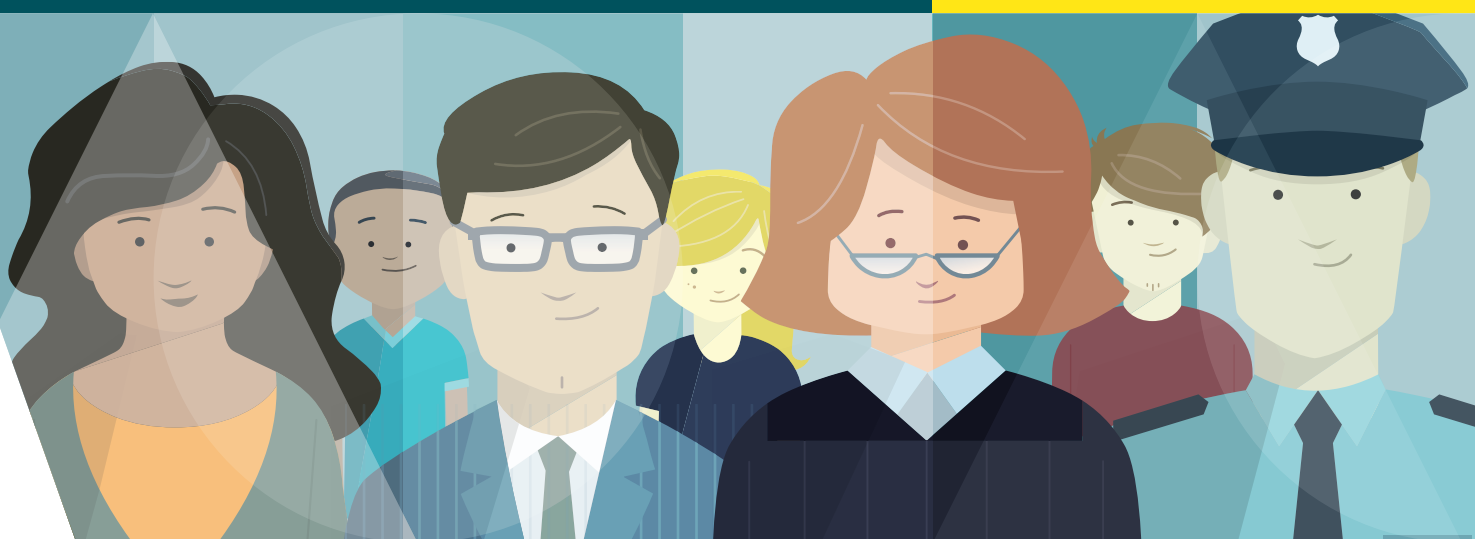


EQUALITY



# Child-friendly justice

Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States



This report addresses matters related to human dignity (Article 1); the prohibition of torture and inhuman or degrading treatment or punishment (Article 4); the right to liberty and security (Article 6); respect for private and family life (Article 7); the protection of personal data (Article 8); non-discrimination (Article 21); the rights of the child (Article 24) and the right to an effective remedy (Article 47) falling under the Titles I 'Dignity', II 'Freedoms', III 'Equality' and VI 'Justice' of the Charter of Fundamental Rights of the European Union.

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# Child-friendly justice

Perspectives and experiences of  
professionals on children's participation  
in civil and criminal judicial proceedings  
in 10 EU Member States



# Foreword

All European Union (EU) Member States have a duty to ensure that children's best interests are the primary consideration in any action that affects them. This consideration is of particular importance when children are involved in criminal and civil judicial proceedings. Such proceedings can be stressful for anyone. Even more so for children, who may become traumatised if the procedures are not child friendly, the settings unsuitable and the professionals involved inadequately trained. Thousands of children are affected. Data show that in 11 EU Member States alone, around 74,000 children were victims of crime and 495,000 were affected by parental divorce in 2010.

The treatment of children in judicial proceedings is an important fundamental rights concern, addressed by the United Nations in its Convention on the Rights of the Child, which all EU Member States have ratified and which celebrated its 25<sup>th</sup> anniversary in November 2014. The EU further shows its commitment to this issue by promoting the Council of Europe's 2010 *Guidelines on child-friendly justice* and helping its Member States improve the protection of child rights in their judicial systems.

These Council of Europe guidelines promote children's rights to be heard, to be informed, to be protected and to non-discrimination. To determine the extent to which these rights are respected and fulfilled in practice, the Fundamental Rights Agency (FRA), in cooperation with the European Commission, collected and analysed data through interviews with professionals and children who experienced judicial proceedings.

The present report, which is the first part of this work, examines the responses of 570 judges, prosecutors, lawyers, court staff, psychologists, social workers and police officers interviewed in 10 EU Member States. These professionals are in daily contact with children going through judicial proceedings. The evidence they provided shows that there is a long way to go to make justice more child-friendly across the EU. The second report of this FRA research will concentrate on the responses of the children who were interviewed.

Practices of child participation in criminal and civil judicial proceedings vary considerably not just across, but also within Member States, pointing to a need for clear and consistent standards and guidelines and the systematic monitoring of their implementation. Children are not sufficiently supported when participating in a criminal or civil proceeding, court settings that can be intimidating for children are not always adjusted to their needs. Concrete measures, such as preventing a child from directly confronting defendants or witnesses in court or ensuring that a child is informed about and understands the proceedings, are not yet common practice. The research also revealed, however, a number of promising practices, outlined in this report.

Making justice systems more child-friendly improves the protection of children, enhances their meaningful participation and at the same time improves the operation of justice. The findings of this report can provide Member States with a useful tool to identify barriers, gaps or weaknesses in their judicial proceedings, especially in the process of transposing relevant EU directives. Such a child-friendly approach, in line with the Council of Europe guidelines, will make participation in judicial proceedings a safer experience for children in the EU.

**Constantinos Manolopoulos**

*Director a.i.*

# Country codes

Country Code	Country
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SK	Slovakia
SI	Slovenia
UK	United Kingdom



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# Introduction

## Charter of Fundamental Rights of the European Union

### Article 24

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

## Convention on the Rights of the Child

### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

European and international human rights instruments recognise the importance of child participation in judicial proceedings.

In the EU, nevertheless, notwithstanding the provisions laid out in the Charter of Fundamental Rights of the European Union (EU), the treatment of children in justice systems remains a concern. The European Commission has stated that these systems are insufficiently adapted to the specific vulnerabilities and needs of children. To compound matters, national judicial systems vary both in the way they define a child for the purposes of judicial proceedings and in their standards and guidelines for the treatment of children during such proceedings.

*"We have excellent provisions and regulations, possibly the best in Europe, but their implementation is minimal – both by the justice system and by other institutions and services. So raising awareness and sensitivity to this issue [...] is important]. But also making society more sensitive to certain issues, legal education in short."*  
(Poland, judge, female)

In its 2011 EU Agenda for the Rights of the Child, the European Commission outlined several action points to help make justice systems more child-friendly, since it is an area "[...] of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation".<sup>1</sup> These points include strengthening the protection of child victims of crime and children involved in family disputes, promoting the 2010 Council of Europe *Guidelines on child-friendly justice* by taking them into account in future legal instruments in the field of civil and criminal justice, and supporting and encouraging the development of training activities for judges and other professionals.

References to children's involvement in judicial proceedings in EU law emphasise the need to guarantee their right to be heard and their effective participation in legal proceedings. In the area of civil justice, under the Brussels IIa Regulation,<sup>2</sup> the violation of a child's right to be heard is a ground for not recognising judgments in matters of parental responsibility. In the area of criminal justice, the Victims' Directive<sup>3</sup> sets general minimum standards for all victims, as well as for specific groups of victims, such as children. It strengthens the rights of victims and family members to information, support and protection, and their procedural rights when participating in criminal proceedings. Other examples include the Human Trafficking Directive<sup>4</sup> and the Directive on combating sexual abuse, sexual exploitation of children and child pornography,<sup>5</sup> which provide children with special assistance measures before, during and after criminal proceedings, to facilitate their participation while ensuring their protection and safety.<sup>6</sup>

In Europe, the Committee of Ministers of the Council of Europe adopted in 2010 a set of *Guidelines on child-friendly justice*.<sup>7</sup> Although non-binding, the guidelines

- 1 European Commission (2011). All EU legal instruments and case law are available at <http://eur-lex.europa.eu>.
- 2 Council Regulation (EC) No. 1347/2000.
- 3 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards of the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
- 4 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
- 5 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse, sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.
- 6 This report does elaborate further on the three European directives throughout the different chapters. The research was conducted before their transposition dates and thus not all EU Member States had yet adapted their national legislation to them.
- 7 Council of Europe (2010).

are an integral part of the Council of Europe' Strategy on the Rights of the Child<sup>8</sup> and represent a milestone in this area. They provide concrete guidance on the participation of children in the justice system. They are intended to help governments and professionals enhance children's access to justice by introducing a child-centred approach, with due consideration to a child's level of maturity and understanding and to the circumstances of the case. The guidelines outline the basic principles of participation, best interests of the child, dignity, protection from discrimination and rule of law. They highlight general elements of child-friendly justice for the periods before, during and after the judicial proceedings, and include provisions concerning information and advice, protection of private and family life, safety, training of professionals, multidisciplinary approach, and deprivation of liberty. The guidelines state that during judicial proceedings, particular attention should be paid to the access to the court and the judicial process, legal counsel and representation, the right to be heard and to express views, avoiding undue delay, the organisation of the proceedings, and the use of a child-friendly environment and child-friendly language, as well as of evidence and statements provided by children.

