEF IRC Report Cards, Bradshaw/Hoelscher/Richardson, EU Index on Child Well-being (based on existing data, for cross-national comparison) • UNICEF 2008 TransMONEE database • WHO, HBSC and PISA databases on child mortality, violence, bullying • Council of Europe ESC Monitoring reports • Review of EU Daphne programmes best practices reports • Analysis of national legislation and case-law • National statistics (police, courts, statistical offices) • National Action Plans

	<ul style="list-style-type: none">• National policy documents/ educational strategies• Child budgeting analysis• (Annual) Reports of child welfare authorities, ombudspersons, relevant NGOs (for example Save the Children organisations)
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4.4. Indicator area: Adequate standard of living

Introduction

Defining a standard of living adequate for a child presents a difficult task. Indeed, more easily identifiable are standards of life which are *inadequate* for children. This, of course, invokes not only images of children in poor countries, experiencing conflict and war, but also of children living at the margins of European societies, such as children from ethnic minorities (for example Roma children), children in residential care, homeless and street children and unaccompanied minors. These situations represent significant and disturbing deviations from the standards we interpret as acceptable and adequate, and are usually referred to in terms of marginalisation, exclusion and extreme poverty.

In addition to these specific phenomena, there are situations of disadvantage which are not as visible at first glance. For example, the distribution of material resources in a given society is rarely equal amongst children, with some having better access to resources than others. These children experience a type of inequality that, whilst not as immediately apparent and extreme as the examples above, nonetheless constitutes poverty. This phenomenon is usually referred to as **relative poverty**.

Equally, poverty can be seen where the living standard of the child population in a society is significantly lower than that of the adult population. This concept, which addresses relational/generational inequalities between the child population, on one hand, and the complementary population group of adults, on the other, is a phenomenon typical to economically advanced societies such as the EU Member States. It is connected with developments in modern society and economy, concerning, in particular, intergenerational responsibilities and the distribution of costs and benefits at both state level and at family/individual level. It is only since the 1980s, after the full establishment of modern welfare states, that **generational child poverty** has been fully recognised.

Economic inequalities within society cannot be explained at the level of the family or individual alone, the way in which economies and societies are organised has a major impact. In particular, the willingness of governments to intervene on inequalities by adopting social-, child-, family-, and women's-policy measures may all affect inequalities. Therefore, questions arise in relation to the nature, extent and impact of government intervention both in terms of addressing inequalities within the child population as a whole, as well as between children and adults. Children's rights provide an excellent framework for action in such situations: they remind governments of their legal obligations to address child poverty and social exclusion; also, they bring children themselves into the spotlight, providing a framework within

which they can claim their rights and demand their fair share of opportunities for a decent life.

More recently, attempts have been made to complement one-dimensional monetary concepts of poverty based on (household) income with other dimensions, such as space, immaterial resources and power. This leads to the more complex question of children's well-being in economically advanced societies, represented by more than simply an absence of poverty. This conceptual shift from 'exclusion' to 'inclusion' brings to light children's subjective perception of their situation.

Legal and policy context

At international level, the key provisions relating to child poverty are contained in the CRC. Safeguarding an adequate standard of living for children is the main concern of Article 27 CRC, which comprises a principal obligation to ensure a standard of living adequate for the child's physical, mental, spiritual, moral and social development; an emphasis on parental responsibility for safeguarding this right; a reference to the State's obligation to promote and maintain parents' abilities and capacities in doing so, as well as to intervene directly if parents do not live up to their responsibilities.²⁰⁵ In addition, Article 26 acknowledges the link between children's citizenship and the distribution of material resources, including access to social security. Therefore, whilst the task of safeguarding a decent standard of living for children is considered a responsibility of the parents in the first place, ensuring the children's access to social security remains primarily a State obligation.

At European level, the Revised European Social Charter (1996) implemented in the Council of Europe framework should be mentioned. The Charter includes a number of child poverty relevant provisions, although most of them address children indirectly as dependants of their (working) parents (a common approach adopted by many human rights documents), rather than on the basis of children's rights.

The EU has, for over thirty years now, focused its efforts on addressing poverty both in the context of economic deprivation and in the context of participation in social and economic processes. Traditionally, EU's formal legal basis for engaging in activities relating to poverty is derived from a reference, in Articles 151 and 152 TFEU²⁰⁶ to the importance of combating social exclusion. These provisions are primarily aimed at enhancing employment and social opportunities for adults in the EU and are not, as such, particularly child-sensitive. It was not until the turn of the millennium that children were included more explicitly within EU's anti-poverty campaign. This has been achieved, not through the formulation of legal

²⁰⁵ See, for instance, Redmond G., 'Child poverty and child rights: Edging towards a definition' in: *Journal of Children and Poverty*, Volume 14/1, March 2008, pp. 63-82.

²⁰⁶ Originally introduced by the 1997 Treaty of Amsterdam, as Articles 136 and 137 EC Treaty.

measures, but rather, through a coordinated and ambitious programme of co-operation instituted by the Lisbon Strategy.²⁰⁷

The principal aim of this strategy is to curb economic stagnation and enhance productivity with a view to making the EU 'the most dynamic and competitive knowledge-based economy in the world'. Central to this process was a strategy, which addressed the social and environmental factors that hinder growth and competitiveness and that cultivate social exclusion involving, in particular, the following:²⁰⁸ fixing guidelines on child poverty, tied in to timetables for achieving short, medium and long-term goals; establishing appropriate quantitative and qualitative best practice indicators; and instigating a process of periodic monitoring, evaluation and peer review, organised as mutual learning processes. This whole process would be sensitive to national, regional and cross-sectoral differences in responses to child poverty.

Dovetailing with the Lisbon Strategy was the development of the Social Inclusion Process, which is aimed more directly at tackling disadvantage and which has adopted child poverty as a core priority. Thus, in 2000 the Social Inclusion Process was established by the European Council with a view to making a decisive impact on eradicating poverty by 2010. Both schemes operate on a multi-level basis, with the EU providing the support and impetus for policy exchange and development at national level, thereby prompting a more strategic, consensus – driven approach to tackling child poverty.²⁰⁹ . The 2006 spring European Council placed further pressure on Member States and the European Commission to take action to eradicate poverty among children. This prompted detailed indicators-based research into the reasons for child poverty in the Member States, ²¹⁰ as further discussed below. In 2 July 2008 the Commission adopted a renewed Social Agenda designed to ensure that European Union policies respond effectively to today's economic and social challenges. One of the seven priority areas identified is 'Children and youth – tomorrow's Europe'.²¹¹

In March 2010, the Communication from the European Commission 'Europe 2020' put forward the European strategy for 'smart, sustainable and

²⁰⁷ Introduced following the European Council meeting in March 2000 and reviewed and streamlined in June 2005.

²⁰⁸ Lisbon European Council, 2000, paragraph 37.

²⁰⁹ A review of Member States' progress in relation to national implementation of the strategy is conducted through a series of bi-annual reports. For further information see: <http://ec.europa.eu/social/main.jsp?langId=en&catId=750>. The 2006 Spring European Council placed further pressure on Member States and the Commission to take action to eradicate poverty among children. This prompted detailed indicators-based research into the reasons child poverty in the Member States. See further the Social Protection Committee, Directorate-General for Employment, Social Affairs and Equal Opportunities (2008) 'Child Poverty and Well-Being in the EU - Current status and way forward', Luxembourg: Office for Official Publications of the European Communities.

²¹⁰ See further The Social Protection Committee, Directorate-General for Employment, Social Affairs and Equal Opportunities (2008) 'Child Poverty and Well-Being in the EU - Current status and way forward', Luxembourg: Office for Official Publications of the European Communities.

²¹¹ See: <http://ec.europa.eu/social/main.jsp?catId=547&langId=en>.

inclusive growth'.²¹² The Strategy points out that Europe must fight poverty and social exclusion and reduce health inequalities to ensure that everybody can benefit from growth. Importantly, the Strategy explicitly recognises the importance of access to childcare facilities. Two of the five measurable EU targets for 2020 are related to education and poverty. One of them aims at tackling the problem of early school leavers by reducing the drop out rate to 10 per cent from the current 15 per cent. The other aims at combating poverty by reducing the number of Europeans living below the national poverty lines by 25 per cent, lifting over 20 million people out of poverty.

In order to catalyse progress in combating poverty, the flagship initiative 'European platform against poverty' requests the European Commission to transform the open method of coordination on social exclusion and social protection into a platform for cooperation, peer-review and exchange of good practice. It also requests the Commission: to take concrete action, including through targeted support from the structural funds, notably the European Social Fund (ESF); to design and implement programmes to promote social innovation for the most vulnerable; to undertake an assessment of the adequacy and sustainability of social protection, and to identify ways to ensure better access to health care systems. EU Member States are requested to promote shared collective and individual responsibility in combating poverty and social exclusion and to define and implement measures addressing the specific circumstances of groups at particular risk (such as one-parent families, elderly women, minorities, Roma, people with a disability and the homeless).

In addition, the introduction of a new horizontal provision obliging the EU to combat social exclusion in the Treaty on European Union (Article 3(3) TEU) in conjunction with the now legally binding character of the Article 24 of the Charter of Fundamental Rights of the European Union on the protection of the rights of the child, may contribute to the gradual shift towards more child-sensitive approaches in this field.

Alongside these legal developments, the concept of generational distributive justice has emerged as an important issue in childhood research. With regard to policies, however, there is still progress to be made in embedding childhood and generational distributive justice in public discourses on poverty and in more general social and economic development.

The EU formal legal basis for engaging in such activities derives from references in Article 3 TEU, Articles 10 and 19 TFEU and Article 21 of the Charter of Fundamental Rights of the EU, which recognise age as a prohibited ground for discrimination.²¹³ The EU has therefore created a legal instrument, which is more explicit than other global Conventions.

²¹² Communication from the European Commission, *Europe 2020 – A strategy for smart, sustainable and inclusive growth*, COM (2010) 2020, 3 March 2010, Brussels, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

²¹³ Age was added to the grounds for discrimination explicitly prohibited by the Treaty at Amsterdam in 1997 (previously found in Article 13 EC).

Child poverty and social exclusion are key areas for the development of child indicators at EU level. There have been various attempts by non-EU organs, to define indicators that go beyond income to address child well-being (for example by the Council of Europe and UNICEF). Wider-reaching Human Rights Based Poverty Reduction Strategies²¹⁴ have also been established at UN level with the aim of “developing substantive guidelines for the integration of human rights in national poverty reduction strategies”. Of relevance also are the guidelines for indicators developed by the Council of Europe²¹⁵ in the context of the (Revised) Social Cohesion Strategy.

One of the most notable studies to have been published in this context is the UNICEF assessment of the well-being of children in 21 nations of the industrialised world.²¹⁶ Although welcomed for its innovative inclusion of a number of subjective dimensions (and indicators) of children’s well-being, the report is distinctly data-driven (dependent on the availability of data sources). The study evaluates and compares different dimensions of child well-being, namely the material situation, health, subjective well-being, education, children’s relationships and civic participation, thereby having due regard to the CRC.²¹⁷ These clusters serve as a basis for a composite child well-being index.

A further example of UNICEF’s work on child well-being indicators is the TransMonee project²¹⁸ relating to the situation of children in central and eastern Europe (CEE), the Commonwealth of Independent States (CIS) and the Baltic States. The outcomes of this study are relevant for the development of our indicators, particularly in relation to incorporating the newer EU Member States.

Further consideration of the human rights perspective is found in a recently published discussion paper by Eurochild²¹⁹, entitled ‘A child rights approach to child poverty’. The underlying concept of child poverty is child deprivation, a well-known concept in child poverty research²²⁰. In this paper the dimensions of deprivation are structured along the ‘Three Ps’ of the CRC, namely provision, protection and participation. Other NGOs such as Save the

²¹⁴ Office of the United Nations High Commissioner for Human Rights ‘Principles and guidelines for a Human Rights Approach to Poverty Reduction Strategies’, Geneva 2006.

²¹⁵ Council of Europe ‘Concerted development of social cohesion indicators: Methodological guide’, available at: http://www.coe.int/t/dg3/socialpolicies/socialcohesiondev/source/GUIDE_en.pdf.

²¹⁶ See UNICEF, Innocenti Research Centre, *Report Card 7: An Overview of Child Well-being in Rich Countries*, Florence: UNICEF Innocenti Research Centre, available at: http://www.unicef-irc.org/publications/pdf/rc7_eng.pdf.

²¹⁷ In an EU version, which preceded UNICEF Report Card 7 (RC7), two more clusters were included, namely housing and environment, as well as risk and safety. See Bradshaw, Hoelscher and Richardson (2007) ‘An index of child well-being in the European Union 25’ in: *Journal of Social Indicators Research*, 80, pp. 133-177.

²¹⁸ UNICEF: 2008 TransMonee Database, available at: <http://www.unicef-irc.org/databases/transmonee/>.

²¹⁹ Eurochild, *A child Rights approach to Child Poverty*, 2007, available at: www.eurochild.org/fileadmin/user_upload/files/Eurochild_discussion_paper_child_rights_poverty.pdf.

