The rights of the child and protection of children

More children could be at risk of poverty or social exclusion in many EU Member States as a result of the economic crisis, a topic that continued to be at the forefront of European Union (EU) policy debates in 2012. EU Member States had to take measures to address cases of malnutrition, as well as make budgetary cuts that had an impact on education, healthcare and social services, which are important for children. Despite EU and Member State efforts, domestic violence, sexual abuse and trafficking continued to affect children living in the EU. In addition, children continued arriving in the EU as asylum seekers with or without their families. Almost one out of three asylum seekers arriving in the EU in 2012 was a child and there is concern in some Member States that their protection remains a challenge.

The new Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure was opened for signature in February 2012. The Optional Protocol provides children, groups of children or their representatives with the possibility to bring a complaint before the UN Committee on the Rights of the Child. As of 31 December 2012, 13 EU Member States (Austria, Belgium, Cyprus, Finland, Germany, Italy, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia and Spain,) had signed the Optional Protocol (see also Chapter 10 on EU Member States and international obligations).

In relation to the EU’s accession to international instruments, the European Parliament recommended that the EU explore how to accede to the United Nations Convention on the Rights of the Child (CRC), as it has done with the United Nations Convention on the Rights of Persons with Disabilities.

The Council of Europe Strategy for the Rights of the Child (2012–2015), a part of its cross-cutting programme

Key developments in the area of children’s rights

- The European Parliament and Council of the European Union adopt a Directive establishing minimum standards on the rights, support and protection of victims of crime, strengthening the protection of children who are victims of crime.
- The European Commission addresses the issues of child trafficking and sexual abuse of children on the internet through the adoption of two European strategies: the EU Strategy towards the Eradication of Trafficking in Human Beings and the European Strategy for a Better Internet for Children.
- Eurostat data show that in 2011 children were at greater risk of poverty or social exclusion than the rest of the population: 27% of children faced that risk. To help address this problem, the European Commission is preparing to adopt a Recommendation on Child Poverty with a focus on access to resources, services and child participation.
- EU Member States continue to prepare legal and policy reforms in the fields of crime, family and child protection. A number of reforms have been stopped or delayed, however, in part because of the economic crisis.

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2 Ibid.
5 UN, Convention on the Rights of Persons with Disabilities (CRPD), 13 December 2006.
6 Council of Europe, Committee of Ministers (2012a).
‘Building a Europe for and with children’, was adopted on 15 February 2012. The strategy aims to achieve the effective implementation of existing standards on children’s rights and will provide guidance, advice and support on how best to:

- bridge gaps between standards and practice in promoting child-friendly services and systems in the areas of justice, health and social services;
- eliminate all forms of violence against children;
- guarantee the rights of children in vulnerable situations, such as those with disabilities, in detention, in alternative care, migrant or Roma children; and
- promote child participation.

Several national parliaments have debated the explicit inclusion of the rights of the child in national constitutions. For example, a number of legislative proposals were under discussion in Germany,7 while in November 2012 referendum the Irish approved an amendment to the constitution giving voice to children in legal proceedings affecting them and recognising children’s rights in general.8

4.1. Violence against children

Violence against children in the form of physical, sexual or psychological abuse occurs in diverse settings, including in the family, in the community or on the internet. In 2012, EU Member States addressed violence against children through legislation, policies or by improving service delivery.

The EU adoption of a comprehensive strategy on violence against women and girls9 is, however, still pending. The directive establishing minimum standards on the rights, support and protection of victims of crime, which was adopted in 2012 (see also Chapter 9 on rights of crime victims),10 supplements the 2011 EU directive, which helps combat sexual abuse and sexual exploitation of children and child pornography.11 The 2012 directive establishes protection guarantees for child victims of crime, such as special consideration for the vulnerability of children in court proceedings, the use of appropriate methods to avoid the risk of victimisation and the need for trained professionals.

On 1 June 2012, Finland ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. With the exception of the Czech Republic and Ireland, all EU Member States and Croatia have now ratified this instrument. The UN High Commissioner for Human Rights presented a thematic report on violence against women and girls with disabilities, which highlights the lack of systematised and disaggregated data.12

FRA ACTIVITY

Combating hostility and violence against children with disabilities

FRA is conducting research on hostility and violence against children with disabilities in the EU. This will contribute to filling data gaps in this under-researched area (see also Chapter 5 on equality and non-discrimination and Chapter 9 on rights of crime victims).

The FRA project, Children with disabilities: targeted violence and hostility, seeks to address the under-reporting of abuse, lack of support and poor awareness of rights among disabled children, which FRA research has uncovered.

The project will identify the related legal and policy framework and determine how information about such hostility is collected. The project will look for promising practices to see how some EU Member States are addressing the problem.


The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence, which also covers violence against girls, is the only legally binding instrument on the matter at European level. Six Member States signed the Convention in 2012, but none had ratified by the end of the year (see also Chapter 10).13

The Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence14 also aim at promoting the development and implementation of a holistic national framework for safeguarding the rights of the child and protecting children from all forms of violence.