On a yet broader level, the United Nations (UN) also addresses the issue of child participation in justice, most notably in its Convention on the Rights of the Child (CRC),<sup>9</sup> as well as in a number of documents published thereafter. In 2005, the UN's Economic and Social Council adopted Resolution 2005/20 on Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,<sup>10</sup> which elaborates on the rights to be heard, to effective assistance and to safety, and provides guidance for law reform and for professionals working with children. In 2008, the Secretary-General expressed concern as to how the rights of the child are taken into account in access to justice initiatives.<sup>11</sup> The following year, the UN Committee on the Rights of the Child – the CRC's monitoring body – elaborated upon the right of the child to be heard in the context of judicial proceedings,<sup>12</sup> stressing that children need to be provided with child-friendly information and adequate support by trained staff. Key aspects include the design of courtrooms, the clothing of judges and lawyers, and the provision of sight screens and separate waiting rooms. In 2014, following the report of the UN High Commissioner for Human Rights on access

to justice for children,<sup>13</sup> the UN Human Rights Council adopted a resolution<sup>14</sup> calling for measures to ensure children's effective participation in justice proceedings through child-sensitive procedures and safeguards.

#### FRA ACTIVITY

### Analysing children's human rights in case law

FRA, in cooperation with the Council of Europe, is preparing a handbook on children's rights, the *Handbook of European law on the rights of the child*. This handbook is designed to assist lawyers, judges, prosecutors, social workers and others working with national authorities, as well as non-governmental organisations (NGOs) and other bodies that may be confronted with legal issues related to the rights of the child, without necessarily being specialised in the field of children's rights. It analyses the case law of the European Court of Human Rights (ECtHR), the European Committee on Social Rights (ECSR) and the Court of Justice of the European Union (CJEU) on children's human rights.

The handbook covers the following topics:

- civil rights and freedoms;
- equality;
- personal identity issues;
- family life;
- alternative care and adoption;
- child protection against violence and exploitation;
- economic, social and cultural rights;
- migration and asylum;
- consumer and data protection;
- children's rights within criminal justice and alternative proceedings.

The handbook will be published in 2015.

## Measuring progress in making justice systems child friendly

In its Agenda for the Rights of the Child, the EU noted that a lack of reliable and comparable data was obstructing the development and implementation of evidence-based policies. It identified a number of key challenges: improving existing monitoring systems, establishing child rights-related policy targets and monitoring their impact. These are particularly important for the involvement and treatment of children in judicial proceedings.

To address this lack of data, the European Commission and FRA took stock of existing work in this area. The

8 Council of Europe (2012).

9 UN (1989). All EU Member States are parties and there is a close to universal acceptance worldwide, for an overview of the EU Member States and their obligations under UN treaties, see: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/un>.

10 UN, Economic and Social Council (2005).

11 Child Rights International Network (CRIN) (2011).

12 UN, Committee on the Rights of the Child (2009).

13 UN, Human Rights Council (2013).

14 UN, Human Rights Council (2014).

coordinated and systematic data collection included the child rights indicators that FRA developed in 2010<sup>15</sup> and further elaborated in 2012 in regard to family justice.<sup>16</sup> FRA further refined the indicators, supplementing them by referring to key international standards and guidelines, such as the CRC and the Council of Europe Guidelines on child-friendly justice. The indicators follow the rights-based model, developed by the UN High Commissioner for Human Rights (OHCHR),<sup>17</sup> which is designed to measure:

- duty bearers' commitments (structural indicators);
- efforts (process indicators) to fulfil these standards;
- the results (outcome indicators).

The European Commission collected statistical data from all EU Member States, where available, on children's involvement in judicial proceedings. The data covers the legislation, regulations and policies as of 1 June 2012 that affect the treatment of children in judicial proceedings, identifying strengths and potential gaps. This work contributed to the population of structural and process indicators.<sup>18</sup>

In parallel, to gain a comprehensive understanding of the situation, FRA conducted interview-based fieldwork research in 10 EU Member States, selected to reflect a diversity of judicial systems and different practices regarding the involvement of children in justice – Bulgaria, Croatia, Estonia, Finland, France, Germany, Poland, Romania, Spain and the United Kingdom.<sup>19</sup> It collected the experiences, perceptions and views of professionals involved in criminal and civil judicial proceedings, as well as the experiences of children who have been involved in such proceedings, as victims, witnesses or parties. This work contributed to the initial population of process and outcome indicators with qualitative data for the 10 EU Member States. Evidence from the second part of FRA's fieldwork research based on interviews with children themselves will further populate process and outcome indicators. Based on a combined analysis of the professionals' and children's interviews, FRA will issue opinions on child-friendly justice.

This report is part of FRA's broader work on the protection of the rights of the child, which is a core thematic area and ongoing concern. This brief is set out

Figure 1: Indicator framework: structural-process-outcome

<b>Structural</b>	Legal, policy and institutional framework	<b>Commitment</b>	Commitment to international human rights law Legislation and policies in place Institutional framework Complaint and support mechanisms Budgetary allocations
<b>Process</b>	Policy implementation, effectiveness of complaints and support systems	<b>Effort</b>	Policy implementation Action plans Strategies Implementation guidelines Effectiveness of complaint and support mechanisms
<b>Outcome</b>	Situation on the ground – rights realised in practice	<b>Results</b>	Actual awareness of rights Actual impact of policies and other measures Actual occurrence of violations Comparative data

Source: FRA, 2014

15 FRA (2010a).

16 FRA (2012).

17 OHCHR (2012).

18 For the results for criminal justice, see [www.childreninjudicialproceedings.eu](http://www.childreninjudicialproceedings.eu).

19 France: Île-de-France, Provence-Alpes-Côte d'Azur, Franche-Comté, Rhône-Alpes, Poitou-Charentes, Nord-Pas de Calais, Bretagne, La Réunion; Germany: Berlin-Brandenburg, Hessen, Bavaria, Lower Saxony, Rhineland-Palatinate, North-Rhine Westphalia, Niedersachsen, Hamburg, Saarland, Brandenburg, Thüringen, Mecklenburg-Vorpommern; Spain: Andalusia, Catalonia and Madrid; United Kingdom: England, Wales and Scotland.

in FRA's Multiannual Framework<sup>20</sup> and reflected in its development of child-rights indicators and collection of data on children in situations of particular vulnerability (trafficked children and separated, asylum-seeking children,<sup>21</sup> as well as women's experience of violence during their childhood).<sup>22</sup>

## How to read this report

The chapters of this report each refer to one of the rights examined, namely the right to be heard, the right to information, the right to protection and privacy, the right to non-discrimination and the principle of best interests of the child. The chapters' sub-sections reflect the categories of the indicator model 'structural-process-outcome' (Figure 1) and the international and European standards and guidelines they relate to, such as the CRC and the Council of Europe Guidelines on child-friendly justice, as well as guidance provided by other actors, such as the United Nations Office on Drugs and Crime (UNODC). Where indicators are populated using results from qualitative research they should be read as indicative of a situation.

- **Structural indicators** refer to national legal provisions and policies; they are populated through an analysis of European Commission data on legislation and policies in the EU Member States as of 1 June 2012.<sup>23</sup>
- **Process indicators** refer to measures taken to implement legal and policy provisions; they are populated with evidence provided through the interviews with professionals about their perspectives and experiences on children's participation as victims, witnesses or parties in civil and criminal judicial proceedings.
- **Outcome indicators** refer to the actual improvement of the situation of rights holders (here children); they are partly populated with evidence provided through the interviews with professionals and will be further populated through interviews with children after the second part of the research has been completed.

Two further chapters assess two issues identified by the Council of Europe Guidelines as important elements for making judicial proceedings child-friendly: training and multidisciplinary cooperation of professionals.

Relevant promising practices that the research identified are included throughout the report.

The population of structural indicators, which indicate how national justice systems regulate the participation of children in judicial proceedings, is based on the European Commission's legal analysis. Structural differences in the judicial systems of EU Member States present particular challenges as regards comparability. This is the case, for example, with the United Kingdom, which follows a common law system, in contrast with other EU Member States with civil law systems. It is important to note in this respect the different role that victims of crime play in adversarial criminal law systems such as in the United Kingdom, where they do not have such an active role in the proceedings as in civil law systems.

The population of process and outcome indicators is based on the results of the interviews and focus groups with professionals, as well as information collected by the Commission and FRA. In the report, the professionals are grouped into two broad categories reflecting their role and the way they approach and contribute to the participation of children in judicial proceedings. The first group is made up of judges, prosecutors and lawyers, referred to as 'legal professionals', and the second group is made up of social workers and psychologists, referred to as 'social professionals'. To reflect the proportionality of findings, the analysis uses the term 'majority of [respondents]' for an aspect mentioned by more than half of the respondents and 'some of [respondents]' for aspects that are mentioned by less than half of the respondents.

The research covered the perspectives of professionals working in the context of criminal and civil law in terms of their experiences with children who are victims and witnesses in criminal proceedings (in cases of domestic violence, sexual abuse and neglect), and children who are parties in civil proceedings (focusing on children involved in their parent's divorce and separation). In total, 570 professionals were asked about practices, experiences, assessments and suggestions for improvements concerning how children participate – in practice – in judicial proceedings, from what age, with what type of support, etc. The preparation of the interview questions involved desk-research that collected information on national legal provisions on the participation of children in court proceedings to identify the most pertinent issues. Relevant academic research was also taken into account.

Details on the methodology, target groups, samples, interview schedules, as well as on the population of indicators, can be found in the annexes, which also include references to selected national legislation valid at the time of the fieldwork research until the end of 2012 (available online).

<sup>20</sup> Council Decision No. 252/2013/EU (2013).

<sup>21</sup> FRA (2009); FRA (2014a); FRA (2010b).