²²⁰ The most prominent concepts are: income poverty, subjective poverty measures, relative deprivation, lifestyle deprivation and social exclusion.

Children have also been extremely active in conceptualising indicators to measure the social situation of children in Europe.²²¹

OECD has developed a family data base²²² with indicators for all OECD countries (supported by the European Union) categorised under four broad headings: family structure, labour market position of families, public policies for families and children, and children outcomes. In the area of child well-being, indicators have been developed, focusing on early childhood education, child age and social spending, and on family structure and child well-being. Some indicators are family- or household- and not child-focused (neglecting the concept of the child as unit of observation), and they largely neglect subjective dimensions of child well-being. Nonetheless, this ongoing activity offers a wealth of data sources.

Finally, and perhaps most significantly for this research, **the EU Indicators Subgroup of the Social Protection Committee**²²³ produced a report on *Child Poverty and well-being in the EU*. This report is clearly focused on *child poverty* and provides a very comprehensive analysis covering all Member States. The study includes 15 recommendations for taking this work forward, aimed at improving monitoring and assessing the impact of relevant policies, both at EU and Member State level. In addition, a new study was launched in 2009 with the support of the European Community Programme for Employment and Social Solidarity (2007-2013) to identify the main determinants of child poverty and social exclusion in Europe and across the Member States; provide an overview and assess the effectiveness of existing policies on income support and access to the labour market and enabling services of parents; and to define a reduced set of indicators which best reflect the multi-dimensional nature of child well-being, suitable for monitoring policies aimed at reducing child poverty, enhancing the welfare of children and improving their life-chances.²²⁴

Given the vast amount of work already conducted on child poverty indicators, it is important to clarify the rationale underpinning, and added value of, the indicators developed during this research. On the whole, in including child poverty indicators here, the aim is not to duplicate work being done by others, but to generate synergies by contributing additional children's rights and child sociological perspectives to ongoing initiatives dealing with social indicators for children. The strength of the child rights approach lies in its normative foundation, a call on governments and duty

²²¹ For example Save the Children: Concept note on developing child indicators, available at: http://www.crin.org/docs/save_concept_indicators.doc.

²²² OECD Family database, available at: <http://www.oecd.org/els/social/family/database>.

²²³ The Social Protection Committee has approved in January 2008, on request of the European Council, a report on 'Child Poverty and Well-Being', identifying the predominant factors affecting child poverty in each country. This report underpinned the key policy messages on social inclusion of the 2008 Joint Report on Social Protection and Social Inclusion adopted jointly by the Commission and the Council.

²²⁴ Tarki (2010) *Child poverty and child well-being in the European Union*, Report prepared for DG Employment, Social Affairs and Equal Opportunities (Unite E.2) of the European Commission, Budapest, available at: <http://www.tarki.hu/en/research/childpoverty/index.html>.

bearers to take on board and fulfil their international commitments, to secure the necessary resources for implementation and to monitor progress through comprehensive child-sensitive indicators, which address both empowerment of children and state/EU responsibility. The indicator list is not intended to be firm and final, but a tentative work in progress. We note that highly prodigious activities are going on in a number of other places, particularly in the Social Protection Committee. **Our primary task, therefore, is to complement this work by integrating a distinctly child rights and child sociological perspective** into the common framework adopted for this project. In doing so, we propose some theoretical and methodological modifications or extensions to the indicators as highlighted in the explanatory text accompanying them.

The indicators on the child's right to an adequate standard of living (ASL) are framed around the following three dimensions:

- child income poverty;
- the impact of government intervention;
- aspects beyond income poverty as well as children's subjective perceptions.

4.4.1. Child income poverty

Background

There are several reasons supporting the inclusion of relative and relational child poverty. First, it addresses problems which are particularly relevant for economically advanced countries; many global initiatives on child poverty focus primarily on severe forms of economic deprivation in relatively poor countries. Secondly, relative child poverty incorporates relational child poverty which involves a generational comparison of poverty levels between the whole of the child population in the EU and adults.²²⁵

Relative poverty provides information on equalities/ inequalities with a view to (income) distribution in a society. It is not an appropriate measure for indicating levels of severe poverty since it shifts the focus from the 'size' of the cake as a whole to its distribution within a society. As such, nations at lower levels of economic development might perform well on relative child poverty indicators and, equally, rich nations may perform badly.

Relative child poverty is defined as the percentage of children living below a certain poverty threshold, usually a percentage of the standardised national median income.²²⁶ The 2008 report of the Social Protection Committee (SPC) uses the following parameters:

²²⁵ According to the Social Protection Committee report 2008, in 2005 19 per cent out of 97,5 million children in the EU 27 were at risk of poverty, as compared to 16 per cent of the total population (SPC 2008).

²²⁶ In this context, the term 'at-risk-of-poverty' is used synonymously with 'poverty'.

- the poverty (risk) threshold is set at 60 per cent of the national median equivalised household income, that includes all types of income of all members of the household plus all transfers (OECD sets the poverty threshold at 50 per cent instead; see UNICEF RC7, 2007; and the report on *The Social Situation in the EU 2007* uses three levels: 60 per cent, 50 per cent and 40 per cent);
- for equivalisation of household incomes (that is for taking into account differing needs of households of different size and composition) the modified OECD equivalence scale is applied;
- for aggregation or comparison of national data at the level of the EU, the national poverty thresholds are expressed in Purchasing Power Standards.

It should be borne in mind that the respective number of children in poverty or at risk of poverty depends on the choice of methodological parameters; whether it would be poverty thresholds or equivalence scales, for instance. Therefore, any reference to the proportion of children in poverty or at risk of poverty should be accompanied by some explanation of the poverty threshold and the equivalence scale applied.²²⁷

Throughout EU countries, certain demographic and socio-economic characteristics of households may have a major or minor impact on the distribution of poverty among the child population, in particular:

- the number of children in the household;
- family forms, particularly one-parent families and couples with children;
- the number of earners in the household: namely, distinction between dual-earner, one-earner and workless households;
- work intensity (WI), defined as the ratio of actual time worked and regular full time (whereby $WI\ 0 = 0$ (parents not working); $0 < WI\ 1 < 0,5$; $0,5 =$ or $< WI\ 2 < 1$; $WI\ 3 = 1$, that is both parents full time working).

These are the demographic and socio-economic dimensions along which relative (child) poverty is usually disaggregated. In principle one might go further and disaggregate also for cross-cutting dimensions such as age, disability, gender and ethnicity. This would provide some insight into whether certain groups of children are more likely to experience or be at risk of poverty than others. Of course, data collection presents significant problems in relation to some of these categories such as Roma or asylum-seeking children.

The concept of **generational or relational child poverty** addresses generational inequalities between the child population on one hand and the complementary population group of adults on the other. It is derived from that of relative child poverty. Again generational child poverty does not reveal much about the living standards of children in absolute terms, but rather addresses how the risk of poverty is distributed between children and

²²⁷ The report on *The Social Situation in the European Union 2007* may serve as a good example in this respect.

the adult population. From a structure-oriented childhood sociological perspective this is the most fundamental aspect of child poverty, since it sheds light on the position of the total child population in comparison with other generations or age groups. This does not mean that intra-generational differences among children are irrelevant; however, only knowledge about the socio-economic situation of children at large provides a frame of reference for interpreting the situation of specific groups of children.

As mentioned, above some methodological definitions are necessary concerning poverty thresholds and equivalence scales. The poverty threshold was introduced and defined in the previous section as a percentage (usually 60 per cent, 50 per cent and/or 40 per cent) of the median income. Equivalence functions are used for standardising household income with a view to the composition and number of household members, in order to safeguard comparability of the income situation, for instance between single adults on the one hand and parents with children on the other. In the literature one finds quite a number of scales that are used for expressing the equivalent per person income of individuals living in households of different size and composition. The most widely applied scales are linear functions based on the number of adults and children in a household, in particular the original and the modified OECD scales, with the latter being predominantly applied in the EU context. Both are rather simple linear scales assigning weights to household members (adults and children), supposing that household expenditures are subject to a combination of economies of scale and greater needs for adults than for children.

Both scales assign the weight of 1 to the first adult. However, while the original OECD scale assigns 0.7 and 0.5 to further adults and children below 16 years of age respectively, for the modified OECD scale the respective weights are 0,5 and 0.3. Outcomes of child poverty measurement are rather sensitive with a view to the selection of both poverty thresholds and equivalence scales. Obviously child poverty rates will be lower if we use a lower poverty threshold and a flatter equivalence scale. However, while the fundamental outcomes will be rather robust as long as we look at the ranking of nations or the impact of household size and composition, this is unfortunately not the case with a view to the generational income distribution. When replacing the original by the modified OECD scale the order of the results may be reversed.²²⁸

Since the 1980s, books and articles have been published on developments concerning child poverty, generational shifts of poverty from old age to childhood and political ageing of economically advanced societies, which

²²⁸ This can be demonstrated with a simple example. Let us consider a single household with an income of 1000€ and a one-parent household with one child on an income of 1400€. For the single household the equivalent income remains unchanged, namely 1000€. For the one parent/ one child household the equivalent income according to the original OECD scale was 933€ (1400 divided by 1,5), that is below 1000, while according to the modified OECD scale the equivalent income is 1077€ (1400 divided by 1,3), that is above 1000. This means, the generational poverty order between the two households, a childless household and a household with a child, has been reversed by this modification.

were based on data calculated with the original OECD scale.²²⁹ In order to follow up these developments for more recent periods it would make sense to retain the traditional OECD scale as well. To guarantee comparability and continuity, a solution would be to use both scales simultaneously - just like different poverty thresholds are being used simultaneously. Studying and interpreting the differences of results might promote a better understanding of the phenomenon of generational child poverty.

To summarise, information about the number of poor children in a given society is a prerequisite for any (national or international) monitoring of child poverty. In economically advanced countries the concept usually applied in this connection is *relative child poverty*. It is the point of departure for any further analysis, be it statistical disaggregation along socio-economic or cultural characteristics, as well as cross-national and/or intergenerational comparison. Relative child poverty is a firm component contained in any report on childhood and children in economically advanced countries. What we suggest specifically in this report is, to calculate child poverty for different poverty thresholds (60, 50 and 40 per cent of the median income) and equivalence scales (the original and the modified OECD scales in particular).

In a structure-oriented childhood sociological perspective, *generational or relational child poverty* is the most relevant aspect of child poverty. With a view to policy analysis, it has the same relevance for children as gender comparison for women. We suggest an indicator concerning the position of the total child population in comparison with the complementary adult population. It would not pose any problem to extend this to a comparison between children and old age, too.

Relative poverty is not an appropriate measure for indicating levels of **severe poverty** in a society. Data on per-capita gross domestic product (GDP) for instance provides some information on the general economic situation of the population worldwide, and we may assume that, in absolute terms, in countries with lower per-capita GDP children will also be poorer on the whole. But severe poverty is not restricted to poor countries only; it may be and is present also in EU countries. Therefore we need additional methods for measuring severe poverty.

One approach departs from the relative child poverty rate; this indicates the number or percentage of children below the poverty threshold, but it does not tell us how far below the threshold children fall. On this basis it is possible to create a measure for the intensity of poverty: the **poverty gap**, defined as the ratio of the median equivalised income of children below the poverty threshold and the poverty threshold itself.²³⁰ If the gap is large, it is

²²⁹ See for instance Preston, S. (1984) 'Children and the elderly in the U.S.' in: Scientific American; Cornia, G.A. (1990) *Child poverty and deprivation in industrialized countries: recent trends and policy options*, Innocenti Occasional Papers, Florence: UNICEF; Thomson, D. (1996) *Selfish generations? How welfare states grow old*, Cambridge: Cornia; G.A. (ed.) (1997) *Child poverty and deprivation in industrialised countries*, Oxford.

²³⁰ SPC, 2008, p. 16.

obvious that there exists severe poverty in the society affecting a substantial part of the population. If the gap is rather small, the phenomenon may have different explanations: a substantial part of the population is just below the poverty threshold; there is severe poverty among a small minority of the population; or a mixture of both.

To achieve this, one might use an indicator for *absolute severe and extreme poverty* by selecting poverty lines that are sufficiently low. The report on *The Social Situation in the EU 2007*²³¹ uses various poverty lines, the lowest being €10 and €5 per day. The UNDP factsheet contained in the statistical annex to the OSCE Status Report on the Situation of the Roma Population applies an even lower threshold, namely €2 per day. Jonathan Bradshaw in his capacity as external evaluator refers to ongoing research and expresses the view that an indicator on material well-being, which combines child income poverty, material deprivation of households, and parents' worklessness would be more adequate.

Finally, there is obviously a difference between (households with) children who are affected by poverty either temporarily or chronically. It is more complicated to establish an indicator reflecting these **poverty dynamics**. Bradshaw²³² indicates the **persistence of poverty** by confronting the child poverty rate in year *n* with the percentage of children who have been below the poverty threshold throughout the years *n-2*, *n-1* and *n*; this can be done by using the EU Statistics on Income and Living Conditions (EU-SILC) because it is a four year cohort.