The Council of Europe Committee of Ministers approved a recommendation in June 2012 on the protection

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7 Germany, Entwurf eines Gesetzes zur Änderung des Grundgesetzes – Gesetz zur grundgesetzlichen Verankerung von Kinderrechten, 26 June 2012; Germany, Stellungnahme der Bundesregierung zu der Entschließung des Bundesrates Kinderrechte im Grundgesetz verankern, 19 July 2012.
8 Irish Times (2012).
9 European Commission (2010b).
12 UN, Human Rights Council (HRC) (2012).
13 Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No. 210, 2011.
14 Council of Europe, Committee of Ministers (2009).
and promotion of the rights of women and girls with disabilities, noting the need to improve their access to justice and their protection from exploitation, violence and abuse.\(^1\) (for more information on access to justice, see Chapter 8 of this Annual report).

"Where the social integration of persons with disabilities is concerned, a conceptual and methodological sea change has taken place in international law since the end of the 20th century, as people with disabilities are no longer considered as patients or objects of charity but as holders of rights and full citizens who, when interacting with social and environmental barriers, may be prevented from participating in society."

Recommendation CM/Rec(2012)6 of the Committee of Ministers to Member States on the protection and promotion of the rights of women and girls with disabilities ( Adopted by the Committee of Ministers on 13 June 2012)

The European Committee of Social Rights published its conclusions on Articles 17 and 7, paragraph 10, of the Revised European Social Charter in January 2012. Article 17 concerns the right of children and young persons to social and legal protection, including against all forms of corporal punishment in all settings, rights of children in institutions, young offenders, and effective right to education. Article 7, paragraph 10, guarantees special protection against the physical and moral dangers to which children are exposed, such as sexual exploitation of children.

As regards the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, known as the Lanzarote Convention, the Committee of the Parties to the Convention agreed in 2012 that the first monitoring round would focus on “sexual abuse of children in the circle of trust”.

A questionnaire to be addressed to the Parties was expected to be adopted in March 2013.

The Lanzarote Committee is also mandated to facilitate the collection, analysis and exchange of information, experience and good practices between states to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children. The committee thereby plays an observatory role on the protection of children against sexual exploitation and sexual abuse.

The protection of children from sexual abuse and exploitation on the internet remains an important concern in the EU. The European Commission adopted a European Strategy for a better Internet for Children in May 2012. The strategy aims at:

- stimulating quality content online for young people;
- stepping up awareness and empowerment; creating a safe environment for children online; and
- fighting child sexual abuse and child sexual exploitation.

The European Economic and Social Committee welcomed the strategy, noting the need for more precise rules and adequate sanctions to tackle child pornography more effectively and to address data protection and privacy issues.

"The Internet is an extraordinary place for children – yet while online exploration opens a world of possibilities, it can also expose unwary users to possible dangers. We have a shared vision of the opportunities and of the steps that should be taken to empower and protect children online and better secure our public and private networks."


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\(^1\) Council of Europe, Committee of Ministers (2012b).
\(^2\) European Commission (2012a).

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**Promising practice**

**Fighting sexual abuse on the internet**

**Vihjeliin** is a free online service of the Estonian Union for Child Welfare, which enables internet users to report illegal content online, such as sexual abuse or exploitation of children and child trafficking. This service is developed in cooperation with several non-government organisations (NGOs), the Ministry of Social Affairs, Police and Border Guard Board and it is part of the Estonian Development Plan for Reducing Violence 2010–2014.

The statistical data provided by this service show that from August 2011 to the end of 2012 there was a decline in the number of reports received regarding child sexual abuse images, from 63 to 10, and in adult pornography (18 years and over), from 505 to 60.

**Vihjeliin** is a member of the networks INHOPE and INSafe, which are, respectively, an international network of organisations that provide online solutions to prevent the internet distribution of illegal content and an EU-funded network which unites organisations promoting the safer use of the internet.

In March 2012, the European Commission proposed establishing a new European Cybercrime Centre (ECC) at Europol, which would further strengthen child protection on the internet. In November, a new European Financial Coalition against Commercial Sexual Exploitation of Children Online (EFC), co-financed and supported by the European Commission, was launched to fight the sexual exploitation of children online through measures addressing online payments.

The European Parliament adopted its own-initiative report *Protecting children in the digital world* in November, calling for improved checks on children’s privacy when using mobile phones, for filtering software and for better education of parents and teachers.

EU Member States undertook a number of legislative reforms relating to the rights of the child and the protection of children in 2012. Romania amended its Law on the prevention and combating of domestic violence, improving protection for children suffering domestic violence by allowing courts to inform local authorities on their own initiative when they consider that a child needs special protection.

**Italy** ratified the Lanzarote Convention on 19 September 2012 with a law that provides for increased penalties for perpetrators of domestic violence. The law also introduces a new provision concerning female genital mutilation (FGM); if a child’s parents or guardian perpetrates this crime it can lead to loss of custody. **Portugal** also ratified the Lanzarote Convention in 2012.