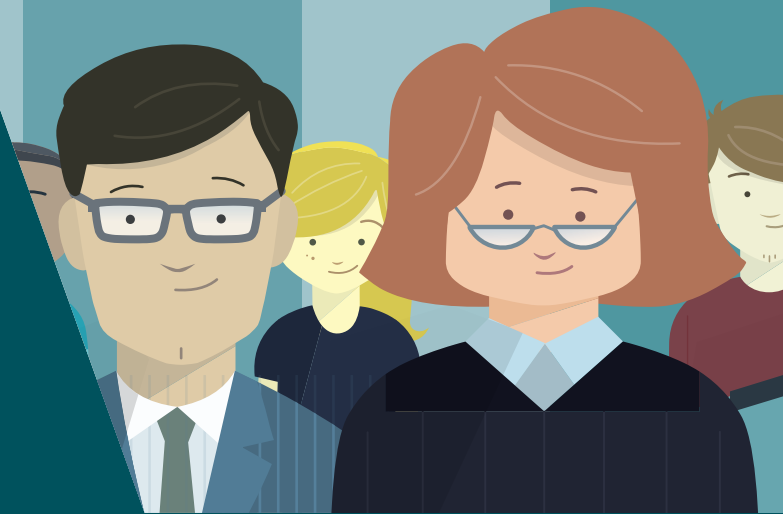
<sup>22</sup> FRA (2014b).

<sup>23</sup> The data populating structural indicators draw from the European Commission reports: Children in judicial proceedings and Data on children in judicial proceedings in EU-28.



# 1

## Right to be heard



### Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

#### Article 44

Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

#### Article 47

A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

### Convention on the Rights of the Child

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The right to be heard and express one's views is essential for effective participation in judicial proceedings. It is a right guaranteed to children by the EU, the Council of Europe and the UN.

But simply capturing a child's views is not enough. Meaningful participation requires that the relevant authorities create a safe and friendly environment and use appropriate methods of questioning to determine and take into account a child's specific needs.

*"During my career I have noticed major changes: [...] previously child hearings were simply considered a formality of the proceedings and this is no longer the case."* (Spain, court clerk, female)

The evidence FRA collected in the 10 EU Member States studied shows that Member States sometimes fail to deliver on the right of a child to be heard in judicial proceedings. Hearings in both civil and criminal proceedings are seen as traumatising for children. However, the findings – resulting from the analysis of structural, process and outcome indicators – also pinpoint specific measures that make judicial procedures more child friendly, helping make children's participation in criminal and civil judicial proceedings more meaningful.

Tables 1 and 2 provide an initial overview of the population of structural and process indicators in criminal and civil law in the Member States surveyed (see detailed tables analysing the population of individual indicators by country in Annex 2). Where indicators are populated using results from qualitative research they should be read as indicative of a situation. The data populating the structural indicators are based on the analysis of European Commission data on national legislation. The data populating process indicators stem from FRA fieldwork research based on the respondents' reports and assessments of practices and procedures in their countries.



Outcome indicators are not included, as they can only be fully populated once the forthcoming work on children’s interviews is complete (for a fuller description of the data analysis see the methodology section in [Annex 1](#)).

Some respondents consider that hearing children is not always meaningful and necessary, and suggest limiting

the number of hearings when possible. Others strongly promote children’s rights to be heard and express their views, advising that their developmental phase, linguistic capabilities and state of health should always be kept in mind.

**Table 1: Criminal law – Populating structural and process indicators, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Structural</b>	Partly implemented	Partly implemented	Partly implemented	Usually implemented	Partly implemented	Usually implemented	Partly implemented	Partly implemented	Often not implemented	Partly implemented	Partly implemented
<b>Process</b>	Partly implemented	Usually implemented	Partly implemented	Partly implemented	Partly implemented	Partly implemented	Partly implemented	Partly implemented	Often not implemented	Usually implemented	Usually implemented

■ Usually implemented    ■ Partly implemented    ■ Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014

**Table 2: Civil law – Populating structural and process indicators, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Structural</b>	Usually implemented	Usually implemented	Usually implemented	Usually implemented	Partly implemented	Usually implemented	Partly implemented	Usually implemented	Often not implemented	Usually implemented	Partly implemented
<b>Process</b>	Often not implemented	Partly implemented	Partly implemented	Usually implemented	Partly implemented	Partly implemented	Partly implemented	Partly implemented	Often not implemented	Usually implemented	Usually implemented

■ Usually implemented    ■ Partly implemented    ■ Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014

## Case law on children's right to be heard

### Court of Justice of the European Union

“[...] as provided for in Article 24 of the Charter of Fundamental Rights and the first subparagraph of Article 42 (2) of Regulation No. 2201/2003, it is not a necessary consequence of the right of the child to be heard that a hearing before the court of the Member State of origin takes place, but that right does require that there are made available to that child the legal procedures and conditions which enable the child to express his or her views freely and that those views are obtained by the court. [...] where that court decides to hear the child, those provisions require the court to take all measures which are appropriate to the arrangement of such a hearing, having regard to the child’s best interests and the circumstances of each individual case, in order to ensure the effectiveness of those provisions, and to offer to the child a genuine and effective opportunity to express his or her views.”

*CJEU, C-491/10, Joseba Andoni Aguirre Zarraga v. Simone Pelz, 22 December 2010, paras. 65–66*

### European Court of Human Rights

“It would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned.”

*ECtHR, Sahin v. Germany, No. 30943/96, 8 July 2003, para. 73*

“The combination of the refusal to order an independent psychological report [for the child] and the absence of a hearing [of the child] before the Regional Court reveals, in the Court’s opinion, an insufficient involvement of the applicant [father] in the decision-making process [...] thereby violating the applicant’s rights under Article 8 of the Convention.”

*ECtHR, Elsholz v. Germany, No. 25735/94, 13 July 2000, para. 53*

*“I think we do have a history of hearing children, I think we have had a problem in the past in that we have tended to treat them as mini adults, we haven’t made concessions in relation to children’s understanding and ability to participate in the process, [but] we do hear them.”*  
(United Kingdom, lawyer, female)

FRA fieldwork findings show that children are heard more often in criminal than civil proceedings, due to the need for evidence in criminal cases. Children are not always required to participate in civil proceedings, such as in family law cases involving issues including divorce and custody. There are more procedural safeguards in criminal than in civil proceedings, particularly when the child is a victim rather than a witness. Authorities in civil proceedings also grant certain procedural rights more often to child plaintiffs than to witnesses or parties. Video recordings and child-friendly hearing rooms are more often available and used for criminal than civil proceedings.

All interviewees underlined the importance of coordinated professional work by all the specialists involved, to limit and alleviate any negative effects children may experience. On the whole, if trained professionals hear children and guidelines on how to hear children exist, professionals are assessed to behave more appropriately. Children feel more secure if there are fewer hearings, fewer people present and if only one trained professional hears them. They can also make better use of their rights and provide more valid, less influenced statements.

Repetitive hearings and lengthy proceedings remain a challenge in both justice fields. In criminal proceedings, this is due to lengthy time spans between providing evidence and trial hearings. In civil proceedings, especially in family cases, length may stem from parties’ conflicting interests and may radically impact children’s daily living arrangements. Overall, repetitive and lengthy proceedings are judged to worsen the quality of the children’s evidence and undermine their emotional well-being.

Both criminal and civil proceedings have, however, made progress in making justice more child-friendly. They have done so by ensuring that social care professionals participate more throughout judicial proceedings, especially in civil law hearings. The adoption of special measures to protect children from re-victimisation has also helped.

## Promising practice

### Implementing the child’s right to be heard in a child-friendly environment in criminal proceedings

French legislation (structural indicator) ensures that trained professionals hear children in the most favourable settings under the most suitable conditions. It stipulates that children should receive free legal aid and gain, through multidisciplinary professional cooperation, a comprehensive understanding of their situation. The professionals interviewed identified measures to ensure procedural safeguards, the training of professionals, the controlled contact with other parties and the need to prioritise cases involving children (all structural indicators). Through such measures, they assessed the degree to which the implementation of legislation makes criminal proceedings more child-friendly.

From a legal perspective, the United Kingdom (England and Wales) has less specific legislation than France. From a procedural one, however, England and Wales have measures in place that render criminal proceedings as child friendly as possible. The professionals interviewed consider that these measures have a positive impact on children’s well-being and safety.

Participation is a core principle of the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.<sup>24</sup> The meaningful participation of children requires that child-friendly procedures be developed within a system originally designed for adults. The relevant authorities must create a safe and friendly environment and use appropriate methods of questioning to determine and take into account a child’s specific needs. They must also protect them, to keep children, especially those who have been victims or witnesses to a crime, from suffering further psychological trauma. Authorities must respect and empower them, while ensuring their well-being – an important element to consider given the stress and trauma of judicial proceedings. [Chapter 3](#) examines protection and privacy measures during judicial proceedings.

<sup>24</sup> Council of Europe (2010).