Table 14: Indicator group– Child income poverty

Indicator group	Child income poverty
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 21 and 24 of the EU Charter of Fundamental Rights • Articles 10, 19, 151, and 153 TFEU • Lisbon Strategy and Social Inclusion Process • Ongoing Work of the Social Protection Committee EU Indicators Subgroup
CRC reference	Article 27 (adequate standard of living); 26 (social security); 2, 3, 6, 12 (CRC general principles); General Comment No. 4 (2003) on adolescent health and development; General Comment No. 7 (2005) on implementing child rights in early childhood.
Indicator	➤ Relative child poverty
Indicator type	Outcome

²³¹ Bradshaw, 2007, pp. 24-25.

²³² *Ibid.*

Why is it important to measure	Relative child poverty addresses problems which are particularly relevant for economically advanced countries; many of the global initiatives on child poverty focus primarily on severe forms of economic deprivation in relatively poor countries. ²³³
Definition	Percentage of children living below the poverty threshold (=60, 50 and 40 per cent of the standardised national median income), OECD and modified OECD scale, EU + 27 EU members; disaggregated by: <ul style="list-style-type: none"> • number of children per household; • children living with one and both parents; • work intensity of parents; • ethnic origin.
Indicator	➤ Relational - generational child poverty
Indicator type	Outcome
Why is it important to measure	Consistent with the sociology of childhood approach adopted for these indicators, relational child poverty addresses generational inequalities between the child population on one hand and the complementary population group of adults on the other. Specifically, this measures how poverty is distributed between children and the adult population.
Definition	Relative poverty rate of total child population (below 18) by relative poverty rate of adult population (18+); poverty threshold (= 60, 50 and 40 per cent of the standardised national average income), OECD and modified OECD scale, EU + 27 EU members.
Indicator	➤ Poverty gap
Indicator type	Outcome
Why is it important to measure	Since relative poverty is not an appropriate measure for indicating levels of severe poverty in a society, we need additional methods for measuring severe poverty. An indicator on poverty gap will reveal whether severe poverty exists in the society that affects a substantial proportion of the population.
Definition	Ratio of the median equivalised income of children below the poverty threshold and the poverty threshold itself
Indicator	➤ Absolute poverty.
Indicator type	Outcome

²³³ See: <http://www.unicef.org/sowc09/report/report.php>.

Why is it important to measure	Following on from the poverty gap indicator, an indicator for absolute severe and extreme poverty can be applied by selecting poverty lines that are sufficiently low, for example 10,5 and/or 2€ (or monetary equivalent) per day.
Definition	Children with (equivalised) income of less than 10/5/2€ (or monetary equivalent) per day disaggregated by ethnic origin.
INDICATOR	➤ Persistence of poverty.
Indicator type	Outcome
Why is it important to measure	There is a difference between households with children who are affected by poverty either temporarily or chronically. It is more complicated to establish an indicator reflecting these poverty dynamics. The persistence of poverty can be analysed by comparing the child poverty rate in year n with the percentage of children who have been below the poverty threshold throughout the years n-2, n-1 and n.
Definition	Child poverty rate in year n by percentage of children poor in the 3 years n-2, n-1 and n; disaggregate for ethnic origin.
Key data	<ul style="list-style-type: none"> • CRC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database • International/regional databases, e.g. UNICEF's 2008 TransMONEE Database • Demographic and household statistics (including income data like EU SILC) at national and EU level (EUROSTAT; OECD and others) • Studies and reports on child poverty rates, for example EU Joint report on social inclusion, Social Observatory Report (EU), SPC Report 2008.

4.4.2. The impact of government intervention

Background

Public policies and transfers affect child poverty levels generally, and in the context of private households in particular. While major advancements are under way with a view to child poverty measurement, policy evaluation of government intervention remains under-developed. In public debates policy makers are frequently tempted to interpret improvements in child poverty rates as direct consequence of their political action, though in reality there might not be any causal connection between the two. The **impact of government intervention** on child poverty levels should be evaluated both nationally and cross-nationally. This would allow establishing a more reliable basis for interpreting interrelations between policies (or policy reforms) on

one hand, and child poverty levels on the other. Timeliness of data is important in this context.

For studying the interrelations between government intervention and child poverty, various types of methods are being used²³⁴, namely:

- descriptive-intuitive methods, mostly relating (child) poverty rates to public expenditures;
- counterfactual methods, based on comparison between poverty levels before and after transfers;
- behavioural analyses, based on panel data, trying to link actual policy efforts with actual outcomes;
- simulation models combining public child benefit packages with a variety of model families defined by demographic and socio-economic characteristics.

The Indicators Subgroup of the Social Protection Committee uses an indicator on the **relative spending on children**²³⁵. It is defined as the benefit spending on the family/children function (in per cent of all social benefits) corrected by the share of children aged 0-17 in the total population. The indicator is adequate to some extent for providing a generational perspective of public expenditures. Another indicator is the **impact of social transfers** (excluding pensions) on the poverty risk for children (in per cent of the poverty risk before all social transfers).²³⁶ It approaches the question of effectiveness and efficiency of social transfers with a view to child poverty. Both indicators have the disadvantage that they do not include tax breaks in respect of children, which is an increasingly important feature of some countries' welfare packages.²³⁷

Bradshaw and Finch²³⁸ analyse variations in the structure and level of *child benefit packages* (comprising tax allowances, cash benefits, exemptions from charges, subsidies and services in kind, which assist parents with the costs of raising children). The method used in this study – simulating treatment by the child benefit package for varying family types and earnings levels – is rather complex and sophisticated but could, in principle, provide a more adequate basis for studying the specific impact of government intervention on child poverty in varying demographic and socio-economic family structures. However, there is also a minor problem with this indicator: since child benefits and expenditures are analysed at the household level, public investments in child services (relevant for their extension and quality) remain in the shade. Therefore, instead of selecting just one indicator, we suggest a combination of different indicators producing different results.

²³⁴ SPC, 2008; Bradshaw and Finch, 2002.

²³⁵ SPC 2008, p. 42, Figure 15.

²³⁶ SPC 2008, p. 39, Figure 13.

²³⁷ The OECD Adema series does include child tax benefits.

²³⁸ Bradshaw and Finch, 2002.

Table 15: Indicator group– Impact of government intervention

Indicator group	Impact of government intervention
EU relevance	<ul style="list-style-type: none"> • Articles 13, 136 and 137 EC • Lisbon Strategy and Social Inclusion Process • Ongoing Work of the Social Protection Committee EU Indicators Sub-Group
CRC reference	Articles 27 (adequate standard of living), 26 (social security), 3/2, 18, 27 (subsidiary government obligation toward children; parental support), 2, 3, 6, 12 (CRC general principles); General Comment No. 4 (2003) on adolescent health and development; General Comment No. 5(2003) on General measures of implementation; General Comment No. 7 (2005) on implementing child rights in early childhood.
Indicator	➤ Relative public spending on children.
Indicator type	Process
Why is it important measure to	The indicator will provide some insight into the division of public expenditure between children and adults.
Definition	Benefit spending on the family/ children function (in per cent of all social benefits) corrected by the share of children aged 0-17 in the total population.
Indicator	➤ Impact of government intervention on relative child poverty.
Indicator type	Outcome
Why is it important measure to	This indicator will measure the effectiveness and efficiency of social transfers on addressing child poverty.
Definition	Impact of social transfers (excluding pensions) on the poverty risk avoidance for children in per cent of the poverty risk before all social transfers
Indicator	➤ Child benefits packages.
Indicator type	Outcome
Why is it important measure to	SPRU/University of York analyse variations in the structure and level of child benefit packages (comprising tax allowances, cash benefits, exemptions from charges, subsidies and services in kind, which

	assist parents with the costs of raising children). The method used in this study – simulating treatment by the child benefit package for varying family types and earnings levels – is rather complex but, in principle, more adequate for studying the specific impact of government intervention on child poverty in varied demographic and socio-economic family structures.
Definition	Ranking of nations; composite index (could also be indicated for specific household constellations).
Key data	<ul style="list-style-type: none"> • CRC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database • Legal documents and policy papers by international organisations (for example Council of Europe resolutions and recommendations) • International comparative studies/ analysis of variations in the structure and level of child benefit packages and their impact on relative child poverty (for example Bradshaw 2007) • Reports and Action Plans: National Plans of Action (EU 27) and EU Joint report on social inclusion, Peer Reviews on social inclusion (EU), Social Observatory Report (EU), and others • International and regional Databases, such as UNICEF's 2008 TransMONEE Database • National programmes and government interventions to combat/ reduce child poverty • Analysis of national legislation and case-law • Analyses of family policy and other related policy areas (for example youth policy) at national and international level concerning policy measures to reduce child poverty (for example data on public spending/ public expenditures related to children) • Behaviour analyses (based on panel data) trying to link actual policy efforts with actual outcomes.

4.4.3. Aspects beyond income poverty as well as children's subjective perceptions

Background

Safeguarding a child's right to an adequate standard of living requires more than just the absence of child income poverty. The concept of relative child income poverty is often criticised for being rather distant from the lived experiences of children themselves, as well as restricted and one-dimensional with a view to the complexity of poverty and deprivation. Therefore, under the third and last dimension, *beyond child income poverty*, we identify a number of issues which may be more difficult to

operationalise, but which manifest the distinctly children's rights based approach of these indicators.

Various efforts have been made to provide a more comprehensive understanding of well-being, comprising issues beyond income by looking at *other dimensions of material deprivation*, as well as to assess poverty in a more subjective manner by *including children as informants and agents*.

The Social Protection Committee's report introduces and combines two dimensions: 'economic strain' and 'enforced lack of durables', as well as 'poor housing conditions'.²³⁹ In terms of economic strain the items included are "Could not afford (if wanted) to face unexpected expenses; one week annual holiday away from home; to pay for arrears; a meal with meat, chicken or fish every second day; to keep home adequately warm [...]." Under 'enforced lack of durables' the following items are mentioned: washing machine; colour TV; telephone; personal car. 'Poor housing conditions' are defined by the following sets of items: does the dwelling suffer from one or more of the three problems: leaking roof/ damp walls/floors/foundations or rot in window frames; accommodation too dark; no bath or shower; no indoor flushing toilet for sole use of the household.

These items are EU-SILC items developed for adults and merely calculated for children and are not child-focused from the outset.²⁴⁰

The UNICEF Report Card 7 (RC7) 'An Overview of child well-being in rich countries' refers to two scales: family affluence and educational possessions, which are more child-centred and *subjective indicators*.²⁴¹ For the Family Affluence Scale (WHO HBSC Briefing Paper 9) four questions are being asked.

- Does your family own a car, van or truck?
- Do you have your own bedroom for yourself?
- During the past 12 months, how many times did you travel away on holiday with your family?
- How many computers does your family own?

The educational possessions (OECD Programme for International Student Assessment (PISA)) includes the following items: a desk for study; a quiet place to work; a computer for schoolwork; educational software; an internet connection; a calculator; a dictionary; school textbooks. It is obvious that these items are less adult-centred, although they could be further improved, for instance, by adapting them more to early childhood and primary school age. These questions – we learned recently – have been omitted from the latest survey, unfortunately. However, as a point of departure we keep for the time being the two latter indicators, or perhaps a combination of both,

²³⁹ For definition see SPC, 2008, p. 51.

²⁴⁰ However, EU-SILC is introducing some more child relevant indicators from 2009 onwards, which might make a better index.

²⁴¹ See UNICEF Report Card 7, 2007, pp. 8-9, Figures 1.3a and 1.3b.

which at a later stage could be replaced by an improved index based on more child-centred questions from EU-SILC.

The subjective perception of children is a more general issue, and not just a question of material standard of living. UNICEF RC7²⁴² contains a separate section entitled “subjective well-being”. The tables, predominantly based on the WHO-HBSC survey, cover children’s perception of health and school as well as overall life satisfaction. The indicator on life satisfaction can be considered too general. The subjective perception of family and peer relations is referred to in a separate section on “relationships”²⁴³, while leisure is not dealt with substantially. The title “behaviour and risks”²⁴⁴ reveals an adult-centred attitude, and the subjective indicators mostly cover only the age group 11+ to the exclusion of early childhood and primary school age children.

Finally, the question of *children as economic and social subjects or agents* remains. As derived from the previous section on relative and generational child poverty, the basic data (equivalised income) result from a statistical operation. This implies a departure from the assumption that within any household the standard of living is unique. There is a dearth of information concerning the distribution of resources within the household, including about children’s own money, from paid jobs, from public transfers, pocket money from their parents, and other. This leads to further questions concerning the role children both as producers and as consumers. On the one hand, children are economically dependent on their families. On the other hand, there has been a surge of commercial interest in and targeting of this group, especially over the last 20 years. A large number of children have their own bank accounts, and take part in consumption as well as in production. Any system of indicators on children’s standard of living, which does not include these questions, together with information on children’s use of time and space is incomplete.