In **Belgium**, a relevant decree for ratification is awaiting publication after ratification by the Flemish, German-speaking, Walloon Region and Brussels community institutions.

In **England and Wales**, the Domestic Violence, Crime and Victims (Amendment) Act 2012, which took effect on 2 July 2012, extended the offence of causing or allowing the death of a child or vulnerable adult to include causing or allowing serious physical harm to a child or vulnerable adult. The 2012 Act is intended to fill a recognised gap in the law in cases where, although it is clear that serious injuries short of death must have been sustained at the hands of one of a limited number of members of the household, there is insufficient evidence to point to the particular person responsible. It is intended to prevent those accused of causing serious physical harm to a child or vulnerable adult from escaping justice by remaining silent or blaming someone else.

**Bulgaria**, the **Netherlands**, Slovenia and Croatia all adopted national action plans to combat general domestic violence or specifically violence against children.

A number of EU Member States continued to investigate the issue of violence in institutions and compensation schemes for victims. **Bulgaria**’s State Agency for Child Protection inspected institutions for children deprived of parental care in May–June 2012 and found 46 cases of violence. **Germany** established a Residential Institution Fund in January 2012 to mitigate the damage suffered by persons abused in residential institutions.

A number of reforms of the criminal code initiated by Member States in 2011 entered into force or continued to be discussed during 2012. For instance, an amendment to the **Austrian Criminal Code (Strafgesetzbuch)**

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18 European Commission (2012b).
19 For more information on the European Financial Coalition against Commercial Sexual Exploitation of Children Online, see: [www.europeanfinancialcoalition.eu/](http://www.europeanfinancialcoalition.eu/).
24 Belgium, Proposal for a law approving the Treaty with the Council of Europe on the protection of children against sexual exploitation and sexual abuse, 2 December 2011.
25 Belgium, Walloon Region, Decree on the approval, as concerns the matters for which the execution was transferred from the French Community to the Walloon Region, of the Treaty of the Council of Europe on the protection of children against sexual exploitation and sexual abuse, 26 April 2012; Belgium, Brussels Capital Region, Ordinance on the approval of the Council of Europe’s Treaty on the protection of children against sexual exploitation and sexual abuse, 1 March 2012; Belgium, German-speaking Community, Decree on the approval of the Council of Europe’s Treaty on the protection of children against sexual exploitation and sexual abuse, 28 March 2011; Belgium, Flanders, Decree on the approval of the Council of Europe’s Treaty on the protection of children against sexual exploitation and sexual abuse, 12 February 2012.
28 Netherlands, State Secretary for Health, Welfare and Sport & Minister of Security and Justice (2011).
32 Germany, Residential Institution Funds (2012).
33 Austria, Federal law by which the Criminal Code is amended – Criminal Code Amendment 2011.
enabled Austrian jurisdiction to apply to a number of offences, including genital mutilation, if the offence was committed abroad by an Austrian citizen or by a person with a habitual residence in Austria.

In Austria, it is a crime to intentionally view child pornography and carries prison sentences of up to two years.\textsuperscript{34} The international police operation ‘Carole’ against child pornography identified 272 suspects in Austria.\textsuperscript{35}

Several operations were conducted in Greece in 2012 leading to the identification of websites with child pornographic material, for example on 31 August the police announced the results of operation ‘Trojan Horse’ which led to the arrest of 17 people and the confiscation of half a million electronic files containing child pornographic material.\textsuperscript{36} Operation ‘Cyber-touch’ held in October 2012 led to the arrest of eight people;\textsuperscript{37} with operation ‘Gridlock’ held in November 2012 leading to the arrest of a further eight.\textsuperscript{38} The Greek police’s cybercrime unit operates the 11012 hotline for confidential anonymous information on internet child pornography.

In Italy, the law ratifying the Lanzarote Convention addresses the acts of soliciting\textsuperscript{39} and the incitement to commit crimes of paedophilia and child pornography. In the United Kingdom, registered sex offenders must notify the police of any foreign travel.\textsuperscript{40} New legislation or amendments to the existing laws covering sexual abuse or exploitation were being discussed or pending approval in Belgium, Lithuania, Luxembourg and Spain.