**Table 3: Structural, process and outcome indicators on the right to be heard**

Indicators	
<b>Structural indicators</b> Legal, statutory provision or obligation:	<b>1.1.1./1.4.1.</b> Fulfilling the child’s right to be heard
	<b>1.1.2./1.4.2.</b> Ensuring children are heard in the most favourable setting <ul style="list-style-type: none"> <li>• Providing for specialised courts or services</li> <li>• Taking into account the age and maturity of the child</li> <li>• Specifying the most favourable settings and suitable conditions</li> </ul>
	<b>1.1.3./1.4.3.</b> Training all professionals in direct contact with children on communicating with children at all ages and stages of development, as well as with children in situations of particular vulnerability, including the existence of a mandatory training requirement as a prerequisite for taking up a post where contact with children is likely
	<b>1.1.4./1.4.4.</b> Encouraging multidisciplinary cooperation to obtain a comprehensive understanding of the child and assess their legal, psychological, social, emotional, physical and cognitive situation
	<b>1.1.5./1.4.5.</b> Providing children with free legal aid including access to legal representation, under the same or more lenient conditions as adults
	<b>1.1.6./1.4.6.</b> Reducing the length of proceedings involving children and determining the matter without delay by a competent, independent and impartial authority or judicial body
<b>Process indicators</b> Measures and procedures:	<b>1.2.1./1.5.1.</b> Ensuring that professionals are adequately equipped to work with children <ul style="list-style-type: none"> <li>• Requiring training and specialisation of professionals involved</li> <li>• Elaborating guidelines and tools for professionals involved</li> <li>• Providing procedures to help support a child before, during and after hearings</li> <li>• Allowing persons to attend hearings (civil only)*</li> </ul>
	<b>1.2.2./1.5.2.</b> Adapting settings to children’s needs <ul style="list-style-type: none"> <li>• Providing child-friendly facilities, including screens, separate rooms and technological equipment</li> <li>• Controlling contact with other parties in the judicial proceeding (criminal only)*</li> </ul>
	<b>1.2.3./1.5.3.</b> Providing legal representation and legal aid to children
	<b>1.2.4./1.5.4.</b> Reducing the length of proceedings <ul style="list-style-type: none"> <li>• Avoiding undue delay (criminal only)</li> <li>• Prioritising cases involving children (criminal only)*</li> <li>• Reducing the number of hearings (criminal only)*</li> </ul>
Outcome indicators populated through evidence from interviews with professionals and children**	
<b>Outcome indicators</b> Results:	<b>1.3.1./1.6.1.</b> Deciding to hear the child
	<b>1.3.2./1.6.2.</b> Reducing the length of proceedings
	<b>1.3.3./1.6.3.</b> Assessing the measures in place and their effect on children
Outcome indicators to be populated through evidence from interviews with children***	
<b>Outcome indicators</b> Results:	The extent to which children who were heard were able to express their views and participate effectively
	The extent to which children were assisted by a competent professional during court proceedings
	The extent to which children were satisfied with the way their right to be heard was respected
	The extent to which children received legal representation and free legal aid

Notes: \* These indicators are applicable to both proceedings but data are not always available to populate both.

\*\* These indicators can only partly be populated in this first report, as both children’s and professionals’ perspectives are necessary to give a complete assessment of the outcomes.

\*\*\* The second report, based on interviews with children, will be published at a later stage.

Source: FRA, 2014





The indicators relating to the right to be heard are presented and populated separately for criminal and civil proceedings, since important differences between the two in terms of age requirements, provisions and guidelines lead to distinct legal contexts for implementation. Criminal provisions tend to be more detailed than civil ones, typically specifying the authority in charge of hearing the child, the setting where the child is heard and the information provided to him/her. More fragmented provisions exist in civil proceedings, where depending on the type of case, hearing the child is either mandatory, optional, or not regulated at all. [Figure 2](#) summarises the differences between criminal and civil proceedings.

## CRIMINAL PROCEEDINGS

### 1.1. Structural indicators (legal obligations)

#### 1.1.1. Fulfilling the child’s right to be heard

The rights of child victims are addressed in a number of EU legislative initiatives aimed at reinforcing victims’ rights, such as:

- Council Directive (2004/80/EC) relating to the compensation of victims of crime;
- Directive (2011/99/EU) on the European Protection Order;
- Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters (an integral part of the Stockholm Programme,<sup>25</sup> setting out the

Figure 2: Differences between criminal and civil proceedings

	CRIMINAL	CIVIL
Regulations	More regulation • focus on very severe cases • focus on victims	Fragmented • different type of proceedings • focus on plaintiffs
Guidelines	More guidelines for all professionals	Fewer guidelines, mainly for social professionals
Professionals	Focus on legal professionals	More involvement by social professionals
Locations	Separate rooms • video links • video recordings courtrooms	Offices courtrooms neutral spaces
Support	Group-based	Bilateral

Source: FRA, 2014

25 European Council (2010).

EU’s priorities in the area of justice, freedom and security for the period 2010–2014).

EU secondary law on criminal issues provides for the right of a child to be heard in, for example:

- Article 10 (right to be heard) of the Victims’ Directive (2012/29/EU);
- Article 19 (assistance and support to victims) of Directive 2011/93/EU combating sexual abuse, sexual exploitation of children and child pornography;
- Article 14 (assistance and support to child victims) of the Human Trafficking Directive (2011/36/EU).

As Table 4 shows, seven of the EU Member States included in the research have legislation recognising the right of children to be heard in criminal proceedings (in Poland this applies only to child victims).<sup>26</sup> In three EU Member States – Bulgaria, Germany and the United Kingdom (England and Wales) – the right to be heard is not expressly enshrined in law. The decision to call on a child to testify is left to the discretion of the police and prosecuting authorities. In the United Kingdom, the standing of the victim in criminal proceedings differs considerably from that in the other countries researched. The victim typically does not play an active role in the proceedings; instead, the state takes the lead in defending his or her rights. There are, however, some changes since 2013, which this research does not cover. As part of the approved new Code of Practice for Victims of Crime, victims can now say how the crime has affected them – physically, emotionally, psychologically, financially or in any other way – and express their concerns, request compensation and indicate if they require any support (Victims Personal Statements).<sup>27</sup>

**Table 4: Child’s right to be heard, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Victim</b>			✓	✓	✓*	✓	✓	✓	✓		✓**
<b>Witness</b>			✓	✓	✓	✓***	✓		✓		✓

Notes: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

\* Children under 15 years of age can participate during the pre-trial investigation stage whereas children over 15 have rights parallel to those of the parents and guardian.

\*\* Children under 14 years of age may not make a victim statement except through a parent or guardian.

\*\*\* Witnesses cannot request to be heard but they can write to the judge/public prosecutor. Child witnesses fall under the scope of provisions for adult witnesses.

Source: European Commission, 2014

### 1.1.2. Ensuring children are heard in the most favourable settings

EU secondary criminal law includes provisions concerning the necessity of suitable settings and conditions for children. Relevant directives are the:

- Victims’ Directive, in particular Article 24 (right to protection of child victims during criminal proceedings) and Article 25 (training of practitioners);
- Directive on combating sexual abuse, sexual exploitation of children and child pornography (on how to conduct interviews with children);
- Human Trafficking Directive, in particular Article 15 (protection of child victims of trafficking in human beings in criminal investigations and proceedings) and Article 18.3 (on the training of officials).

#### Providing for specialised courts or services

Specialised courts and prosecutors’ services tend to help make proceedings more child friendly. As Table 5 shows, four of the 10 EU Member States studied (Croatia, France, Germany and Romania) operate separate courts for children with specialised panels made up of either individual judges, a set of judges, or a combination of the two. In Croatia, France and Germany, a specialised child offender court can also try adult perpetrators of crimes against children. In Romania, there are provisions for establishing specialised courts for child offenders and for adults committing crimes against children, but only one such court exists (the Tribunal for Children and Family in Braşov). Regular criminal courts handle criminal offences against children in Spain, and specialised courts, called gender-based violence courts, deal with cases of child victims or witnesses of domestic violence.

<sup>26</sup> European Commission (2014).

<sup>27</sup> United Kingdom, The Crown Prosecution Service (2013).

Table 5: Specialised courts and prosecution services units, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO*	UK (England and Wales)	UK (Scotland)
Special courts** for child victims and witnesses in criminal proceedings		✓				✓	✓		✓		
Specialised units-Prosecution*** services			✓								

Notes: ✓ = the provision applies; grey cell = the provision does not apply, either because the right does not exist or because it is not applicable.

\* Romania has only one specialist court, in the city of Braşov.

\*\* Includes ordinary courts with adapted courtrooms.

\*\*\* Estonia has specialised units within the prosecution services that deal with children. While other Member States have no such specialised units, prosecutors who deal with children receive mandatory training on children's rights and needs in Croatia, Estonia, France, Germany and Spain.

Source: European Commission, 2014

## Taking into account the age and maturity of the child

Many legal instruments specify that a child's rights to express his/her views freely should be determined not only according to age but also maturity. This is expressed in:

- Article 12 of the CRC – the UN Committee on the Rights of the Child explained that "[r]esearch has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view":<sup>28</sup> an individual assessment is

therefore necessary to ascertain the views of the child according to the principle of 'evolving capacity' – a new principle of interpretation in international law. It recognises that as children acquire enhanced competencies, there is a diminishing need for protection and a greater capacity to take responsibility for decisions affecting their lives;<sup>29</sup>

- Article 24 (the rights of the child) of the EU Charter of Fundamental Rights;
- Article 10 (right to be heard) of the Victims' Directive.

In the 10 EU Member States researched, legal age requirements on the right to be heard either specify ages or allow this to be determined on a case-by-case

Table 6: Age requirements on the right to be heard in criminal court proceedings, by EU Member State

EU Member State	Special protection measures	Age
BG	under 14	Obligatory over 10
DE	under 16	No minimum age
EE	under 14	
ES	under 18	
FI	under 15	Obligatory over 15
FR	under 18	
HR	under 16	
PL	under 15	No minimum age
RO		Obligatory over 10
UK (England and Wales)	under 18	No minimum age
UK (Scotland)	under 16	No minimum age

Source: European Commission, 2014

<sup>28</sup> UN, Committee on the Rights of the Child (2009).

<sup>29</sup> See UNICEF (2005), *The Evolving Capacities of the Child*, Innocenti Insight 11.

basis. As Table 6 shows, children over the age of 10 must be heard in Bulgaria and Romania, and those aged 15 and over must be heard in Finland. Children below these ages may be heard only under certain conditions, such as during a pre-trial investigation phase in Finland. Germany, Poland and the United Kingdom have no minimum age for hearing children in criminal cases.