As to data, there might be surveys in some countries that are probably not adequate for cross-national comparison. Data on consumption trends produced for private companies may be unavailable for public use. Data on productive activities of children (outside school) may be biased by a protective, abolitionist attitude regarding child labour. While such gaps cannot easily be bridged, there is considerable need and scope for further research and data collection, particularly concerning *children’s own money, children’s access to space, children’s activities, children as producers, as well as children as consumers.*

²⁴² UNICEF RC7, 2007, p. 35 c.

²⁴³ UNICEF RC7, 2007, p. 22 c.

²⁴⁴ UNICEF RC7, 2007, p. 26 c.

Table 16: Indicator group– Impact of government intervention

Indicator group	Aspects beyond income poverty as well as children’s subjective perceptions
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 21 and 24 of the EU Charter of Fundamental Rights • Articles 10, 19, 151, and 153 TFEU • Lisbon Strategy and Social Inclusion Process • Ongoing Work of the Social Protection Committee EU Indicators Sub-Group
CRC reference	Articles 27 (adequate standard of living), 26 (social security), 12 (child participation), 2, 3, 6 (other CRC general principles, in particular child development), 28/29 (education), 24 (health); General Comment No. 4 (2003) on adolescent health and development; General Comment No. 7 (2005) on implementing child rights in early childhood.
Indicator	➤ Family affluence
Indicator type	Outcome
Why is it important to measure	<p>Safeguarding a child’s right to an adequate standard of living requires more than just the absence of child income poverty. Various efforts have been made to provide a more comprehensive understanding of well-being comprising issues beyond income by looking at other dimensions of material deprivation, as well as to assess poverty in a more subjective manner by including children as informants and agents.</p> <p>The EU Indicators Subcommittee introduces an indicator which combines two dimensions: ‘economic strain’ and ‘enforced lack of durables’, as well as ‘poor housing conditions’. The problem is that these items are predominantly adult-focused. This indicator calls for a more child-centred approach to measuring family affluence.</p>
Definition	Percentage of children reporting low family affluence ²⁴⁵
Indicator	➤ Children’s educational possessions
Indicator type	Outcome
Why is it important to measure	So far there is limited information concerning the distribution of resources within the household (for example children’s own money, from paid jobs, from public transfers, pocket money from their parents). This leads to further questions concerning the role of children both as producers and as consumers. On the one hand,

²⁴⁵ See UNICEF RC7 and WHO HBSC9.

	<p>children are economically dependent on their families. On the other hand, however, over the last 20 years there has been a surge of commercial interest in and targeting of children. A large number of children have their own bank accounts, and take part in consumption as well as in production. Any system of indicators on children's standard of living should include these aspects, together with information on children's use of time and space.</p>
Definition	<p>Percentage of children reporting less than six educational possessions.²⁴⁶</p>
Key data	<ul style="list-style-type: none"> • CRC State reporting procedure, NGO monitoring ("shadow") reports, UN OHCHR Treaty bodies database • WHO-HBSC9, OECD-PISA, qualitative studies and surveys on children's perceptions of poverty and its consequences • International and regional Databases, such as UNICEF's 2008 TransMONEE Database • EU Statistics on Income and Living Conditions (SILC) • Analysis of national legislation and case-law • National Action Plans, national policy documents • National and comparative data on family affluence and educational resources • Studies, publications and scientific articles on child poverty and its causes and its impact on children and their well-being (UNICEF report card 7, SPC Report 2008 and others) • Reports, studies and scientific articles covering these issues (for example, studies on the internal distribution of resources within families)

²⁴⁶ The educational possessions scale (OECD-PISA) includes the following items instead: a desk for study; a quiet place to work; a computer for schoolwork; educational software; an internet connection; a calculator; a dictionary; school textbooks. It is obvious that these items are less adult-centred, although they could be further improved, for instance, by adapting them more to early childhood and primary school age.

4.5. Indicator area: education, culture, active citizenship, participation in activities related to school and sport

Introduction

This cluster of indicators addresses another central dimension of children's lives: education, leisure activities, culture, participation in school related activities and in sport related activities. Education is defined in a broad sense, encompassing all publicly and privately funded education, as well as training for children and young people under 18 years of age. This encompasses all stages of education, from pre-school learning to higher education and vocational training, with the latter also encompassing human resource development activities (for example informal learning).

The right to education has long been recognised as encompassing not only equal access to educational provision and academic opportunities, but participation in a forum that is crucial for the child's personal development, for promoting mutual understanding, tolerance and friendship, and for nurturing a sense of social and civic responsibility. In short, education is necessary for the fulfilment of all of the civil, political, economic, social and cultural rights expressed in the CRC.

Legal and policy framework

Several Articles of the CRC reinforce the child's right to education, but this is found most explicitly in Articles 28 and 29 UN CRC. These measures are inspired by earlier international provisions such as Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and its interpretation by the Committee on Economic Social and Cultural Rights (see General Comment No. 13).

While many of the state obligations deriving from the right to education are 'progressive and subject to available resources', these are underpinned by a number of fundamental and unconditional obligations, including the right to non-discrimination and equal treatment (Article 2 CRC), the obligation to 'take steps' towards achieving a right to education (Article 2(1) ICESCR), the right to a non-violent school environment (Article 28(2) CRC), and the right to participation of children concerning education (Article 12 CRC).

These obligations are further supplemented by the guidelines of the Committee on the Rights of the Child in General Comment No. 1,²⁴⁷ which calls for:

²⁴⁷ CRC/GC/2001/1, 'The Aims of Education', 17 April 2001.

- review of curricula, systematic revision of teaching materials and school policies to include the various aims of education;
- training schemes for teachers, educational administrators and others involved in child education;
- adaptation of teaching methods in order to reflect the spirit and educational philosophy of the CRC and the aims of Article 29(1) in promoting those values;
- governments to take all appropriate steps to encourage mass media to disseminate information and material of social and cultural benefit to the child;
- development of monitoring mechanisms in the field of education.

In addition, Article 31 of the CRC enshrines the right of the child to leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. States parties undertake to respect and promote the right of the child to participate fully in cultural and artistic life and to encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. Further, Article 30 states that a child belonging to an ethnic, religious or linguistic minority or having indigenous origin shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

EU provision relating to the education of children is characterised by a mixture of binding and non-binding measures and, like so many other areas of social law and policy, has evolved in a rather scattered fashion. An overall analysis of this provision reveals three fundamental limitations: first, very little EU education provision is explicitly child focused; secondly, any provision that is child focused covers only certain aspects of education and targets a limited number of children; and thirdly, binding measures have been poorly implemented at domestic level. These limitations are primarily attributable to EU's limited regulatory competence in the field of education; the EU is only authorised to *complement* and *support* the activities of the Member States in this area. The main substance of educational provision (including curricular content, the funding and structure of education systems) is determined solely by Member States in accordance with their distinct cultural, social, political, religious and economic contexts.²⁴⁸

The Treaty of Lisbon has introduced a new horizontal provision gearing the EU towards a high level of education and training (Article 9 TFEU). This provision, in combination with the affirmation of the 'right to education' and the focus on the 'rights of the child' enshrined in Articles 14 and 24 of the Charter of Fundamental Rights of the European Union, respectively, may facilitate a gradual shift towards a more child-focused approach in this domain.

²⁴⁸ Articles 3 and 5 EC.

Until the adoption of the Treaty on European Union in 1992, education was regarded as falling within Community competence only insofar as it impacted upon the labour market. EU provision in this respect, therefore, was limited primarily to 'vocational training'. Thus, the former Article 128 EEC initially provided simply for the establishment of a "common vocational policy capable of contributing to the harmonious development both of the national economies and of the common market".

The adoption of the TEU broadened the scope of EU competence in the field of education by incorporating the former Article 149 into the EC Treaty. This provision, entitled 'Education, Vocational Training and Youth', emphasises the complementary, supporting role of the EU in respect of education but calls for greater 'Europeanisation' of education systems through enhanced knowledge and skills transfer and exchange.

Further, new references to minorities and diversity have been incorporated, most notably, in the context of the general objectives of the EU, as the TEU now includes the obligation to "respect its rich cultural and linguistic diversity", and to ensure that Europe's cultural heritage is safeguarded and enhanced (Article 3). In addition, the EU Charter of Fundamental Rights enshrines the obligation to respect the Union's cultural, religious and linguistic diversity (Article 22). Finally, the Stockholm Programme has also indirectly incorporated minority issues on its agenda, by emphasising that the EU and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system.

In addition, the Treaty of Lisbon has incorporated a specific reference to sport. The TFEU's title XII is now devoted to 'Education, Vocational Training, Youth and Sport' and Article 165(1) now includes the following paragraph:

"The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."

Moreover, Article 165(2) TFEU now includes the following aim for the Union:

"[...] developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen."

With this new formal EU competence on sport, the European Commission is preparing a communication on the impact of the Lisbon Treaty on sport. The launch of the first EU programme on sports is expected in 2012.²⁴⁹

²⁴⁹ See: http://ec.europa.eu/sport/library/doc/b22/be_pres_summary_sport_directors_genval_en.pdf. See also European Commission, *White Paper on Sport*, available at: http://ec.europa.eu/sport/white-paper/doc/wp_on_sport_en.pdf and the European Council Declaration on Sport, available at: http://ec.europa.eu/sport/information-center/doc/timeline/european_council_12-12-2008_conclusions_en.pdf.

The indicators developed under this core indicator group are divided into four themes relating to: accessibility, adaptability, personal development and active citizenship and participation. Each of these themes clearly reflects the general principles of the UN CRC²⁵⁰ and is closely related to areas of EU activity.

4.5.1. Accessibility of education

Background

Every effort should be made to ensure that schooling is accessible to all children irrespective of age, gender, ethnicity, economic status, disability or other factors. This implies the need to remove physical, economic and cultural barriers to education, which affect particularly the most vulnerable groups (children from a migrant background, children with disabilities, children from ethnic, religious or linguistic minorities, children at risk of or suffering from poverty and social exclusion, separated, asylum-seeking children, and others). Indicators in this domain would make it possible to monitor changes in the situation of these disadvantaged groups and to assess the effectiveness of measures addressed to ensure equal access to education.

Despite the emphasis on securing equality of access to education in international children's rights instruments, there is disturbing evidence to suggest that many children, particularly disabled children and those from minority ethnic groups have been deprived of entry to education at some level. This is evidenced most recently in two cases brought before the European Court of Human Rights (ECtHR). Both involved direct claims by Roma children of violations of their rights under Article 2 Protocol 1, in conjunction with the non-discrimination provision in Article 14 of the European Convention on Human Rights (ECHR). The first was the case of *D.H. and others v. the Czech Republic*²⁵¹, where a violation of these provisions was found as it was established that an unusually high proportion of Roma children were placed in schools for children with learning disabilities. This was followed by the case of *Sampanis and others v. Greece*²⁵² which involved a successful claim brought by a group of Roma school children against the Greek authorities. The children had, due to enrolment difficulties, missed a full year of primary school education and, subsequently, were placed in preparatory classes in a separate building, away from the rest of the school population. The European Court of Human Rights concluded that the school should have paid particular attention to the vulnerable position of the Roma and should have facilitated the Roma children's initial enrolment.

²⁵⁰ It is worth noting that the General Comment of the Committee on Economic Social and Cultural Rights on Article 13 ICESCR provides that the right to education shall ensure Availability, Accessibility, Acceptability and Adaptability.

²⁵¹ ECtHR, *D.H. and others v. the Czech Republic*, No. 57325/00, 13 November 2007.

²⁵² ECtHR, *Sampanis and others v. Greece*, No. 32526/05, 5 June 2008.

At **EU level**, most binding provisions are limited to ensuring equality of access to education, respecting Member States' authority to determine the substance and scope of their education systems. The most notable legislation concerns the free movement of persons, relating to the education of EU migrants' children. In particular, Articles 7(2) and 12 of Regulation 1612/68²⁵³ provide the children of EU migrant workers with access to education on the same basis as nationals in the host state. The case law connected to these Articles confirms that they cover all levels and types of education including pre-school, compulsory training, private schooling, special needs provision, vocational training and higher education.²⁵⁴ Article 12(3) of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States²⁵⁵ enables an EU migrant child to retain residence in the host state to pursue education following the death or departure of the primary EU migrant.²⁵⁶ A basic right of access to education on the same footing as nationals is also implied in the Directive's generic equality provision (Article 24(1)), while Article 24(2) explicitly excludes equal rights to peripheral educational benefits such as maintenance grants or student loans).

Equality of educational access is an important cross-cutting theme under EU immigration and asylum law. For instance, Article 27(1) of the Refugee Qualification Directive²⁵⁷ requires Member States "[...] to grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals." Also, Article 14(1) of the Directive on temporary protection²⁵⁸ states that "The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State." This is qualified, however, by the concession that "[...] Member States may stipulate that such access must be confined to the state education system." This implies that children do not enjoy access to the same range of educational establishments that are accessible to migrant children of EU nationality.

The Reception Conditions Directive²⁵⁹ imposes similar limitations on educational access. Article 10 provides that asylum-seeking children must

²⁵³ OJ L 257, 19 October 1968.