Data availability is key to developing effective policies. The Office of the Children’s Commissioner for England published an interim report\textsuperscript{41} in October 2012, relating to its Inquiry into Child Sexual Exploitation in Gangs and Groups. This report shows that at least 16,500 children were at risk of child sexual exploitation, between April 2010 and March 2011, while 2,409 children were confirmed as victims of sexual exploitation in gangs and groups in the period from August 2010 to October 2011.\textsuperscript{42}

These children came from a variety of social and ethnic backgrounds. Most were white girls, although there was a higher rate of victimisation amongst black and minority ethnic children (28 \%) than had been previously identified.\textsuperscript{43} The majority of perpetrators were white males, according to the report.\textsuperscript{44} Mobile phones, social networking sites and other forms of technology were identified as often being used in the grooming, control and pursuit of victims.\textsuperscript{45}

The Greek government announced the establishment of an Observatory for the Prevention of School Violence and Intimidation in November 2012. This observatory will design and implement measures for the prevention of school violence and bullying. It will also identify and refer such incidents to the competent authorities and publish relevant statistical data annually.\textsuperscript{46}

In a March 2012 referendum, Slovenia rejected the new Family Code (Družinski zakonik), adopted in 2011 by the Slovenian National Assembly, which outlawed any form of corporal punishment and degrading treatment of children, and ensured the right to an advocate in proceedings. The law also stipulated that registered same-sex as well as non-registered same-sex partners should be treated on an equal footing with opposite-sex partners in all legal matters except in regard to marriage and joint adoptions.

The European Court of Human Rights (ECHR) underlined the obligation of national authorities to ensure the effective criminal investigation of sexual abuse cases concerning children.

In C.A.S. and C.S. v. Romania, the ECHR found a violation of Article 3 (prohibition of inhuman or degrading treatment and effective investigation) and of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights,\textsuperscript{47} concerning a fiveyear investigation into the rape of a seven-year-old boy. In its final judgment, the ECHR recognised that states have an obligation to ensure the effective and prompt criminal investigation of cases involving violence against children.

### 4.2. Child trafficking

Following the 2011 Directive on preventing and combating trafficking in human beings and protecting its victims,\textsuperscript{48} the European Commission adopted a strategy for the period 2012–2016. This strategy envisages

\textsuperscript{34} Ibid.
\textsuperscript{35} Austria, Ministry of Interior (2012).
\textsuperscript{36} Greece, Greek Police Headquarters (2012).
\textsuperscript{38} Greece, Ministry of Public Order and Citizen Protection (2012b).
\textsuperscript{39} Italy, Law No. 172 on the ratification and execution of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, 23 October 2012.
\textsuperscript{40} United Kingdom, The Sexual Offences Act 2003 (Notification Requirements) (England and Wales), 2012.
\textsuperscript{41} Berelowitz S., et al., The Office of the Children’s Commissioner (2012).
\textsuperscript{42} Ibid., pp. 9–10.
\textsuperscript{43} Ibid., p. 14.
\textsuperscript{44} Ibid., pp. 15–16.
\textsuperscript{45} Ibid., p. 12.
\textsuperscript{46} Greece, Ministry of Education and Religion, Culture and Sports (2012).
\textsuperscript{47} ECHR, C.A.S. and C.S. v. Romania, No. 26692/05, 20 March 2012.
two concrete actions related to child trafficking: developing guidelines on child protection systems and preparing best practice models on the role of guardians and/or representatives of child victims of trafficking.

### Promising practice

**ConTratTo: Taking an integrated approach to tackle human trafficking**

In Italy, the Tuscany regional administration has set up an integrated system against human trafficking that supports victims, who are often very young, and promotes good practice tackling trafficking in the region, ConTratTo (Contro la tratta in Toscana, Against human trafficking in Tuscany).

The project brings together the public and private sectors, as well as non-governmental organisations to tackle the problem using a global approach and move away from separate and uncoordinated measures targeting only specific groups.

The system includes a toll-free regional phone line (880-186086) that is open 24 hours a day, helps victims and provides information to all interested parties. The region also provides first assistance and care for victims in appropriate structures and supports them with appropriate healthcare, psychological, linguistic and legal assistance.

Other important actions within the ConTratTo integrated system include: mapping and monitoring the human trafficking phenomenon, organising awareness raising campaigns and offering training for the operators working with victims.

For more information, see: www.minori.it/minori/lotta-alla-tratta-la-risposta-della-toscana

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Finland, Germany and Lithuania ratified the Council of Europe Convention on Action against Trafficking in Human Beings, adding to the earlier ratifications by 20 EU Member States and Croatia. In addition, Austria, Latvia, the Netherlands, Slovenia and Croatia put in place national action plans against trafficking.

A number of EU Member States either amended or were in the process of amending their legislation in 2012 to comply with the Directive on trafficking, which must be transposed into national law by 6 April 2013. More specifically, Cyprus submitted an action plan aimed at preventing human trafficking and ensuring its prosecution, which sets out the measures taken to execute the judgement in the Rantsev v. Cyprus and the Russian Federation case. Even if Denmark did not take part in the adoption of this directive and is therefore not bound by it or subject to its application, the Danish Government still decided to align national law with the directive by amending the Criminal Code, he amendment expands the forms of trafficking that are criminalised and allows the prosecution of cases of human trafficking and sexual exploitation of children committed abroad by Danish citizens and by persons with a permanent residence in Denmark. Lithuania also amended its Criminal Code to broaden the definition of trafficking. Estonia enacted a law criminalising trafficking in March 2012.