The child’s participation is often determined not only on the basis of age but also on provisions acknowledging maturity. The principle of evolving capacity provides that children shall be treated in an individualised manner based on their degree of maturity. This principle is embedded in the legal frameworks of Bulgaria, Croatia, Estonia, France, Finland, Germany, Romania, Spain and the United Kingdom (with the exception of Scotland). Poland and Scotland (United Kingdom) have no such legal provisions.

The research identified different approaches to defining ‘maturity’ but little evidence of official standards to guide judges in assessing it. In Germany and the United Kingdom, for instance, jurisprudence lists several criteria that help determine a child’s maturity, such as: social relations, impulsivity, conflict management, results at school, living conditions and stability of emotional reactions.

The rules of questioning can vary according to age, with special protection measures applied to children up to a certain age (Table 6). Courts in Estonia, for example, may involve child protection experts in the questioning of any child under the age of 14. Protection mechanisms also apply to children under 14 years old in Bulgaria, under 15 in Poland for child witnesses, and under 16 in Scotland.

### Specifying the most favourable settings and suitable conditions

The Victims’ Directive establishes a number of protection mechanisms that apply to all victims of crime, including children. It also states that due to their vulnerability to secondary victimisation, children shall be

presumed to have specific protection needs. These are specified in:

- Article 22 (individual assessment of victims to identify specific protection needs);
- Article 23 (right to protection of victims with specific protection needs during criminal proceedings) – more specifically on guidelines for conducting interviews, avoiding visual contact between victims and offenders, ensuring that the victim may be heard in the courtroom without being present and avoiding unnecessary questioning about the victim’s private life unrelated to the criminal offence;
- Article 24 (right to protection of child victims during criminal proceedings) – more specifically on recording interviews, the appointment of a special representative and the right to legal advice and representation in a child’s own name.

Various legal provisions in the 10 Member States included in the research specify the most favourable settings and suitable conditions for the realisation of a child’s right to be heard. To avoid secondary victimisation through repetitive hearings, for example, interviews with child victims and witnesses are often recorded, to be used later as evidence (Table 7). EU Member States regulate this practice differently depending on whether the child is a victim or a witness, his or her age and the type of crime.

Further safeguards include the:

- presence of professionals during hearings (Table 8);
- presence of a person of trust to accompany the child (Table 9);
- use of screens to separate the child from the defendant;
- requirement that a child can only be interviewed by one person or outside the courtroom.

Specifications concerning the most favourable settings and suitable conditions should not only cover procedural safeguards but also the overall child friendliness of the settings, to facilitate children’s effective participation.

**Table 7: Obligation to video-record interviews, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Victim</b>	✓ <sub>opt</sub>	✓	✓		✓	✓	✓	✓	✓ <sub>opt</sub>	✓	✓
<b>Witness</b>		✓	✓		✓		✓	✓	✓ <sub>opt</sub>	✓	

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable; opt = optional.

Source: European Commission, 2014

Table 8: Obligation to ensure the presence of professionals during hearings, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Victim						✓ <sub>opt</sub>		✓ <sub>opt</sub>			
Witness				✓			✓	✓ <sub>opt</sub>	✓ <sub>opt</sub>		

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable; opt = optional. 'Professionals' includes psychologists, social workers.

Source: European Commission, 2014

Table 9: Obligation to provide an accompanying person during interview-hearing, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Victim		✓		✓	✓		✓	✓	✓	✓	✓
Witness		✓		✓			✓		✓ Below the age of 14	✓	✓

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

Table 10: Obligation to provide a child-friendly environment during hearings

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Victim	✓	✓	✓	✓	✓	✓	✓	✓ For victims of certain types of offences		✓	✓ For children under the age of 16
Witness		✓		✓	✓		✓	✓	✓	✓	✓

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

All the countries researched address this, but not necessarily for both child victims and witnesses (Table 10).

### 1.1.3. Training professionals

The Victims' Directive requests EU Member States in Article 25 to "ensure that officials likely to come into contact with victims, such as police officers and court staff, receive general and specialist training [...] and enable them to deal with victims in an impartial, respectful and professional manner".

Legislation in the majority of the EU Member States studied prescribes mandatory training on the rights and needs of the child for judges, police, prosecutors,

lawyers and other professionals working with children. In seven EU Member States this training is a prerequisite for assuming a position (Table 11).

Aside from the specialised courts in Croatia, France, Germany, Romania and Spain, a number of countries have certain departments that require additional training, such as the special police units in Estonia, France and Spain or the special unit dealing with children within the Estonian prosecution services. There are no special units in Croatia, Finland and the United Kingdom, but police officers within regular units are trained to interview children when required. Training is also required for other functions, such as for legal guardians in Finland. In the United Kingdom, judges specialising in sex

**Table 11: Mandatory training on children’s rights and needs, by EU Member State**

EU Member State	Mandatory for professionals working with children	Types of professionals covered by mandatory requirement				Continuous training for professionals	Formal cooperation among professionals
		Judges	Police	Public prosecutor	Defence lawyers		
BG	In part	In part	In part				
DE	✓	✓		✓			
EE	✓	✓	✓	✓	✓	✓	
ES	✓	✓	✓	✓		✓	
FI						✓	✓
FR	✓	✓	✓	✓	✓	✓	✓
HR	✓		✓	✓	✓		✓
PL							✓
RO						✓ For judges, police officers and public prosecutors	
UK (England and Wales)	✓	✓		In part		✓ For judges	✓
UK (Scotland)							

Note: ✓ = the provision applies; empty grey cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

offences must train in managing vulnerable witnesses, including children. Witness support staff and ‘intermediaries’ acting as mediators between different professionals and children also take courses on the legal process and on supporting children with communication

difficulties. Professionals involved with interviewing children providing evidence must also undertake a specialised two-week training course in issues such as child communication and development.

**Table 12: Multidisciplinary approach to dealing with children involved in criminal proceedings, by EU Member State**

EU Member State	Multidisciplinary approach recognised as important	Children covered by multidisciplinary approach
BG	Yes	Victims of abuse
DE	Yes	
EE	No	-
ES	Yes	
FI	Yes	Victims
FR	Yes	Victims
HR	Yes	
PL	Yes	Victims of domestic violence
RO	No	-
UK (England and Wales)	Yes	Victims
UK (Scotland)	Yes	

Source: European Commission, 2014



### 1.1.4. Encouraging multidisciplinary cooperation

Most national legal frameworks require a multidisciplinary approach to training, acknowledging the necessity of a comprehensive understanding of child-related issues through exchanges between professionals from different disciplines. Formal cooperation among professionals is required in Croatia, Finland, France, Poland and the United Kingdom (England and Wales).

#### Promising practice

#### Introducing mandatory cooperation

In Poland, a child under 15 years of age who was a victim of, or witness to, domestic or sexual abuse should only be heard once in criminal proceedings in the presence of a psychologist. The hearing should be video-recorded for future reference. Prompted by these new legal amendments, organisations such as the Nobody's Children Foundation have developed special training programmes on child hearings open to both legal and social professionals. Respondents praised this initiative because it facilitates multidisciplinary cooperation in the criminal justice field.

### 1.1.5. Providing children with free legal aid including access to legal representation

Legal representation is essential for children's effective enjoyment of procedural rights, particularly the right to be heard. A number of EU legal instruments refer to both legal representation and legal aid, such as:

- the Victims' Directive (on a child's right to a lawyer);
- Article 12 (protection of victims of trafficking in human beings in criminal investigation and proceedings) of the Human Trafficking Directive;
- the Directive on combating sexual abuse, sexual exploitation of children and child pornography (on the right to legal counsel and if appropriate to legal representation).

A child's right to a legal representative and legal aid is embedded in the system of all the EU Member States studied except the United Kingdom, given its common law system (Table 13). Finland and Germany aside, this right covers all stages of the proceedings, although in Finland and Romania it is only available for child victims, not child witnesses. Legal aid is available to child witnesses in Bulgaria, Croatia, Estonia, Germany, Romania and Spain. In Bulgaria, every witness (child or adult) has the right to request consultation with a lawyer if he/she thinks that the testimony could put him- or herself in danger.

In some countries – Croatia, Finland and Romania – legal representation is free of charge. In others, such as Germany, it is available only to those who are financially eligible, subject to a means or a merit-test. This means that only children who are perceived to be in need of protection can access legal aid free of charge during questioning.

### 1.1.6. Reducing the length of proceedings

The Victims' Directive attempts to prevent delays from occurring at several stages of the proceedings, such as during the provision of information or the transmission of complaints.

As Table 14 shows, five of the 10 EU Member States studied have legal obligations to avoid undue delays in criminal justice proceedings. In France, Germany and Poland these provisions are contained in policies or guidelines formulated in response to case law. A number of Member States have regulations that limit the number of interviews or hearings to be conducted with the child victim or witness during the trial (Table 15).

## 1.2. Process indicators (procedures)

Process indicators refer to measures and procedures taken to implement laws and policies that enable children to express their views and concerns in criminal judicial proceedings. These measures concern:

- the **persons** responsible for empowering and helping children to express their views and concerns and participate effectively. The indicators examine:
  - the degree of specialisation and training of professionals dealing with children
  - the existence of guidelines and protocols regulating child hearings
  - the support given to children before, during and after hearings
  - how legal representation, counsel and aid is provided to children;
- the **organisation** of hearings in terms of the physical environment and the personal interaction, which should be specifically adapted to children's needs. The indicators focus on the existence and function of protective and child-friendly measures on:
  - the physical adaptation of the hearing's environment
  - the practices and guidelines of child-friendly hearing techniques.