²⁵⁴ This case law is detailed in Chapter 8, Ackers and Stalford, 2004; and in Stalford, 2000. As it happens, much of this case law involves the educational rights of grown-up children of migrant workers, primarily in the context of university entrance.

²⁵⁵ OJ L 158, 30 April 2004, p. 77.

²⁵⁶ This is essentially a codification of CJEU, Case C-413/99, *Baumbast and R v Secretary of State for the Home Department*, ECR [2002] I-07091.

²⁵⁷ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

²⁵⁸ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7 August 2001, p. 12.

²⁵⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6 February 2003, p. 18.

be granted access to the education system on similar - but not necessarily the same - terms as apply to nationals (for example education may be provided in accommodation centres rather than in schools). Moreover, their education can be postponed for up to three months from the date of application for asylum. This can be extended if “specific education is provided in order to facilitate access to the education system” (in which case postponement can be for one year). The directive also states that Member States may offer ‘other’ arrangements where the specific situation of the child makes access to the education system impossible.

The European Union’s obligation to guarantee equality of access to all children is further bolstered by the recent UN Convention on the Rights of Persons with Disabilities (CRPD). This is the first international Treaty of its nature to be signed by the EU and imposes an explicit obligation on signatories to identify and eliminate barriers to accessing schools for disabled people (Article 9 CRPD).²⁶⁰

In terms of **broader EU policy developments**, improving equity in the access to education and training is a key policy domain addressed within the EU Education and Training 2010 strategy²⁶¹. Available data suggests some shortcomings in children’s and young people’s access to education. For instance, nearly one in six young people in the EU are early school leavers and one in four young adults (25 to 29 years of age) have not completed upper secondary education.²⁶² Children from families suffering socio-economic disadvantage and children from a migrant background²⁶³ or an ethnic minority in many cases do not receive the support necessary to reach levels of educational attainment that would facilitate their access to upper educational levels. They are consequently at a higher risk of abandoning the educational system at early stages.

One of the five European benchmarks for 2010 adopted by the Council (which constitute an essential tool for monitoring progress of the Lisbon objectives in the field of education and training) is to achieve an EU average rate of no more than 10 per cent early school leavers.²⁶⁴

²⁶⁰ See also the child-focused provision (Article 7) of this Convention, which states that “States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”

²⁶¹ Communication from the European Commission on a coherent framework of indicators and benchmarks for monitoring progress towards the Lisbon objectives in education and training, COM (2007) 61 final, 21 February 2007.

²⁶² Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Promoting young people’s full participation in education, employment and society, COM (2007) 498 final, 05 September 2007.

²⁶³ See for instance the Green Paper of the European Commission on Migration and Mobility: challenges and opportunities for EU education systems, COM (2008) 423 final, 3 July 2008. See also Ackers and Stalford, 2004; and Stalford, 2000.

²⁶⁴ Council Conclusions on Reference Levels of European Average Performance in Education and Training (Benchmarks), 8981/03 EDUC 83, 7 May 2003.

The initial indicators presented below reflect access issues at all levels of education:

Access to early childhood care and education: means of preventing early school leaving is to foster the development of key competences from a very early age. This implies the convenience of taking measures to enhance parental capacities to promote the development of their children as well as ensuring sufficient provision of early childhood care and education facilities. A suitable childcare provision also helps to reduce the negative impact of motherhood on female employment and to enable women to find a balance between work and family. Moreover, the improvement of the employment situation of parents, facilitated by sufficient provision of quality childcare services, contributes to reduce the risk for poverty and social exclusion.

One of the goals established by the international community at the 2000 World Education Forum in Dakar is to expand early childhood care and education.²⁶⁵ At the EU level, the governments of the Member States have been encouraged to take measures for improving the availability and accessibility of childcare services. At the Barcelona Summit in 2002, Member States adopted the targets of providing childcare by 2010 to at least 90 per cent of children between three years old and the mandatory school age; and at least 33 per cent of children under three years of age.²⁶⁶

Access to childcare services for children under three years is especially limited since they usually imply financial costs that many families cannot afford, compared with pre-school education services for children over three years, which are usually at least subsidised if not entirely free. In order to monitor the progress towards the achievement of the Barcelona objectives, specific indicators have been developed.²⁶⁷ This study introduces an indicator about the accessibility of early childhood care and education services based on this EU target, and further considers additional levels of data breakdown to monitor the access of particular groups (such as children from a disadvantaged socio-economic background and children from a migrant background).

Equal access to compulsory education: the right of access to education comprises the equality of learning opportunities at all educational stages.²⁶⁸ Developing appropriate legislation, policies and support services in order to remove physical, economic and cultural barriers to education is not a sufficient guarantee to equality of access. Inflexibility in schools may

²⁶⁵ UNICEF/UNESCO (2007) *A Human Rights-Based Approach to Education for All*, p. xi. See also the most recent UNICEF Report Card 8, Adamson, P., 'The child care transition: a league table of early childhood education and care in economically advanced countries', Innocenti Report Card, 08/20, December 2008.

²⁶⁶ Presidency Conclusions, Barcelona European Council, 15-16 March 2002, document SN 100/1/02 REV 1, p. 12.

²⁶⁷ See the Report from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children, COM (2008) 638 and the accompanying document SEC(2008) 2524.

²⁶⁸ UNICEF/UNESCO (2007), Chapter 2.

exclude asylum-seeking children. Discriminatory attitudes and school curricula can also inhibit enrolment of children from a migrant background or a national or ethnic, religious, linguistic or cultural minority, thereby contributing to poor school attainment and early drop-out. Moreover, in some countries children of migrant minorities are segregated in special schools, including such for pupils with disabilities, while benefits could be derived if they are integrated into mainstream schools responsive to their particular needs.²⁶⁹

Access to upper secondary education: the participation in and completion of upper secondary education is increasingly important not only to get access to the learning and training opportunities offered by higher education, but also to have better chances to enter the labour market and to successfully participate in a culturally diverse, knowledge-based and rapidly changing society. As already mentioned, in the EU a quarter of the young people access the labour market without having completed the upper secondary level of education, and 17.4 per cent of youths (aged 15 to 24) are unemployed.²⁷⁰ According to the European benchmarks in the field of education and training, by 2010 at least 85 per cent of 22-year-olds in the EU should have completed upper secondary education.²⁷¹

One means of achieving this goal is by improving the quality and flexibility of initial vocational education and training, for example by fostering the development of key competences that are relevant for integrating in the labour market or by offering opportunities to combine learning and working experiences. Specifically, for young people with fewer capabilities, active labour market policies and measures should be developed to increase their participation in vocational training. In addition, efforts should be made to support students from disadvantaged groups so that they can attain the best academic level possible and gain access to tertiary education. To monitor progress at this level, the indicators proposed in this study are based on the existing EU core indicator,²⁷² adding supplementary layers of data disaggregation.

Table 17: Indicator group– Accessibility of education

Indicator group	Accessibility of education
Indicator type	Structural/Output
EU relevance	<ul style="list-style-type: none"> Article 3 TEU

²⁶⁹ COM (2008) 423 final, 03 July 2008.

²⁷⁰ COM (2007) 498 final, 05 September 2007.

²⁷¹ Council Conclusions on Reference Levels of European Average Performance in Education and Training (Benchmarks), 8981/03 EDUC 83, 07 May 2003.

²⁷² See, COM (2007) 61 final, 21February 2007, and 8981/03 EDUC 83, 07 May 2003. For another definition of the indicator on completion of upper secondary education, see the OECD report 'Education at a Glance' in its latest issue 2008.

	<ul style="list-style-type: none"> • Articles 9, 10, 19, 165 and 166 TFEU • Articles 14, 21, 22 and 24 of the EU Charter of Fundamental Rights • Improving equity in the access to education and training is a key policy domain addressed within the EU Education & Training strategy²⁷³ and 2000 Lisbon Agenda • A number of EU provisions in the field of free movement, immigration and asylum law reinforce migrant children’s right to access education, including: <ul style="list-style-type: none"> - Relating to EU citizen children (Articles 24(1) and 12(3) Directive 2004/38) - For refugees and beneficiaries of subsidiary humanitarian protection (Article 27(1) Directive 2004/83) - For asylum-seekers (Article 10 Directive 2003/9) - For unaccompanied minors (Article 3 of Council Resolution 97/C 221/03) - For children who fall within the scope of the Directive on temporary protection in the event of a mass-influx of displaced persons (Article 14(1) Directive 2001/55) - Proposed Directive on equal treatment (COM (2008) 426) extending protection against discrimination to education - Council Directive 2004/114/EC on admission of third-country students contains specific provisions on school pupil exchange programmes and on persons participating in voluntary service schemes - Council conclusions on child labour (3023rd Foreign Affairs Council meeting, Luxembourg, 14 June 2010) - The Stockholm Programme
<p>Why is it important to measure</p>	<p>Available data suggests persistent shortcomings in children’s and young people’s access to education from early childhood to upper secondary level. Children from families suffering socio-economic disadvantage and children from a migrant or ethnic minority background are particularly vulnerable to educational exclusion and underachievement.²⁷⁴</p>
<p>CRC reference</p>	<p>Articles 28 (education), 29 (aims of education), 31 (right to rest and play, access to cultural activities), and 2, 3, 6, 12 (CRC general</p>

²⁷³ Communication from the European Commission on a coherent framework of indicators and benchmarks for monitoring progress towards the Lisbon objectives in education and training, COM (2007) 61 final, 21 February 2007; Council Conclusions on Reference Levels of European Average Performance in Education and Training (Benchmarks), 8981/03 EDUC 83, 07 May 2003; Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Promoting young people’s full participation in education, employment and society, COM (2007) 498 final, 05 September 2007.

²⁷⁴ See for instance the Green Paper of the Commission on Migration and Mobility: challenges and opportunities for EU education systems, COM(2008) 423 final, 03 July 2008.

	<p>principles, in particular non-discrimination and participation); General Comment No. 5(2003) on General measures of implementation; General Comment No. 9 (2006) on rights of children with disabilities.</p>
<p>Other relevant international provisions</p>	<ul style="list-style-type: none"> • Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and its interpretation by the Committee on Economic Social and Cultural Rights (General Comment No. 13) • ECHR Protocol 1 Article 2, and ECHR Article 14 as well as ECHR Protocol 12 • UNESCO Convention Against Discrimination in Education 1960 (Articles 1 and 4)

<p>Indicators</p>	<ul style="list-style-type: none"> ➤ Existence of legal right for separated/immigrant children to access education at all levels on an equal basis as nationals. ➤ Children cared for outside the family system (ISCED level 0), as a percentage of all children in the same age group.²⁷⁵ ➤ Children attending mainstream schools (ISCED levels 1, 2) as a percentage of all children in the same age group.²⁷⁶ ➤ 15- to 19-year-olds participating in upper secondary education (ISCED level 3) or training as a percentage of the population in the same age group.²⁷⁷
<p>Key data</p>	<ul style="list-style-type: none"> • UNESCO-OECD-EUROSTAT (UOE) data collection • ICESCR concluding observations, General Comments 11 and 13, and information provided under the individual communication procedure once it enters into force • OECD data on students with disabilities, learning difficulties and disadvantages (SENDDD) • OECD data review project on Migrant education • ECHR's Protocol 1, Article 2 and ECHR Article 14 as well as Protocol 12 and derived jurisprudence • PIRLS Study/Progress in International Reading Literacy Study (PIRLS) conducted by the International Association for the Evaluation of Educational Achievement (IEA) • TIMSS Study/Trends in International Mathematics and Science Study (TIMSS) by the International Association for the Evaluation of Educational Achievement (IEA) • PISA Study/OECD Programme for International Student Assessment (PISA) • The Separated Children in European Programme reports on law and policy in relation to separated children across Europe contain a section on education and training²⁷⁸ • The work of the OECD Programme for International Student Assessment (PISA) in relation to immigrant children²⁷⁹

²⁷⁵ Disaggregated by: age group (0-2 years / 3 years-mandatory school age); number of hours they are cared for (1-29 hours / 30 hours or more per usual week); type of childcare (crèche, pre-school centre, childminder); family socio-economic status (combining family income, parent occupational status and parent educational level); migrant background (further disaggregating by country of origin); area of residence (metropolitan / urban / rural).

²⁷⁶ Disaggregated by educational level (primary / lower secondary); gender; provision time (half-day / full-day); migrant background (further disaggregating by country of origin); ethnic origin; disability status.

²⁷⁷ Disaggregated by: type of upper secondary education (general / vocational training); vocational stream and type of programme (within vocational education); gender; family socio-economic status (combining family income, parent occupational status and parent educational level); migrant background (further disaggregating by country of origin); ethnic origin; disability status.

²⁷⁸ See: www.separated-children-europe-programme.org/separated_children/publications/assessments/index.html.