### 4.3. Child-friendly justice

The EU Agenda on the Rights of the Child adopted in 2011 recognised the promotion of child-friendly justice and the use of the Council of Europe Guidelines on Child-friendly Justice as EU priorities in the field of the rights of the child.

In October 2012, the European Network of Ombudspersons for Children dealt particularly with child-friendly justice in its annual conference under the Cyprus Presidency of the Council of the European Union.

Several EU Member States amended their procedural laws to make children’s involvement in justice procedures more child-friendly. In Hungary, for example, a new law requires that courts use language appropriate to age when they communicate with children through summons, warnings or notices. In the Czech Republic, the legislative procedure for the new law on victims of criminal offences was in its final stage in 2012. This law considers children to be particularly vulnerable and therefore requires the use of specially trained staff in

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49 Austria, Federal Ministry for European and International Affairs, Task Force on Anti-Trafficking (2012).
52 Slovenia, Inter-departmental working group for combating trafficking in human beings (2012).  
53 Croatia, National Committee for Combating Trafficking in Human Beings (2012).
questioning children, as well as allowing for the use of audiovisual equipment.

FRA ACTIVITY

Is justice ‘just’ for children?

FRA carried out fieldwork research in close collaboration with the European Commission in 2012 to assess how the Council of Europe Guidelines on Child-Friendly justice are applied.

The research included interviews with 574 judges, lawyers, social workers, psychologists and other professionals on the involvement of children in justice proceedings and sought to identify practices and procedures of child participation as victims or witnesses in court proceedings in 10 EU Member States (Bulgaria, Estonia, Finland, France, Germany, Poland, Romania, Spain and the United Kingdom) and Croatia. At the interviews researchers gave respondents the Council of Europe Guidelines, which have now been translated into 22 EU languages.

The research findings will feed into the European Commission’s work on collecting statistical data on children’s involvement in judicial proceedings in the EU.

For more information, see: http://fra.europa.eu/en/project/2012/children-and-justice

In other EU Member States, concerns were raised over the way children were treated in judicial procedures. This was the case in Spain, where a report published by Save the Children in November 2012 argues that judicial procedures need to be better adapted to children’s needs.

Financial and human resource issues hampered efforts to improve the involvement of children in judicial procedures in Romania. In October 2012, the Superior Council of Magistracy decided, due to a lack of resources, against establishing specialised children’s tribunals.

Promising practice

Listening better to children in court proceedings

In Poland, the NGO ‘Foundation Nobody’s Children’ and the Ministry of Justice established a system of visiting, inspecting and certifying institutions with child-friendly hearing rooms.

The certification is granted to institutions that comply with a standardised set of criteria.

The programme, established in 2007, has certified 54 institutions.

For more information, see: http://dzieckoswiaddek.hdn.pl/przyjazny-pokoj-przesłuchan

Sweden’s Barnahus (‘Children’s house’) is a programme under which the judicial system, social services and health services collaborate in joint investigative interviews of child victims of abuse. Trained expert staff conduct such interviews in purpose-built interview rooms that allow observation by representatives of the police, prosecution and defence and child protection services via closed-circuit television.

The Department of Sociology of Law at Lund University evaluated the practice, showing that it had strengthened children’s evidence submitted in court.

For more information, see: The Swedish Association of Local Authorities and Regions (SALAR), available at: www.skl.se/vi_arbetar_med/socialomsorgochstod/barn-och-unga/nyhetsarkiv/ifo_barn_och_unga

4.4. Asylum-seeking and migrant children


The report takes stock of the progress made and identifies the main areas for improvement in the best interests of the child, such as the need for collecting data on the situation of these children, the need for preventing unsafe migration and trafficking, the need to provide better access to procedural guarantees and the need to find durable solutions.

In 2012, the main areas of concern across EU Member States included guardianship or legal representation and the administrative detention of children alone or with their families (see also the section on alternatives to detention in Chapter 1 of this Annual report). The Council of Europe Committee of Ministers is closely supervising the issue of detention of unaccompanied minors in the

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62 Save the Children Spain (2012).
63 Romania, Superior Council of Magistracy (2013).
Table 4.1: Asylum applicants by age group (*), 2012 (%), by EU Member State

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<th>EU Member State</th>
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Notes: * Data not available for the Netherlands (due to the transition to a new computing system, since January 2012, the Netherlands has been temporarily unable to provide statistics on asylum applications disaggregated by citizenship, age and on first instance decision. n.a. means data are not available.
** Two or fewer applicants recorded in the reference period.


context of execution of the judgment in the case of M.S.S v. Belgium and Greece.\(^{65}\)

In Cyprus, the Ombudsman’s Office published a report on legal representation of unaccompanied asylum-seeking children in May 2012.\(^{66}\) The report recommended changes in legislation to ensure the legal representation of unaccompanied asylum-seeking children.