**Table 13: Obligation to provide children with legal representation and legal aid, by EU Member State**

EU Member State	Victim			Witness		
	Right to legal representation	Right to legal aid	Type of legal aid	Right to legal representation	Right to legal aid	Type of legal aid
BG	✓	✓	Means test	✓	✓ *	
DE	✓ During the examination	✓	Available to all	✓ During the examination	✓	Merit based
EE	✓	✓	Means test	✓	✓	Means test
ES	✓	✓	Different rules across communities	✓	✓	Different rules across communities
FI	✓ During the investigation and at the trial	✓	Available to all			
FR	✓	✓	Legal consultation is free of charge in principle. Representation at judicial proceedings is means-tested.	✓		
HR				✓	✓	Available to all
PL	✓	✓	Means test	✓ Only if this is necessary to protect his or her interests		
RO	✓	✓	Free in cases of attempted murder, crimes of violence, sexual crimes. For other crimes, free legal aid is means tested.		✓	Available to all
UK (England and Wales)						✓
UK (Scotland)						

Notes: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

\* Every witness (child or adult) has the right to request consultation with a lawyer if he/she thinks that the testimony could put him- or herself in danger.

Source: European Commission, 2014

Criminal judicial proceedings for children, as for adults, have two phases: the pre-trial and the trial phase. When necessary, the analysis addresses each phase separately.

### 1.2.1. Ensuring professionals are adequately equipped to work with children

The professionals that children come into contact with throughout the proceedings should be adequately equipped to hear them, enabling them to freely express their opinions and give statements that can be used as

evidence. In the pre-trial phase children may interact with professionals with a different background or function than those during the trial phase.

#### Requiring training and specialisation of professionals involved

##### Pre-trial phase

During the pre-trial phase, police officers are often children’s first point of contact with the criminal justice system. They play a key role in criminal investigations and interact closely with child victims and witnesses.





Table 14: Avoiding undue delay in cases applicable to both children and adults, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Victim	✓	In part		✓	✓		✓		In part	✓	
Witness				✓						✓	

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

Table 15: Limiting the number of interviews, by EU Member State

EU Member State		BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Victim	Limit to the number of interviews/hearings during trial	✓	✓		✓		✓	✓	✓ If the child is the victim of a serious crime	✓	✓	
Witness	Limit to the number of interviews	✓ When the child is under 14 years of age		✓					✓ When the child is under 15 years of age			

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

In most of the countries studied, the police investigators who deal with children are specially trained. Police officers in Croatia must complete a three-month training programme before they are authorised to sign police reports in cases involving children. In the United Kingdom, the police can decide how to take a child's initial statement. In practice, however, a specialist police unit interviews almost all victims of sexual assault and of any type of familial abuse, and video records these interviews (in line with the Achieving Best Evidence in Criminal Proceedings (ABE) guidelines). The treatment of children who are victims of less serious offences is more variable, and children interviewed by non-specialists officers are often simply asked to give a written statement. The law in Finland stipulates that a police officer specialising in investigating children must conduct child interviews.

*"In my opinion the police have [...] tried to make [the interviewing situation] as easy as possible. And for example if it's a sexual crime, which the adolescents find difficult to talk about any way, then the police says, tells about her/his own background. For example that she/he has investigated this type of crime for years and there's no need to worry about being ashamed to say something; that it's his/her work and he/she has heard all sorts of things and is used to hearing them."* (Finland, staff of victims' support organisation, female)

In other countries, such as Bulgaria or Romania, respondents spoke of a lack of professionalism. They provided examples of inappropriate police behaviour.

*"There are also situations when the behaviour is out of line. I saw, and not only once, situations when the policeman allowed himself to say 'Ok, come on, I know that you enjoyed it too' or something similar. Personal preconceptions and stereotypes come in."* (Romania, psychologist, female)

Judges are usually involved in the pre-trial investigation phase when they conduct the first hearing. Exceptionally, psychologists can also perform pre-trial hearings, or can be asked for individual assessments, for instance on the child's protection needs or credibility. In Finland, psychologists conduct child hearings during pre-trial

investigations. They handle the hearing alone with the child. The defendant and his/her lawyer can submit questions on paper for the psychologist to ask. The interview is videotaped and shown at the trial. This is not, however, the case for trial hearings which take place when the child has reached the age of 15.

Some of the countries studied have established specialised institutions for interviewing children, where professionals from different disciplines work together, which respondents commented positively upon. Again in Finland, psychologists interview child victims of sexual abuse or with disabilities in state-funded Forensic Child and Adolescent Psychiatry Centres. In Croatia, the Polyclinic for the Protection of Children in Zagreb provides specialists to hear children as young as four to five years old.

#### Promising practice

### Using trained psychologists to obtain testimony

Judges in Catalonia, Spain, can call upon a specially trained team to perform preliminary child hearings instead of the court. The Technical Advisory Team (*Equipo de Asesoramiento Técnico*, EAT) is comprised of highly trained psychologists who can intervene at the judge's discretion during the pre-trial phase. They are usually called upon in cases of crimes of sexual abuse and/or violence, or where the victim or witness is very young (as young as 3-to-4-years old). This initiative means that the hearings are conducted in child-friendly facilities and that special interviewing techniques are used, including the so-called criteria-based content analysis.\*

\* Cohen, R. L., and Harnick, M. A. (1980), 'The susceptibility of child witnesses to suggestion: An empirical study', *Law and Human Behavior*, Vol. 4, pp. 201-210; Steller, M. (1989), 'Recent developments in statement analysis' in: Yuille, J. C. (ed.), *Credibility assessment*, Dordrecht, Kluwer Academic Publishers, pp. 135-154.

In most of the EU Member States studied, respondents generally said that social professionals such as psychologists and social workers play a key role at the pre-trial investigation phase. They also stressed the importance of multidisciplinary cooperation, such as that between these professionals and the police. In the United Kingdom (England and Wales), a registered intermediary who has either a social or legal background functions as a link between the child and the professionals involved and assists the police. In Scotland, city-based social workers are trained to conduct joint investigative interviews and are co-located with police officers.

Despite the benefits, however, respondents said that social professionals are not always called upon to assist the police in hearings. Many prefer highly trained police

officers to conduct the interviews. In France, for example, the Prosecutor's office rarely requests the presence of a social care professional, such as a child psychiatrist; the investigator normally has a monopoly on questioning the child. A social professional, such as an educator, may however be present for the initial minutes of the interview to instil a climate of confidence. Child protection specialists occasionally attend child interviews conducted by the Romanian police, who may at times call on a psychologist for support. Respondents judged the rules to be vague, however, and argued that a lack of resources made this type of cooperation rare. Nonetheless, a child protection specialist will usually be present for cases involving trafficking victims, or if the child's parent is absent.

#### FRA ACTIVITY

### Reinforcing guardianship systems for children deprived of parental care

The FRA and the European Commission jointly produced a handbook that focuses on reinforcing guardianship systems. These systems are a key safeguard of children's rights when parents are not able or willing to exercise parental rights and duties or have been precluded from doing so. This can be the case with child victims of trafficking; separation can be a result of, or a risk factor for, trafficking.

The handbook aims to strengthen the protection of children by assisting national authorities and other EU stakeholders to further develop existing guardianship systems. It seeks to clarify the role of guardians and strengthen their preventative and protective role as an essential component of an integrated child protection system. It underlines the importance of the role of guardians and legal representatives in preventing and responding to child abuse and exploitation, and in protecting and assisting child victims of trafficking. Given how guardianship varies across the EU, the handbook promotes a shared understanding of the main principles and features of a guardianship system. By presenting a set of core common principles and key standards, it aims to improve conditions for children under guardianship, and promote respect for their fundamental rights.

The handbook, *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking* (2014), responds to a request in the *EU strategy towards the eradication of trafficking in human beings 2012-2016*.

#### Trial phase

During the trial phase, national rules differ regarding the age at which a child is to be heard, by whom and under which conditions. If a hearing is not required, much is left to the individual discretion of the

professionals involved, and practices differ within and across EU Member States. Practices also vary according to the type of case and the role of the child in the proceedings (victim or witness).

In most of the 10 EU Member States studied, judges play a key role in hearing children at the trial phase. Judges in France, Germany, Poland and Spain generally ask most of the questions, in line with national legal frameworks. In Poland, if children are not heard in special child-friendly rooms (so-called ‘blue rooms’), then judges hear them and no specific modes of interviewing are stipulated. Judges or prosecutors in Germany may mandate that psychologists assess the child’s credibility, mostly in ‘moderate’ crime cases. In Bulgaria, Croatia, Estonia, Finland, Romania and the United Kingdom, psychologists or social workers may also play a leading role in child hearings. They may even be the sole person accompanying the child at a hearing. In the United Kingdom, the role of intermediaries – social or legal professionals with further legal training to liaise between the child and the judge – is clearly regulated and applied. Prosecutors and lawyers may question the child indirectly via the judge or psychologist hearing the child.

The respondents’ views differed on how well suited judges are to hear children. Such opinions are closely linked to questions of training and specialisation, on which [Chapter 6](#) gives more detail.

Respondents from Poland consider judges generally well-prepared, and psychologists are usually present at hearings as support persons. In larger French jurisdictions, some judges, who are required to be specifically trained, are designated as competent to handle child-related cases. This designation, however, may also be based on motivation and personality rather than on specific training to conduct child hearings.

*“There is a judge, aware of the fact that he has to hear a child as witness, [who tries] to get closer to the child using his own life experience, trying to make the hearing as little traumatic as possible, while at the same time conducting a procedure in an appropriate manner in order to ascertain some facts important for the proceedings.”*  
(Croatia, attorney at law, female)

Respondents from Finland and Germany raised the issue of judges lacking the specialisation required for working with children, a concern substantiated by the training participation rates of the respondents presented in [Chapter 6](#).