	<ul style="list-style-type: none">• Individual state reports to the UN Committee on the Rights of the Child in relation to the implementation of Articles 22 and 28 UN CRC• Local/regional authority data on non-national children in schools in their area• European Commission reports on national implementation of various EU Directives which include provisions on equal access to education (notably in the field of immigration and asylum)
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4.5.2. Adaptability of education

Background

The EU provisions outlined above demonstrate EU's reluctance to enact binding measures in the field of education targeted at achieving anything more than a basic equality of access. Further, these measures focus primarily on migrant children. The Staff Working document accompanying the 2006 European Commission Communication *Towards an EU Strategy on the Rights of the Child* states that:

*"These Directives point to the right to schooling and provide for access to **education** for all children, including asylum seekers and refugees. Asylum-seeking children must be granted access to the education system on similar – but not necessarily the same – terms as those applicable to nationals (e.g. education may be provided in accommodation centres, rather than schools)."*²⁸⁰

Notwithstanding the limitations of EU competence in the field of education, measures confined to providing a basic right of access to schooling are insufficient to tackle the many functional and systemic inequalities that children face. Likewise, they do not address the *quality* of education received by children. Similarly, no obligation for Member States to adapt the education provided to the linguistic, cultural, physical, emotional and mental capacities of children has been introduced.

In order to facilitate equal access to education, schools and other educational institutions have to adapt their structure and functions to the needs, the evolving capacities and the socio-cultural background of the children. This implies providing support measures and tailoring actions to the specific needs of the child to promote children's academic and psychosocial development, thereby facilitating their social inclusion. An adaptable education system also responds to the challenges of our changing societies and economic and labour force systems. Accordingly, school curricula have to reflect the demands of these changes through the

²⁷⁹ Including the 2003 Report 'Where Immigrant Students Succeed: A Comparative Report of Performance and Engagement in PISA 2003', available at: www.oecd.org/pages/0,3417,en_32252351_32235731_1_1_1_1_1_1_1,00.html.

²⁸⁰ SEC (2006) 889, p. 5.

inclusion of additional key competences,²⁸¹ such as communication in foreign languages, digital competence and lessons in social and civic responsibilities.

There have been some modest attempts to implement more substantial EU educational provision to target the specific linguistic obstacles facing migrant children, notably in the form of **Directive 77/486 on the education of the children of migrant workers**.²⁸² This directive is innovative in its formal recognition of the fact that EU migrant children have distinct learning needs in comparison to children from the host state, that need to be reflected in educational provision. The directive focuses in particular on the need for Member States to integrate additional language tuition into educational provision for migrant children to assist their integration in the host state (Article 2). Moreover, Article 4 includes provision for mother tongue teaching. This might optimistically be construed as EU's sensitivity towards the importance of the child sustaining strong links with their cultural heritage and a departure from the well-trodden path of assimilation. However, a closer look at the specific context in which the directive was enacted indicates a much more instrumental motivation for this provision. The instrument was enacted in the midst of increasing employment migration from Southern Europe (particularly from Greece) to the Member States of Northern Europe, with a view to equipping children and families with the necessarily language skills to ensure their integration in the host state. Emphasis on mother-tongue teaching was more the result of eagerness to facilitate and encourage, the migrants' eventual return home, than of respect for their linguistic and cultural heritage.

The Directive presents other important limitations: it only applies to compulsory education (Article 1); it is confined to the dependent children of a worker who is the national of another Member State;²⁸³ and finally, its implementation has been deficient.²⁸⁴

More recently, however, positive signs have emerged of a more proactive and far-reaching approach to enhancing the educational rights of children and young people at EU level. In 2008, the European Commission adopted a

²⁸¹ See in this respect the Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning, 2006/962/EC.

²⁸² OJ L 199, 06 August 1977, p. 32–33.

²⁸³ Although a Council declaration published at the same time suggests that the Directive should also be implemented in relation to non-EC migrant workers' children. See European Commission's report on the implementation of Directive 77/486, COM (88) 787 final, p. 4.

²⁸⁴ This was in spite of renewed pressure imposed on Member States by the European Parliament to implement the Directive properly. See European Parliament Resolution on the application of Directive 77/486 on the education of the children of migrant workers, OJ C125, 11 May 1987, p. 8; See also European Commission's reports on the implementation of Directive 77/486, COM (84) 54 final and COM (88) 787 final. For further analysis of the scope of the directive, see Chapters 8 and 9 of Ackers, L. and Stalford, H. (2004) *A Community for Children? Children, Citizenship and Migration in the European Union*, Aldershot: Ashgate; and Cullen, H. (1996) 'From Migrants to Citizens? European Community Policy on Intercultural Education' in: *International and Comparative Law Quarterly* Vol. 45, p. 109 at p. 120.

Green paper proposing more in-depth consultation on the merits of resurrecting and adapting Directive 77/486 to respond more effectively to the educational needs of EU's child migrant population.²⁸⁵ In response to the public consultation that took place on 20 October 2009, the Ministers of Education adopted, in November 2009, Conclusions about the priorities for future work in this field at national and European level. These Council Conclusions²⁸⁶ focus on the need to close the achievement gap between children from a migrant background and native children and identify a number of concrete actions, which can be taken in the Member States in order to facilitate integration of the migrant children in the education systems of the EU Member States.

Other initiatives have been developed to enhance the educational opportunities of disadvantaged children. Notably, in 2003, the Council of Ministers of Education adopted a Resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training.²⁸⁷ Finally, the European Commission has put forward proposals for a wider anti-discrimination directive (COM (2008) 426), which would extend protection to children in the school environment. This will significantly enhance the provision already available under Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin which, so far, has not been applied to the educational context.²⁸⁸

Table 18: Indicator group – Adaptability of education

Indicator group	Adaptability of education
Indicator type	Process/Outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 9, 10, 19, 165 and 166 TFEU • Articles 14, 21, 22 and 24 EU Charter of Fundamental Rights • Lisbon Agenda and Social Inclusion Process

²⁸⁵ Green Paper 'Migration and Mobility: challenges and opportunities for EU education systems', Brussels, 03 July 2008, COM (2008) 423 final.

²⁸⁶ Council Conclusions on the education of children with a migrant background - 2978th Education, Youth and Culture Council meeting, Brussels, 26 November 2009.

²⁸⁷ OJ C 134/04, 07 June 2003, p. 6.

²⁸⁸ OJ L 180, 19 July 2000, p. 22. This directive explicitly includes education within its scope (Article 3(1)(g)) and could be used to reinforce obligations incumbent on Member States to implement more detailed and tailored provision to accommodate the distinct educational needs of minority ethnic, disabled or other disadvantaged national children. Note, however, that the directive excludes discrimination on grounds of nationality from its scope (Article 3(2)) so would be less effective in the context of migrant children.

	<ul style="list-style-type: none"> • Disability Convention (signed by the EC in March 2007) - Article 24 • Directive 77/486 (Articles 2 and 3) and European Commission's Green Paper 'Migration and mobility: challenges and opportunities for EU education systems' (COM (2008) 423 final)²⁸⁹ • Proposed Directive on equal treatment (COM (2008) 426) extending protection against discrimination to education. • Council conclusions on the education of children with a migrant background - 2978th Education, Youth and Culture Council meeting. Brussels, 26 November 2009
Why is it important measure to	In order to facilitate equal access to education, educational institutions have to adapt their structure and functions to the needs, the evolving capacities and the socio-cultural background of the children they serve. This requires ongoing scrutiny and development of educational curricula to place sufficient emphasis on life skills as much as academic achievement.
CRC reference	Article 28 (education); 29 (aims of education); 30 (rights of minorities); 31 (right to rest and play, access to cultural activities); 2, 3, 6, 12 (CRC general principles, in particular non-discrimination); General Comment No.1 (2001) on aims of education; General Comment No. 5(2003) on General measures of implementation; General Comment No. 9 (2006) on rights of children with disabilities.
Other relevant international provisions	<ul style="list-style-type: none"> • Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and its interpretation by the Committee on Economic Social and Cultural Rights (General Comment No. 13) • Article 2 Protocol 1 ECHR (right to be educated in accordance with parents' beliefs) and ECHR Article 14 and Additional Protocol 12 • UNESCO Convention Against Discrimination in Education 1960 (Article 5)
Indicators	<ul style="list-style-type: none"> ➤ Provision of specialist support in schools for non-native children who is sensitive to age, gender, culture and linguistic acquisition (for example financial support, travel assistance, supplementary language classes). ➤ Children with disabilities receiving additional resources, as a proportion of all children at the same educational level, disaggregated. ➤ Children with emotional, behavioural or learning difficulties receiving additional resources, as a proportion of all children at the same educational level, disaggregated.

²⁸⁹ Notes the prevalence of 'foreign' children in schools, and the need for more tailored provision beyond mere equality of access – could potentially lead to better enforcement of a more modern day version of Directive 77/486.

	<p>➤ Children with disadvantages (due to low socio-economic status, migrant background and others) receiving additional resources, as a proportion of all children at the same educational level.²⁹⁰</p>
Key data	<ul style="list-style-type: none"> • OECD data on students with disabilities, learning difficulties and disadvantages (SENDDD) • EUROSTAT EU SILC data • ECHR’s Protocol 1, Article 2 and ECHR Article 14 and Additional Protocol 12 and derived jurisprudence • The Separated Children in European Programme reports on law and policy in relation to separated children across Europe (section on education and training) • OECD Programme for International Student Assessment (PISA) in relation to immigrant children • Individual state reports to the UN Committee on the Rights of the Child in relation to the implementation of Articles 22 and 28 UN CRC • Local/regional authority data on non-national children in schools in their area

4.5.3. Children’s personal development

Article 29(1) of the CRC affirms that one of the aims of education is to promote “the development of the child’s personality, talents and mental and physical abilities to their fullest potential”.²⁹¹ This entails equipping children and young people with necessary key competences and school attainment levels to enable them to access the labour market and meet the demands of a rapidly changing knowledge and skills-based economy. The promotion of personal development requires that education and training (acquired through formal schooling and out-of-school, non-formal learning) provides children with “appropriate and equal opportunities for cultural, artistic, recreational and leisure activity”.²⁹²

There are numerous data sources reporting on indicators of children’s academic achievement²⁹³ as well as ongoing EU development of new indicators of other basic skills (as language, learning and civic skills).²⁹⁴ To

²⁹⁰ These final three outcome indicators correspond to work being undertaken by the OECD.

²⁹¹ Committee on the Rights of the Child, General Comment No. 1: The aims of education (2001) CRC/GC/2001/1.

²⁹² United Nations Convention on the Rights of the Child (1989), Article 31.

²⁹³ For example, at international level: OECD Programme for International Student Assessment (PISA); OECD report series ‘Education at a Glance’ (last issue 2008); IEA Progress in International Reading Literacy Study (PIRLS); IEA Trends in Mathematics and Science Study (TIMSS).

²⁹⁴ See in this respect the European Commission’s report ‘Progress towards the Lisbon Objectives in Education and Training. Indicators and Benchmarks 2008’, SEC(2008)2293,

complement this work the focus of this study is on other aspects of personal development that fall under EU competence, which relate to inter-cultural exchange and vocational orientation.

An extensive body of EU education provision aims at promoting cross-national cultural and linguistic exchange and cooperation. This consists mainly of soft law and funding initiatives, established in the 1990s to support various stages of education.²⁹⁵ Only one of these programmes (Lifelong learning – COMENIUS) targets children’s education specifically.²⁹⁶ COMENIUS focuses on the first phase of education, from pre-school and primary to secondary schools and its main objective is to “[...] develop knowledge and understanding among young people and educational staff of the diversity of European cultures, languages and values.”²⁹⁷ The programme has funded a variety of mobility, language, exchange and training programmes for pupils, teachers, local authorities, parents’ associations, non-governmental organisations, teacher training institutes, universities and all other educational staff.

Most other EU education exchange and development initiatives seek to equip young people with the necessary skills to make an active and productive contribution to the future labour market. As already noted, the Lisbon Strategy states that its primary objective is to make the EU the most competitive and dynamic knowledge-based economy in the world by 2010. Improving educational and training systems across the EU is seen as central to this aim, and the mechanism chosen for cooperation in this domain is the Open Method of Coordination (OMC). This has served as a basis for a number of parallel activities to promote youth participation and desire for knowledge enhancement as well as sense of social and economic responsibility.

In order to improve young people’s school-to-work transition, the EU encourages education and labour market institutions to make “efforts in providing all young people with tailored guidance and counselling for choosing a suitable education pathway leading to labour market qualification”.²⁹⁸ This entails that qualified personnel (for example counsellors and school social workers) offer children and young people enough information about the requirements and possibilities of different

Part C: The coherent framework of indicators and benchmarks – Development of new indicators, pp. 167-178.

²⁹⁵ In 2006, the European Commission integrated all of these initiatives into a single ‘Lifelong Learning Programme’ and allocated a budget of nearly €7 billion for their development over the period 2007- 2013, Decision of the European Parliament and the Council establishing an integrated action programme in the field of lifelong learning, COM (2006) 236 final, 24 May 2006. For more information see: http://ec.europa.eu/education/lifelong-learning-programme/doc78_en.htm.

²⁹⁶ COMENIUS has been allocated nearly €1 billion to fund activities between 2007 and 2013 but this only constitutes approximately 13 per cent of the total budget, the rest having been allocated for adult lifelong learning activities.

²⁹⁷ See European Commission Education and Training website at: http://ec.europa.eu/education/lifelong-learning-programme/doc84_en.htm.