With respect to administrative detention, Human Rights Watch reported in 2012 that unaccompanied children in Malta were still kept in detention pending the outcome of age determination procedures.\(^{67}\)

In the United Kingdom, the Children’s Commissioner for England raised a number of concerns about the treatment of unaccompanied asylum-seeking children upon

\(^{65}\) See Council of Europe, Committee of Ministers (2012d).
\(^{66}\) Cyprus, Ombudsman (2012).
\(^{67}\) For more information on the Human Rights Watch report, see: www.hrw.org/node/108990.
arrival in its report, *Landing in Dover*.68 The report found that children were detained for a significant time period while interviews were carried out, and that children who did not claim asylum during their interview were returned to France. The United Kingdom’s Border Agency has since ceased this practice of returning children.

The Children’s Commissioner recommended that, except for gathering basic information, no interviews should be conducted with children upon arrival. Interviews should instead wait until children have been referred to local child protection services and have had adequate rest and time for recovery, as well as the opportunity to obtain legal advice and representation.

### 4.5. Family and parental care

The EU’s role regarding family matters is limited and mainly concerned with ensuring that judicial decisions in one Member State can be implemented in another and used for establishing relevant jurisdiction. Council Regulation 2201/2003 (known as Brussels II bis) regulates such issues on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.69 The European Commission continued its assessment of how the regulation is applied, with a view to amending it in 2013.

A number of reforms in the area were in evidence in EU Member States in 2012, but in some cases, budgetary constraints limited the level of public spending available to implement them. In **Poland**, for example, the new Act on Family Support and Substitutional Care68 entered into force on 1 January 2012, aiming to offer support to vulnerable families through family assistants, aid families and coordinators of the family substitutional care. Due to budgetary constraints the local governments claimed not to be able to fulfil some of the new obligations. In consequence, the government proposed to delaying some of the new obligations until 2015 in an amendment to the Act, which was adopted in March 2012.71

A number of reforms in other EU Member States concern the placement of children in foster care in preference to institutional settings. In **Finland**, a new law entered into force at the beginning of 2012 stipulating that in decisions on the placement of children, family care homes should be preferred to institutional care.72 The Finnish National Audit Office in its review of child protection sys-

tems found shortcomings in foster care, family support and the availability of mental healthcare services.73

The **Czech Republic**’s Chamber of Deputies voted in favour of a draft amendment74 to the Law on Social and Legal Protection of Children in November 2012, which the president had previously vetoed.75 The proposed changes aim at improving social care for vulnerable children in their own families or in foster care families by improving foster parents’ training, as well as support and relief services.

In **Hungary**, an amendment to the Child Protection Act76 foresees that state care for children under 12 (except in special cases, such as children with disabilities) should be provided in foster families and not in institutions.77

The Office of Public Defender of Rights in **Slovakia** released a report in November 2012 on the protection of the rights of children found abroad unattended by their parents. The report found that in some cases, public authorities had failed to act in a timely fashion in a child’s best interest.

In October 2012, the **Danish** government announced79 that from 1 November 2013 it would enforce a reform of the social supervision system (*socialtilsyn*) responsible for institutions including childcare facilities and homes for children with disabilities would be enforced to ensure high-quality services.

In **Croatia**, the Foster Care Act80 was enacted in July 2012 and was harmonised with the Social Care Act,81 in an attempt to enhance the number of foster families by making the criteria they must fulfil more accessible.

In the **United Kingdom**, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children entered into force on 1 November 2012.82

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70 Poland, Act on Family Support and Substitutional Care, 9 June 2011.
71 Poland, Act on amendments to the act Family Support and Substitutional Care, 27 April 2012.
73 Finland, National Audit Office (2012).
74 Czech Republic, Amendment to the law on social and legal protection of children, 1 January 2013.
75 Czech Republic, President of the Czech Republic (2012).
76 Hungary, Act CXCII of 2012 on the Taking Over of Certain Specialized Social and Child Protection Service Provider Institutions by the State and on the Amendment of Certain Laws.
79 Denmark, Danish government, et al. (2012).
80 Croatia, Act on Amendments to the Foster Care Act, 13 July 2012.
81 Croatia, Social Care Act, 16 March 2012.
82 United Kingdom, Ministry of Justice (2012).
Fundamental rights: challenges and achievements in 2012

4.6. Child poverty

The European Commission’s Social Protection Committee endorsed the advisory report **Tackling and preventing child poverty, promoting child well-being in 2012**. The report presents an in-depth analysis of key EU and national policy tools and developments in relation to child poverty and social exclusion. It proposes that the future European Commission Recommendation, initially planned for 2012, should support EU and national efforts to contribute to enhancing political commitment, strengthen the evidence base of policy development, drive policy change by mainstreaming child poverty issues, and structure and prioritise EU action to create synergy.

Child poverty in the EU is an issue of growing concern. According to 2011 Eurostat figures, 27% of children are at risk of poverty or social exclusion, a higher percentage than the rest of the population. The situation in Member States is particularly affected by the economic crisis. On 24 October 2012, the European Commission proposed setting up a fund with a budget of €2.5 billion for the period 2014-2020 to help the most deprived persons, including children, in the EU by supporting Member State schemes to provide food, clothing and other essential goods. The issue of child poverty was also the theme of conferences organised during 2012 by the Presidencies of the EU Council (Denmark and Cyprus).