Respondents in Finland reported that during trial hearings (for example when the child is 15 years of age and above), all the parties to the proceedings are usually present in court: the presiding judge, a court clerk, the prosecutor, the jurors when applicable, the defendant, the defendant’s legal representative, the child and the

child’s legal representative. It is, however, possible for the defendant to be removed from the courtroom for the duration of the hearing. If needed, precautions can also be taken to ensure that the child does not encounter the defendant before or after the hearing.

*“Some children are very brave in the hearing, and don’t ask for any special arrangements. They speak very bravely and wonder why everybody is so astonished about the whole thing, what all the hassle is for. [...] Then others can’t even open their mouths, and we have to have breaks, and then in some situations we have to use the pre-trial report, in the situations where the child just can’t get his/her mouth open. Then the prosecutor or the attorney has to help them by saying, ‘now, you’ve [said this] in the pre-trial report’, and this way try to move the narration forward.”*  
(Finland, judge, male)

Most German social professionals see particular room for improvement in dealings with very young children, children with disabilities and traumatised children. Some of the social workers and even judges who were interviewed observed that judges tend to believe that if they have children themselves then they are well prepared for child hearings. The children that the judges meet in the hearings, however, are likely to have very different life experiences from those of their own children.

Respondents appreciate social professionals assisting in the hearing or conducting the hearing (mostly psychologists). Some United Kingdom respondents say that delegating the hearing to a professional detached from the rest of the investigation guarantees that the interests of the child will be taken into account, and that preconceived opinions are less likely to cast a shadow on the veracity of the child’s declarations. In contrast, other respondents from the United Kingdom and some from France believe that such delegation lowers the quality and undermines the validity of the hearing:

*“Some judges have completely delegated [to psychologists...] I can’t say the hearing is not well done, [just] that it is not at all a child hearing any more. It corresponds to an investigation measure [...] It is not the free words of the child. [...] The delegation, [should be] an exceptional case and in the interests of the child. Here, it is for the interest of the service [...] For us, it does not meet the requirements of a child hearing at all.”*  
(France, lawyer, female)

In most countries a well-trained judge is considered the best person to interview the child. Polish interviewees stressed that it is the judge’s task to examine the child and discover the truth. The judge should ask questions in person and cannot be replaced by anyone, not even by a good psychologist.

*“I think a judge should be [in the room with the child and conduct the hearing]. If the judge isn’t up to this, he or she should let the psychologist do this. But if the judge is trained and prepared [then he or she should interview the child personally]. It is the judge who decides the case so it’s crucial he or she has contact with the child. There’s the principle of direct examination of evidence, we have to see the child. Evidently, we later see this child in the recording, but a prepared judge is probably the best suited and the most competent person to collect evidence. [...] A psychologist isn’t prepared to do what we do.”*  
(Poland, judge, female)

The findings thus show that different professionals may be present during a hearing and directly hear a child in criminal proceedings, which requires training and specialisation (see Figure 3). Police officers and judges are most likely to directly hear a child, and some countries also let psychologists hear a child alone or jointly. Defence lawyers and prosecutors are usually not allowed to ask the child any questions directly. Such procedures require clear rules and guidelines, as well as coordination.

### Elaborating guidelines and tools for professionals involved

In all Member States studied except Spain, the manner in which child victims are interviewed is specifically adapted to them. Some EU Member States have guidelines to protect children from inappropriate questioning, while others offer such guidelines or other tools on how best to hear children. French legislation, for example, requires that only trained officials interview child victims, while German and Polish law stipulates that only one person should interview them. German law also foresees special modes of questioning children. Non-binding guidelines for different professional groups exist in several of the countries studied either on how to hear children (e.g. for prosecutors in Spain), or for specific types of cases (such as sexual abuse, in Croatia, Estonia, France and Germany).

#### Guidelines to protect children from inappropriate questioning

*“If the defendant tries to confuse the victim because he wants to point out his innocence or for any other personal reason, then the law provides for his removal from the courtroom and he may also be fined. [...] This can also be done in terms of the defence counsel who asks unfair and misleading questions or does not comply with the judge’s instructions or prevents in any way the conduct of the trial from proceeding. Then the lawyer is dismissed from the courtroom and sanctioned with a fine.”*  
(Bulgaria, judge, male)

To protect children from inappropriate questioning, many of the EU Member States studied, such as Bulgaria, Croatia, Germany, Poland, Spain and in the United

Kingdom (England and Wales), have strict rules about the questioning and cross-examination of children in criminal cases. The professionals involved, particularly judges, have a duty to protect children from inappropriate questioning. In Estonia, judges can prohibit the cross-examination of witnesses under the age of 14.

In Germany, respondents highlight the positive changes brought about by the 2011 criminal law reform, which introduced several exceptional safeguards to protect child witnesses in criminal proceedings. Now, only judges – not prosecutors or defence lawyers – may question a child during the main trial. Minors cannot be asked questions under oath. If and when a child is questioned, the defendant and the general public may be excluded from the courtroom. These safeguards previously applied only to children under the age of 16; they now cover those up to the age of 18, in line with the CRC definition of a child.

In Romania, respondents argued that a child may be treated in an inappropriate manner if the professionals involved are not trained.

*“[In one case] the trafficker was allowed to directly address questions to the victim. The judge attempted to say “Do you have legal representation?”, but when the attorney started to yell that he [was] not able to [ask] all the questions, that the trafficker [was] directly involved and that he should have the right to ask the victim, the judge remained silent. The trafficker [then] addressed the victim directly. I was right next to [the child trafficking victim] and I saw her reaction. She didn’t know what to do, to answer or not, especially since the questions formulated by the trafficker weren’t related to the offence, but to the identity of the victim. His purpose was to find the identity [...] and, at the end, he called her by her name, he said, “I know who you are” and he said her name. The child was almost about to faint on the chair.”* (Romania, psychologist, female)

Social professionals can also assist in avoiding inappropriate questioning. In Bulgaria, for instance, when using ‘blue rooms’, the investigating police officer or the judge asks questions through an intercom system to a psychologist or trained social worker, who then interprets the questions appropriately for the child. Similarly, in the United Kingdom, an intermediary may help the police, judges and legal representatives to frame questions to child victims or witnesses in a child-appropriate way.

#### Guidelines and tools on how to hear children

Respondents described a number of customary practices and guidelines to ensure children are heard appropriately. These practices concern how professionals themselves try to make hearings more child friendly or how they observed other actors doing so. In Estonia, Finland, France, Germany, Poland, Spain and the United Kingdom, child interviewing practices in criminal





## Promising practice

### Setting 'ground rules' for questioning

In the United Kingdom, when a registered intermediary is to be used in court to help the child interact with the professionals involved, legal representatives agree on 'ground rules' for the type of questions to be put to a child at a pre-trial hearing. The intermediary – a social or legal professional with further legal training – then appears at the trial to assist the judge in determining whether counsels are complying with these ground rules.

Examples of 'ground rules' include those for:

- **the intermediary's role:** the intermediary sets the agenda and leads the discussion, treating both parties equally;
- **behaviour:** only one person is supposed to talk at a time and participants must behave respectfully toward one another;
- **process:** all the participants should arrive for the meeting on time;
- **substance:** the discussion should relate to the topics which are meant to be covered.

A registered intermediary may also be used to advise and assist the police on appropriate questioning techniques. During police interviews, they may also help in communicating questions/answers, particularly if children are very young or have specific communication difficulties.

For further information, see [www.colorado.edu/conflict/peace/treatment/grules.htm](http://www.colorado.edu/conflict/peace/treatment/grules.htm); [www.theadvocatesgateway.org/cases](http://www.theadvocatesgateway.org/cases); [www.theadvocatesgateway.org/toolkits](http://www.theadvocatesgateway.org/toolkits)

proceedings are embedded in specific policy guidelines, of varying degrees of detail and focus. Professionals described measures including but not restricted to: pre-trial visits for the child to court, meeting the judge informally, removal of wigs and judicial gowns, and judges

sitting next to the child rather than on the bench to lessen the intimidation of a courtroom. Measures may also include informal communication, testimony provided at adequate times and the use of non-legal and child-friendly terminology and of drawing materials

## Promising practice

### Using child-friendly interview tools

Several countries use toy-like material to make it easier for children to communicate during hearings. Child-friendly interview rooms in Estonian police stations come equipped with anatomical dolls that can be dressed and undressed for sexual abuse cases, a tool that a number of countries use. In Finland, social workers often use 'Teddy Bear Cards' to help children articulate their emotions. Versions of these cards have also been designed for older children.



Finland. Material used during children's hearings dependent upon their age and development.



Estonia, Tallinn. Dolls used during child hearings.

and children’s books. Professionals gave few examples, however, of material specifically developed to support these measures.

Respondents stressed the importance of a relaxed atmosphere and of establishing trust between the person who hears the child and the child. They outlined various ways to create such an atmosphere. Respondents in Spain described a special technique where psychologists ask very general questions to begin with and encourage free play, so that they can focus on understanding how the child is doing and detect any existing trauma.

Estonian professionals related a good practice, where professionals meet the child a day or two before the hearing, introducing him or her to the police department’s building, rooms and colleagues. This familiarisation is designed to inform and prepare the child for an upcoming hearing, create a comparatively relaxed environment and relationship of trust between the child and the police, and ensure a productive hearing. Although not widely practiced, a number of social professionals considered that such familiarisation should be encouraged.

The majority of the interviewees highlighted that, in their work, they met specialists who behaved very professionally. The specialists were skilled and interested in communicating with the child victim/witness in an appropriate manner. However, uniform standards,

guidelines and training would ensure a more systematic approach to achieving good practices, as countries with existing guidelines show.