²⁹⁸ COM (2007) 498 final, 05 September 2007.

educational and vocational choices. It also entails that children with special needs receive sufficient support (provided for example by tutors or peer mentors) to address potential obstacles to achieving higher qualifications.

Table 19: Indicator group – Children’s personal development

Indicator group	Children’s personal development
Indicator type	Process/Outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Articles 9, 10, 19, 165 and 166 TFEU • Articles 14, 21, 22 and 24, 26 of the EU Charter of Fundamental Rights • Lisbon Agenda and Social Inclusion Process • Disability Convention (signed by the EC in March 2007) – Article 24 • Proposed Directive on equal treatment (COM (2008) 426) extending protection against discrimination to education • Council conclusions of 11 May 2010 on competences supporting lifelong learning and the ‘new skills for new jobs’ initiative (2010/C 135/03) • Council conclusions of 11 May 2010 on the social dimension of education and training (2010/C 135/02)
Why is it important to measure	<p>This indicator has been introduced in order to reflect the situation of those adolescents in the EU who undergo the transition between education and employment. While the ‘human potential’ connotations embedded in the ‘personal development’ concept may seem at odds with the emphasis this study places on the implementation of children’s rights in the ‘here and now’, the existence and quality of future opportunities are equally important to children.</p>
CRC reference	<p>Articles 28 (education), 29 (aims of education), 30 (rights of minorities), and 2, 3, 6, 12 (CRC general principles, in particular non-discrimination); General Comment No.1 (2001) on aims of education; General Comment No. 5(2003) on General measures of implementation; General Comment No. 9 (2006) on rights of children with disabilities</p>
Other relevant international provisions	<ul style="list-style-type: none"> • Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and its interpretation by the Committee on Economic Social and Cultural Rights (General Comment No. 13)
Indicators	<ul style="list-style-type: none"> ➤ Proportion of children/young people who have taken part in a COMENIUS-funded programme (allowing for disaggregation).

	<ul style="list-style-type: none"> ➤ Proportion of young people out of education, employment or training within a year of leaving school (allowing for disaggregation). ➤ Existence of specialist programmes to re-integrate young people identified as out of education, employment or training.
Key data	<p>International data relating to indicators of personal development is very limited (although some of the PISA and HBSC data are useful). The proposed indicators are therefore partly subjective, based on responses to specific surveys conducted with children and young people, therefore enabling them to participate in the process of monitoring the implementation of their rights.</p> <p>National and regional data on young people NEET is available from governmental (education/youth and family) departments. This is disaggregated according to region and, in some cases, gender, but further disaggregation in accordance with ethnic minority, disability, age, nationality etc. could be achieved.</p>

4.5.4. Children’s active citizenship and participation in school-related and sport-related activities

Background

An important aspect of children’s personal development, treated as a separate indicators domain in this study, consists of acquiring necessary skills for active citizenship and participation in school.

‘Citizenship’ and ‘participation’ are a familiar rhetoric in EU legal and political discourse²⁹⁹ and there has been significant investment, through EU education policy, to nurture such values in Europe’s young people.³⁰⁰

Young people’s role as active, contributing citizens was acknowledged explicitly in the European Commission’s 2001 White Paper ‘A New Impetus for European Youth’:³⁰¹

“If young people have one clear message, it is that they want their voice to be heard and want to be regarded as fully-fledged participants in the process; they want to play their part in building Europe; they want to influence the debate on the way it develops. It is time now to regard youth as a positive force in the construction of Europe rather than as a problem. In

²⁹⁹ Although admittedly, citizenship is largely associated with the rights of EU nationals in the context of free movement. See further, Dougan, 2009; 2006; and Currie, 2009.

³⁰⁰ See the Decision No. 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the ‘Youth in Action’ programme for the period 2007 to 2013. One of the aims of this programme is to promote young people’s active citizenship.

³⁰¹ COM/2001/0681 final.

other words, we have to give young people the wherewithal to express their ideas, and to test them against similar ideas from other players in civil society.”³⁰²

The European Youth Pact³⁰³ was introduced in 2005 to capitalise on young people’s civic and economic capacity and is aimed at promoting young people’s professional integration and social inclusion. This programme is composed of three main strands, listed below.

- Promoting dialogue between young people and policy-makers with a view to involving young people in policy-shaping debates surrounding the European agenda, thereby enhancing their **active citizenship**.
- **Social and occupational integration** of young people. The European Youth Pact sets out to improve the education and training, and employability and social inclusion of young Europeans, while reconciling work and family life.
- Inclusion of a **youth dimension in other policies**. The European Commission actively works to take youth into account in a number of policy areas, of which anti-discrimination and health are the most prominent.

Such initiatives bear testimony to EU’s unequivocal acknowledgement of the value of engaging young people in policy formation.³⁰⁴ **The European Union’s commitment to endorsing young people’s feedback within concrete policy and legal initiatives, however, is less clear.** There is a lot of support for exercises that seek to elicit young people’s views on European issues, but **less evidence of such views directly informing the subsequent development of law and policy.**

Other criticism that may be raised in this area of EU activity relate to the past focus on a narrow age-group, namely adolescents and young adults, often originating from white Western European background. More recent initiatives have partially addressed these concerns. For instance, in January 2007 a new EU Programme, Youth in Action I, was introduced to encourage the involvement of young people (aged 13 to 30) with fewer opportunities in the democratic life of the EU. This programme will run until December 2013 and consists of five operational actions.

- **Action 1** - Youth for Europe: supporting exchanges and youth initiatives and encouraging young people to participate in democratic life.

³⁰² *Idem*, p. 5.

³⁰³ Communication from the European Commission to the Council on European policies concerning youth - Addressing the concerns of young people in Europe - implementing the European Youth Pact and promoting active citizenship - Communication from Mr. Figel in association with Mr. Špidla, SEC (2005) 693, COM (2005) 0206 final. And Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on addressing the concerns of young people in Europe — implementing the European Pact for Youth and promoting active citizenship, 24 November 2005, OJ C 292/5.

³⁰⁴ For a recent example, see the Flash Eurobarometer survey No. 202 *Young Europeans A survey among young people aged between 15-30 in the European Union*, February 2007, conducted by Gallup at the request of DG Communication.

- **Action 2** - European Voluntary Service: encouraging young people to take part in a voluntary activity abroad that benefits the general public.
- **Action 3** - Youth in the World: encouraging cooperation with partner countries by building networks, promoting the exchange of information and assisting with cross-border activities.
- **Action 4** - Youth Support Systems: promoting the development of exchange, training and information schemes.
- **Action 5** - European Cooperation in the field of youth: contributing to the development of policy cooperation in the field of youth

The indicators which follow seek to reveal the extent to which such initiatives have impacted upon children and young people’s level of participation and, by implication, enhanced their ability to nurture and express a sense of social and civic responsibility.

Table 20: Indicator group – Children’s active citizenship, participation in school-related and sport-related activities

Indicator group	Children’s active citizenship, participation in school-related and sport-related activities
Indicator type	Process and outcome
EU relevance	<ul style="list-style-type: none"> • Article 3 TEU • Article 20, 165 TFEU • Article 17 EC • EU ‘Youth in Action’ programme 2007-2013³⁰⁵ • Articles 11, 14 and 24 EU Charter of Fundamental Rights
Why is it important to measure	<p>Children’s participation contributes to different aspects of their development, enabling them to acquire knowledge, skills and positive attitudes, expand their interests and aspirations and gain confidence in their own capacities. Children’s participation in decision-making that directly concern their lives allows them to make a unique contribution, based on their ways of thinking and experiences. Citizenship, as enshrined in Article 17 EC, is a key component of EU integration but has been interpreted and applied almost exclusively in the context of free movement (Article 18 EC). This indicator measures the functioning of democratic mechanisms that enable children to contribute to the life of the Community as active citizens more broadly.</p> <p>As most of the work on this issue has focused on youth participation (from 15 years onwards), aspects of social and political participation that</p>

³⁰⁵ Decision No. 1719/2006/EC of 15 November 2006, in relation to the issue of youth civic participation, see also the Council of Europe’s Recommendation Rec(2004)13 of the Committee of Ministers to member states on the participation of young people in local and regional life of 17 November 2004.

	can also be enjoyed by younger populations (children from 9 years onwards) have been selected.
CRC reference	Articles 28 (education), 29 (aims of education), 30 (rights of minorities), 31 (right to rest and play, access to cultural activities), and 2, 3, 6, 12 (CRC general principles, in particular non-discrimination); General Comment No.1 (2001) on aims of education; General Comment No. 5 (2003) on General measures of implementation; General Comment No. 9 (2006) on rights of children with disabilities.
Indicators	<ul style="list-style-type: none"> ➤ Proportion of children who have been engaged in the following activities at school (allowing for disaggregation): <ul style="list-style-type: none"> - membership of a school or student council; - class representative; - active role in a pupil or student meeting; - peer mediation; - collaboration in the school newspaper; - peer mentorship or counselling. ➤ Proportion of children having been engaged in the following social or political activities (allowing for disaggregation): <ul style="list-style-type: none"> - participation in a child or youth forum; - participation in a child or youth association/organisation; - involvement as a representative in a child or youth council; - participation in a community (local or regional) project; - participation in a collective supporting action (for example collecting signatures); - involvement in a protest action; - participation in voluntary work. ➤ Proportion of children/young people having been engaged in the sport (allowing for disaggregation). ➤ Existence of provisions/instruments aimed at the protection of the well-being of children involved in sport activities.
Key data	<ul style="list-style-type: none"> • ICCS Study/International Civic and Citizenship Education Study (ICCS) by the International Association for the Evaluation of Educational Achievement (IEA) • European Social Survey (ESS) • National surveys among young people • European Survey EUYOUNG

Reflections and future steps

This report has been concerned with developing tools that can be used to monitor the impact of EU measures on children in a more systematic and robust way. The conceptual and methodological framework in which the indicators have been developed is as important as the outcome. A distinctly child-focused approach has been adopted, by anchoring the indicators firmly in a child rights framework: that of the UN Convention on the Rights of the Child. The interpretation and expectations of how EU activity affects children are explicitly informed by and measured against the rights, principles and obligations set out in that instrument. Specifically, the indicators have then been formulated to respond to the EU framework in a way that reflects the general principles underlying the CRC - notably non-discrimination, best interests, right to life and development, and child participation. These principles are further supported by other international children's rights and human rights instruments.

The present indicators provide a first step towards developing a coherent monitoring mechanism at EU level and are, therefore, central to EU's future Strategy on the Rights of the Child. However, they present a number of challenges that need to be addressed:

First, it is important to note that no indicator set can ever be definitive – it can only be 'indicative' of the impact of EU measures on children at a certain point in time, and should be viewed as one component of broader EU monitoring and development of children's rights. In addition, these indicators do not touch on all areas of EU activity of relevance to children. The four substantive areas identified do not claim to present an exhaustive list of all possible indicator areas. Instead, they provide a point of departure. A possible next step is a rigorous pilot study across the Member States to test the feasibility and utility of the specific set of indicators identified in the report. They should be adapted to respond to EU developments and data availability, and should gradually extend to cover other areas of importance that need to be identified.

Secondly, a number of experts consulted warned against the indicators becoming just another exercise in tokenism. To avoid this, specific attention should be paid to whether the indicators, as they are currently framed, are sufficiently amenable to **EU structures and processes**. This requires identification of the officials who could become responsible for their application and the means by which the findings of the indicators will inform future legal, policy and budgetary developments affecting children. This process could be enhanced if there was a concerted and collaborative commitment to the application and development of the indicators, building on the distinct expertise of the relevant Directorate-Generals within the European Commission learning from those already working to develop indicators internally. The Social Protection Committee Indicators Sub-Group working on child poverty is an obvious example, and the extensive efforts associated with the OMC and Social Inclusion process also provide

invaluable guidance on the future direction of these indicators. It is also important to note that the Committee of the Regions, commenting on the summary report of these indicators, welcomed them as an important step towards implementing more evidence-based policies, while drawing attention to the fact that they only briefly touch on the area of competence of local and regional authorities, being, therefore, of limited use for them.³⁰⁶ The Committee also stated that it actively supports the annual dialogue on multi-level protection and promotion of fundamental rights, co-organised by the European Commission, the FRA and the Committee of the Regions, as a tool for ensuring the effective involvement of Local and Regional Authorities in European cooperation on the issue of children's rights.³⁰⁷

Thirdly, in order to complement more effective internal collaboration, efforts could be made to engage with international children's rights programmes. This study reveals considerable progress and willingness on the part of **international stakeholders** to assist the EU in developing consistent and robust monitoring of the implementation of the rights of the child. This collaboration could be extended to identifying and developing more compatible, synergetic monitoring mechanisms, and to pooling skills and resources in relation to the collection of information.

A fourth, and perhaps mostly critical point is, the issue of data availability. The indicators rely heavily on the availability of data that reveal the situation of children. Experts mandated with data collection at the regional, national, EU and international levels could be engaged more effectively in identifying possibilities for more sensitive disaggregation of existing data, and in suggesting how information-gathering techniques can be adapted and renewed to account for children. Therefore it is crucial that producers and users of data and statistics work together in order to ensure that such indicators can be applied.