“We therefore must maintain a focused and dedicated approach to fighting child poverty. Our choices today will – quite literally – shape the future of Europe, where today’s children have grown up. We must not abandon or diminish our ambitions because of the economic crisis. Or because the task ahead of us seems too overwhelming.”

Karen Hækkerup, Danish Minister of Social Affairs and Integration, Conference on children’s rights and the prevention of child poverty, EU Presidency, Copenhagen, 19 March 2012

The economic crisis affected children in a number of EU Member States, both through the reduction of family incomes and through budgetary cuts in state social expenditures. A United Nations Children’s Fund (Unicef) study, **Childhood in Spain 2012-2013: The impact of the crisis on children**, argued that budgetary cuts were affecting services for children, including health, education and social services.

In Portugal a decree adopted in June 2012 significantly reduced various benefits with severe financial implications for families with children. The Italian Society of Paediatrics, major children’s medical networks and children’s rights associations raised concern over the impact of budgetary cuts in the social and healthcare sectors in Italy. The President of the Authority for Childhood and Adolescence said that almost two million children were living in families in poverty in Italy, drawing on data published by ISTAT, the national statistical office.

The economic situation in Greece became particularly difficult in 2012. The UN Committee on the Rights of the Child in its Concluding Observations on the State Report of Greece expressed deep concern about the right to life, survival and development of children and adolescents whose families are quickly losing their livelihoods and access to state-funded social services, including healthcare and social security. The Committee noted in particular its concern about youth unemployment and school drop-out rates, especially among Roma children.

The Greek Ombudsman’s Parallel Report to the UN Committee on the Rights of the Child notes an increase in child beggars or children working as street vendors. The Greek National Committee of Unicef published a report in March 2012 that expresses particular concern regarding child poverty and malnutrition, noting incidents of students fainting at school.

The Finnish government announced on 22 March 2012 that the annual index-based increase in child benefits would be discontinued between 2013 and 2015, as part of the government’s efforts to save €1.2 billion in public spending for 2013-2016. The Constitutional Law Committee considering the proposal concluded that the economic recession is an acceptable reason for reducing social benefits provided that this does not infringe on constitutional obligations. It considered the reduction of child benefits, estimated at 8% by 2015, as acceptable. The amendment of the Child Benefits Act (lapsisäläki/barnbidragslag, Act No. 796/1992, legislative amendment Act No. 713/2012) takes effect as of 1 January 2013.

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In the United Kingdom, a report by the Secretary of State for Work and Pensions shows that a target to halve child poverty by 2010 has not yet been met, although the number of children living in relative income poverty

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83 Social Protection Committee (2012).
86 For more information, see: http://eu2012.dk/en/Meetings/Conferences/MaaEurope-de-l-Enfance.
88 UNICEF (2012a).
89 Portugal, Decree-Law 133/2012, 27 June 2012.
90 Italy, Italian Society of Pediatrics (2012).
91 Italy, National Authority for Children (2012).
93 UN, Committee on the rights of the child (2012).
94 Greece, Greek Ombudsman (2012).
95 UNICEF (2012b).
96 United Kingdom, Department for Work and Pensions; Department for Education (2012).
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in 2010–2011 was reduced to 2.3 million, 600,000 short of the target.

4.7. Child participation

Child participation is a right enshrined in the UN CRC and the Charter of Fundamental Rights of the European Union.

The Council of Europe issued a Recommendation on the participation of children and young people under the age of 18 in March 2012, setting out a number of key principles and measures for EU Member States, such as sharing good practices regarding participation; the provision of child-friendly mechanisms for children to make complaints; the organisation of public information and education programmes to raise awareness about the right to participate; and the improvement of professional capacity.

To support member states with the implementation of the Recommendation, the Council of Europe began developing a self-assessment tool on the participation of children and young people under the age of 18. FRA is contributing to the development of the tool’s draft indicators to enable the collection and subsequent evaluation of the inclusion of children’s participation in relevant sectors (justice, health, education) where decisions may affect children directly.

Denmark amended the law regulating the National Council for Children (Børnerådet), which now states explicitly that the Council should involve children’s views in its work. In 2012, the Council of the European Union published the outcome of its initiative to ask more than 1,000 children aged five and six years about their views on kindergartens.

One of the indicators for effective child participation is children’s direct access to human rights complaints mechanisms. Only a few EU Member States collect data broken down by age to reflect complaints directly from children.

The French Public Defender of Rights reported in 2012 that, for example, the office received a total of 1,496 complaints regarding violations of the rights of the child in 2011, out of which 120 were made by children themselves.

The Dutch Children’s Ombudsman was contacted 690 times between April and December 2011 about human rights infringements, with children lodging 128 of these complaints on issues including youth care, education, police and justice, divorce and the situation of migrant children.