Finally, it will be crucial to involve children and young people in identifying further areas of priority and need. Consistent with this, a number of indicators seek to draw on the direct experiences and views of young people.³⁰⁸ However, at the present time there is little in the way of comparable information of this nature. This reinforces the need for more investment in participatory qualitative and quantitative research with children from all backgrounds, enhanced dialogue with civil society, and more effective exploitation of the findings of EU funded programmes.

³⁰⁶ Opinion of the Committee of the Regions on Local and Regional Cooperation to Protect the Rights of the Child in the European Union.

³⁰⁷ Opinion of the Committee of the Regions on local and regional cooperation to protect the rights of the child in the European Union, 9-10 June 2010 (CdR 54/2010 final), paragraph 11, available at:
http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifiant=cdR/civex-v\dossiers/civex-v-001/cdr54-2010_fin_ac.doc&language=EN.

³⁰⁸ For instance this has recently been done by FRA in its report *Experience of Discrimination, Social Marginalisation and Violence among Muslim and non-Muslim Youth*, Luxembourg: Publications Office, available at:
http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub-racism-marginalisation_en.htm.

Possible steps

Feasibility studies could be conducted focusing on one cluster of indicators at a time.

Focal points could be appointed in each of the relevant DGs of the European Commission to facilitate synergies among the indicators and their integration in the DGs policy and monitoring activities. This could also facilitate the identification and communication of collaborative opportunities among the various DGs concerned.

Establishment of an EU indicators forum to support ongoing consultation and collaboration with internal experts and international stakeholders working in the field of children's rights/monitoring.

Formulation of a detailed plan of action for a more child-focused approach to data collection and disaggregation, in collaboration with key experts in the field.

Support for participatory research with children and more routine integration of a participatory requirement into relevant EU activities, including calls for tender/research relating to children.

Obtaining information on such a wide scale (both in breadth and depth) cannot and should not be achieved by the EU alone but demands ongoing collaboration with existing international data-gathering³⁰⁹ processes as well as more effective engagement with national rapporteurs and network NGOs.³¹⁰ A more routine collaborative, streamlined approach in this regard would avoid unnecessary and costly duplication, and allow for a more coherent and persuasive system of monitoring of the implementation of the rights of the child.

³⁰⁹ An example is the joint work between Unicef Innocenti and DG JLS on developing trafficking indicators; and the ongoing collaboration between UNICEF, OECD and the Commission to develop indicators relating to the family.

³¹⁰ Such as Save the Children, ChildONEurope, Eurochild and the Youth and European Social Work (YES) Forum.

Annex: Check-lists for indicator development

1. Check-list for child rights-based indicator development

The discussion of a conceptual framework for child rights indicator development has highlighted the need for a comprehensive approach to assessment and monitoring. The following criteria are suggested as guidance to support the development of children's rights indicators. They aim to encompass key concepts of the child rights and childhood sociology perspectives. These concepts include:

- the 'General Principles' identified by the UN CRC Committee;
- child rights standards in relation to state obligations, as informed by the CRC general measures of implementation;
- fundamental rights concepts, which reveal the distinct roles of the rights holders and the duty bearers, as well as the dynamics of empowerment and accountability;
- the age/generational dimension of childhood (vis-à-vis adulthood).

The following criteria are intended as a check-list for assessing whether key dimensions of the rights of the child have been addressed in developing indicators.

Criteria to be met for the development of specifically child rights-based indicator

- Indicator regards children as a social group as a primary unit of observation (not as part of a family, household).
- Indicator regards children as active agents/competent social actors (not as passive objects, recipients of care).
- Indicator is based on the CRC definition of a 'child', as essentially all persons below the age of 18.
- However, indicator may also address the need for some flexibility in setting age limits and applying them (as for youth welfare/social service measures provided also to young adults, for example up to 21).
- Indicator uses child-oriented data, disaggregated by age/age group.
- Indicator addresses the generational dimension (that is comparing children's rights and status to those of adults).
- Indicator is grounded in a normative child rights framework, enabling assessment of:
 - Generally, the state obligations to:

- respect child rights (for example addresses the obligation of the state to refrain from arbitrary interference in child's freedom of speech);
 - protect child rights (for example addresses the obligation of the state to protect child's privacy from undue interference by various actors (such as the sensationalist media); and to
 - fulfil child rights (for example addresses the obligations of the state to ensure adequate provision of health, education and other services).
- Key dimensions of concrete respective right (for example the ban of corporal punishment as part of protection from violence standards).
 - A specific focus not only on the existing legislation and policy, but also on its **implementation** in practice 'on the ground'.
 - CRC general measures of implementation, including:
 - ratification of child rights-related international treaties (for a list, see the Annex to UN Treaty bodies Chairpersons report on indicators 2006), review of existing reservations, review of the implementation of international instruments in the domestic legal order of Member States;
 - review of legislation for compatibility with child rights standards;
 - existence of structures instrumental to child rights implementation, including coordination mechanisms (for example in decentralised states, with federal/regional/local government structure);
 - child rights Action Plans/Strategies for priority setting;
 - child rights mainstreaming policies;
 - child focused, child rights-based data collection and indicator development;
 - child focused, child rights-based research;
 - impact assessment and evaluation;
 - monitoring and reporting;
 - independent child rights institutions (such as ombudsperson institutions);
 - capacity-building/training programmes;
 - information and awareness-raising;
 - civil society participation;
 - child participation;
 - international cooperation in the area of child rights protection; and,
 - resource allocation/designated budgets.
- Indicator reflects principle of universality of standards (for example it aims at specific cross-country/sector comparability).
 - Indicator reflects principle of indivisibility and inter-relatedness of rights (for example by allowing links between different rights to be highlighted; by addressing the need for clustering - no indicators in isolation).
 - Indicator reflects principle of empowerment of the child as a right holder (for example through child rights education, awareness-raising, feedback mechanisms).

- ☑ Indicator reflects principle of accountability of the duty bearer / EU / State / institutions / parents (for example by addressing monitoring, redress and compensation).
- ☑ Indicator reflects the child's right to non-discrimination (in particular through disaggregation of data).
- ☑ Indicator takes into account the possible impact of parental status/situation (such as belonging to minority or unemployment of parents) on the situation of children.
- ☑ Indicator reflects the child's right to participation (for example addresses direct involvement of children in decision-making processes, addresses representation issues, focuses on subjective views of children and others).
- ☑ Indicator is framed in a way that can be understood by children (for example in the course of a child participatory policy assessment process).
- ☑ Indicator reflects principle of evolving capacities of the child (for example by addressing the dynamic nature of parental responsibilities).
- ☑ Indicator is sensitive to measures aiming to reconcile work and family life (for example the availability and accessibility of child care services and their opening hours).
- ☑ Indicator is sensitive to the allocation of responsibilities between parents/care-takers and the state.

Other principles relating to the development of indicators in general should also be applied in a children's rights context, notably:

- ☑ Indicator is methodologically clear: who monitors what, for which purpose, and based on what data?
- ☑ Indicators are relevant, valid and reliable; simple, timely and few in number; based on objective information and data-generating mechanisms; suitable for temporal and spatial comparison and following relevant international statistical standards.
- ☑ Indicator is amenable to disaggregation.
- ☑ Indicator is sensitive to the use of definitions (for example legal definitions of crimes, concepts of 'family') in a cross-national context; attention is paid to ensuring equivalence and comparability of terminology.

2. Example list of generic child rights indicators

The following list aims to provide examples of indicators relevant to the assessment of child rights protection. This may assist in the development of indicators in the areas covered by this project or in any additional areas relevant to EU legislation or with regard to specific policies. The list focuses on structure and process indicators and does not constitute an exhaustive list of generic child rights indicators.

Indicators relating to the **empowerment of children**

- Availability/accessibility (*need separate indicators each*) of child rights education programmes (for example EU support for child rights education

in school curricula, information and awareness-raising campaigns with child and youth organisations).

- Availability/accessibility to child rehabilitation and strengthening programmes (for example EU support to recovery of sexually abused children).
- Availability/accessibility of education programmes for minority children (for example Roma and immigrants).

Indicators relating to **child participation**

- Availability/accessibility of child participation initiatives and decision-making processes affecting children, including support structures for information of children and training for adults.
- Availability/accessibility of institutions and structures for child self-representation and child self-organisation (for example EU support to child-led organisations, involvement of child and youth organisations in decision-making at the EU level).
- Existence of administrative/court procedures adapted to the needs of children, including for specific groups of children such as victims/witnesses of violence, exploitation, separated and asylum-seeking children and access for children to direct legal/psychological support in such procedures.

Indicators relating to non-discrimination against children

- Disaggregation of data to address specific groups of children/better identify children at risk of marginalisation; data should be disaggregated by (see UN CRC Committee Reporting Guidelines):
 - age/age-group, gender, location (urban/rural/remote areas), belonging to a minority, nationality, religion, ethnicity and disability.
- Policies addressing age discrimination/the generational dimension (children vis-à-vis adults) in EU legislation and policy-making (for example under Article 13 EU Treaty).
- Review of consistency of age limits (continued justification in light of its intended purpose).
- Policies based on inclusive approaches responsive to the needs of the children, for example minority protection (such as adequate educational opportunities for Roma children in regular schools), as well as ensuring the full social integration of children, for example children with disabilities.

Indicators relating to duty-bearers' accountability

- Member States' participation in international human rights or child rights specific monitoring processes (for example number of state reports overdue, number of complaints involving children); existence of follow-up mechanisms with regard to the implementation of jurisprudence

(judgements of the European Court of Human Rights) and of the concluding observations of monitoring bodies as such of the UN Committee on the Rights of the Child.

- Availability of information on and accessibility of judicial, quasi-judicial and non-judicial/ombudspersons bodies and other remedial institutions in the Member States and at EU level, both for adults and for children.
- Availability/accessibility of redress and compensation procedures
- Availability/accessibility of recovery and rehabilitation programmes after traumatising events.
- Existence of instruments and structures for monitoring quality standards, for example for foster parenting, adoption procedures, institutional settings, including effectiveness of complaint and redress mechanisms.
- Existence of independent child rights monitoring and evaluation instruments in the Member States and at EU level (for example through annual reporting).

General Framework (legal, political, structural) indicators

- Ratification of International/European or other regional treaties relevant for child rights protection.
- Statements of political and budgetary commitment on child rights issues in international form, for example sponsoring of UN resolutions; nomination of experts in UN/Council of Europe treaty monitoring bodies by Member States; EU/Member States contribution to major conferences.
- Existence/effectiveness of policies and mechanisms to ensure consistency and coherence of child rights based efforts in relation to domestic and EU internal policies and foreign policy; external relations and international cooperation programmes.
- Implementation of legislative review processes of compatibility of domestic and EU legislation, policies and administrative practice with international and European child rights standards.
- Review of references/application of child rights provisions of the EU Charter of Fundamental Rights (for example in case law of the European Court of Justice and of the domestic courts).
- Member States Constitutional recognition of child rights standards, including the best interests of the child principle.
- Enforceability of international/European human/child rights treaties in the Member States.
- Existence/effectiveness of (cross-sectoral) coordination structures and instruments at the level of the EU (for example between European Commission, Council and Parliament) and of the Member States (e.g. across different levels of government, in particular in Member States with a strong decentralised system of governance).
- Existence / effectiveness of Action Plans/Strategies on child rights protection (in general/on specific matters; with/without time-bound objectives/indicators for monitoring, at the level of the EU and of the Member States.

- Existence/effectiveness of child rights mainstreaming activities at the level of the EU and of the Member States, for example through training, amendments to curricula, awareness-raising and information programmes.
- Existence/effectiveness of child-focused and disaggregated statistics and data collection at the level of the EU (for example through EUROSTAT) and of the Member States (for example through national statistical offices) in such fields as child-accessible health services, children in particular difficult situations (as children victims of violence and exploitation, trafficked children, child refugees, migrants, juveniles in detention) and child participation in decision-making.
- Existence/effectiveness of a child-focused research agenda at the level of the EU and of the Member States, outlining child rights-based analysis, impact assessment, monitoring and evaluation, development of indicators, support to research networks; proportion of funding allocated to child research vis-à-vis research concerning other population groups, across the EU and within Member States.
- Existence/effectiveness of formal child impact assessments in, for example legislation, judiciary, policy-making, administration/implementation, monitoring and evaluation at the level of the EU and of the Member States.
- Assessment of child-related public and private service provision (for example in alternative family care, child care services, health care, education), based on the criteria of availability of services, accessibility (including affordability), adaptability to specific needs, and quality of services, including the existence and effectiveness of monitoring and accountability schemes.
- Existence/effectiveness of funding schemes in support of civil society engagement in child rights protection, at the level of the EU and of the Member States.
- Proportion of resource/budgetary allocation for child rights focused funding programmes/expenditures, in general/in relation to specific areas (for example protection from violence, integration programmes for migrants, inclusive education for disabled children) vis-à-vis other areas of EU/Member States' expenditure.

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