Promising practice

Meeting the Minister: asking children about their views on new laws and policies

The Office of the Children’s Rights Director in England facilitated a series of meetings between the Children’s Minister and groups of children to enable the Minister to hear directly children’s views on a range of topics that concern them. Meetings have focused on such issues as the new Children’s Homes Charter, the separation of children in care from their siblings and contacts, education of children in care, adoption, fostering and residential care.

The meetings’ results can be found on the website of the Office of the Children’s Rights Director. These outcomes also feed directly into official policy documents and reports, such as consultation papers and white papers, allowing the voice and views of children to be openly heard and considered in the government’s work. Government policy that departs from the views expressed by the children consulted will require careful justification. It is therefore possible to track the views expressed by children and their impact on policy and legislative developments.

For more information, see: www.rights4me.org/

Outlook

Acknowledging the fact that investing in children and breaking the chain of disadvantage across generations is the way forward, the EU legislature is expected to continue its efforts to minimise the damaging effects of the economic crisis on children. An upcoming Recommendation on Child Poverty and Well-Being is likely to provide the EU Member States with a set of common principles for effective action in key areas like: access to adequate resources, access to affordable quality services and children’s right to participation. A set of indicators is also envisaged to be developed in order to monitor child poverty and social exclusion at the national level. As austerity measures resulted in serious cuts to services such as childcare, it is expected that this recommendation will reinforce social investments.

Actions targeting unaccompanied and separated children will continue in 2013, on the basis of the

97 Council of Europe, Committee of Ministers (2012e).
98 Denmark, Act No. 598 of 18 June 2012 amending Act on the Rule of Law and Administration within the Social Field, 18 June 2012.
100 France, Defender of Rights (2012).
Action Plan on Unaccompanied Minors (2010-2014). The European Asylum Support Office (EASO) with the support of FRA will publish in 2013 a handbook on age assessment targeting this particular vulnerable group. EASO will also develop a new module on interviewing children as part of the European Asylum Curriculum to train officials working in the field of asylum across the EU. The FRA has been invited to join the Reference Group providing advice on the module.

Turning the rights of the child into reality in the field of justice is an essential action item under the EU Agenda for the Rights of the Child and the Council of Europe Strategy for the Rights of the Child (2012-2015). A directive on special safeguards for suspected or accused persons who are vulnerable, including children, is planned to be tabled in 2013. It recognises the multiple challenges that confront child offenders. These legislative initiatives will be complemented by extensive research at the EU level. The European Commission is planning to launch its report on criminal justice in the second quarter of 2013 and next year FRA will expand its fieldwork research within its Child-Friendly Justice project by interviewing children who have been involved in justice procedures.

The protection of children on the internet from all forms of violence remains a challenge for the year to come. In this regard, the adoption of a European Strategy for a better Internet for children was an important accomplishment in 2012. Still, challenges remain at the implementation level, as more precise rules and provisions regarding sanctions to tackle child pornography more effectively and to address data protection and privacy issues are needed. An important development foreseen for 2013 is the inauguration of a new European Cybercrime Centre that will coordinate at EU level the fight against cybercrime.
The rights of the child and protection of children

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14 March – Turkey becomes the first Council of Europe member state to ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence (*Istanbul Convention*)

February
21-23 March – Council of Europe Steering Committee on Human Rights installs a drafting group comprised of experts from member states (CDDH-AGE) to explore possibilities for adopting a non-binding document on the human rights of the elderly

March
13 June – Council of Europe Committee of Ministers adopts the Recommendation on the protection and promotion of the rights of women and girls with disabilities

26 June – Council of Europe Parliamentary Assembly adopts the Resolution Multiple discrimination against Muslim women in Europe: for equal opportunities

April
13 June – Council of Europe Committee of Ministers adopts the Recommendation on the protection and promotion of the rights of women and girls with disabilities

26 June – Council of Europe Parliamentary Assembly adopts the Resolution Multiple discrimination against Muslim women in Europe: for equal opportunities

May
11 June – FRA issues opinion on proposed EU regulation on property consequences of registered partnerships

11 June – European Commission issues report on Discrimination against trans and intersex people on the grounds of sex, gender identity and gender expression

19 June – European Commission adopts the EU strategy towards the eradication of trafficking in human beings 2012-2016

June

26 October – European Parliament publishes study on a potential EU Roadmap for LGBT equality

29 October – Council of the European Union adopts an EU-level framework as required by Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities (CRPD)

September
6 November – European Parliament Civil Liberties, Justice and Home Affairs Committee (LIBE) adopts annual resolution on fundamental rights

6 November – Court of Justice of the European Union (CJEU) rules that national provisions in Hungary requiring the sudden compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 violate the Employment Equality Directive (2000/78/EC).

8 November – European conference on domestic violence against women takes place in Cyprus

October
7 December – Council of the European Union makes a Declaration on the European Year for Active Ageing and Solidarity between Generations (2012): The Way Forward