*“After we [met] the victim at the police station, very shortly after the first interview, specialised officers came from the County [police department]. [...] They used great language, very pleasant, very nice [...] – they even made me have great confidence in that officer. We went in his car [...] and, while he was driving the victim to the Legal Medical Institute, he kept talking to the victim.[...] The victim did not have time to daydream or think of what happened, how things happened, they were talking all the time, all the time.[...] Very, very nice [...] and an astonishing professional, yes.”* (Romania, NGO staff, male)

Respondents from Finland and the United Kingdom in particular referred to existing guidelines targeted at different professional groups as positive practices.

In Finland, where guidelines for hearing and informing children are used for those under the age of 15, the psychologist introduces him/herself, explains the hearing proceedings, and talks about everyday matters with the child. He or she then assesses the child’s level of development and abilities. The guiding principle of the actual hearing in Finland is to start by asking open questions, such as whether the child knows why the hearing is taking place, and then asking for elaboration. Thereafter, direct questions about the events are asked, and finally, if needed, closed questions to elicit either a ‘yes’ or ‘no’ answer. All the psychologists interviewed

## Promising practice

### Elaborating guidelines for interviewing children

In the United Kingdom (England and Wales), the Ministry of Justice developed guidelines for interviewing child victims and witnesses in a 2011 report. The guidelines, *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures* (ABE),\* are directed at all those involved in relevant investigations, including the police, adults’ and children’s social care workers, and members of the legal profession. Children’s ABE interviews may be video recorded and shown later instead of the child’s primary testimony.

The Scottish Government also set guidelines for best interviewing practices in its 2011 publication, *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland*.\*\* These guidelines prescribe joint, video recorded, interviews by specially trained police officers and social workers. Social workers trained to conduct joint investigative interviews are partnered and co-located with police officers to facilitate a rapid response to interview requests. Although these interviews are video recorded, it is standard practice for the child to give live oral evidence.

In Finland, both police and psychologists follow guidelines for hearing and informing children. The guidelines were drafted by the National Research and Development Centre for Welfare and Health (Stakes).\*\*\* Finland has also developed a special set of guidelines on interviewing children who are victims of sexual abuse and/or assault and battery.

\* *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures.*

\*\* *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland.*

\*\*\* *Sosiaali- ja terveysalan tutkimus- ja kehittämiskeskus, Stakes/Forsknings- och utvecklingscentralen för social- och hälsovården, Stakes 2003: Guidelines on investigating sexual abuse and assault and battery against children, Opas lapsen seksuaalisen hyväksikäytön ja pahoiteltujen selvittämisestä, are not publically available.*

believed that the hearing should be discussion-based, as that is the only reliable way to retrieve information from a child. Although some respondents noted that the High Court of Justice issued a preliminary ruling allowing children's drawings as supplementary evidence to their statements, they said neither the interpretation of the drawings nor of a child's play was a reliable source of information. They agreed, however, that sometimes drawings do yield concrete information, such as on body parts touched or rooms and spaces visited.

### Providing procedures to help support a child before, during and after hearings

Respondents agree that social professionals, namely social workers and psychologists, should attend hearings, to put the child at ease and provide assistance and support, including therapeutic support. Several of the 10 EU Member States mandate this by law (see [Table 8](#)). In Polish criminal proceedings, the court or prosecutor may order court-appointed expert psychologists to attend. Their role is to support and prepare children for hearings, to prevent secondary victimisation. The Croatian court advisor role in criminal proceedings also promotes child-friendly procedures. According to the French respondents, the presence of ad hoc administrators is very important in both criminal and civil proceedings. They ensure the child's rights are protected throughout the procedure when there is a conflict of interest between the child and his/her parents. Professionals interviewed recommended the development of clear rules regulating their role and appointment process, as well as more recourse to them.

In Estonia and Finland, respondents welcomed the presence of a support person provided by victim support. Given these countries' mandatory pre-trial phase regulations, social professionals are particularly involved in the initial pre-trial stage. In Finland, existing guidelines for hearing children also support their work. The pre-trial hearings help avoid trial hearings. When children are heard at trial, social professionals in the two countries said this resulted from judges failing to consult them in courtroom hearings.

Respondents also signalled the lack of unified practices, rules and procedures regarding their presence in court. They did however relate several good practices involving social professionals in trial hearings in countries without mandatory requirements. In Spain, for example, victims' support services play a pivotal role in cases of violent crimes and sexual abuse (see the promising practice on the training of professionals in [Section 1.2.1](#)).

There is a shared perception, particularly among social professionals, that much more should be done to provide adequate assistance throughout the proceedings.

Respondents from several countries stress how difficult working conditions are becoming.

*"Things are growing harsher day after day. There are new responsibilities that are imposed upon us, requiring [that we practically become] parents to all these children. Hardly anyone would stand the pressure here. And here the turnover is too big."* (Bulgaria, social worker, female)

In Spanish shelters, where social professionals take care of children's needs, they also help prepare the children before, during and after trial hearings and ensure that children have access to therapeutic support after the trial.

*"Of course, for the judge, the public prosecutor and the lawyers it's all over when the trial ends, but there are other consequences for the girl. This is the reason why we need to work with her before and after."* (Spain, social worker, male)

Parents are another potential support for children. Their role is delineated to some extent in most of the 10 countries studied. In general, the parents or a person of trust are entitled to be present during the hearing of a child aged up to 14 years old, as for example in Romania.<sup>30</sup> Romanian respondents working in the field of trafficking, however, pointed out that parents of child victims tend not to be present at hearings. They say the children themselves may prefer this so that their parents do not find out about their trafficking experience.

Several respondents across different countries and professions considered the parents' presence potentially disruptive. Estonian and French respondents argued that their presence may impede the child's willingness to talk freely. Some respondents said, however, that the parents' presence may be necessary, for example when interviewing children who are under school age.

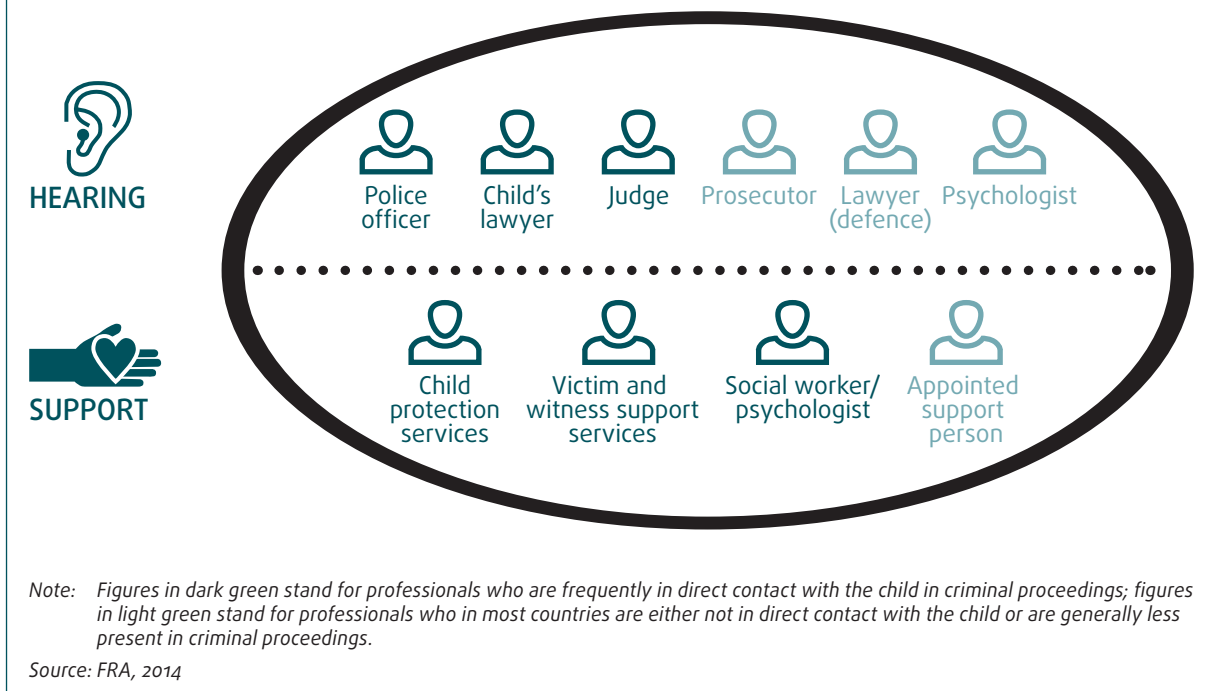
*"Parents are definitely not included in the hearings if it's obvious that the parent has not acted in the best interests of the child. This is because, to be clear, in sexual abuse cases, approximately 80 % of the cases where the father or stepfather has been the abuser, then the mother doesn't side with the child, but instead starts accusing the child."* (Estonia, state prosecutor, male)

In Finland, children are usually heard in the absence of their parents. If the children are very anxious during the hearing, they can take a break and visit their parents or other accompanying person outside the hearing room.

Several respondents pointed out that it is better for the child if fewer people are involved in the process and if support is clearly regulated and coordinated. [Figure 3](#) visualises the different ways of providing support. Specialised institutions or services for child protection, as well as victims' and witnesses' support services in

30 Criminal Procedure Code (*Codul de Procedură Penală*) (2010).

Figure 3: Most commonly involved professionals – criminal proceedings



which social professionals play an important role, often provide support in criminal proceedings. Support can also be provided by specifically appointed individual professionals, such as intermediaries in the United Kingdom, or through therapy with psychologists.

### 1.2.2. Adapting settings to children's needs

The physical environment in which children come into contact with the justice system should help to make them feel comfortable and safe. The aim is to avoid potential re-traumatisation and to enable children to participate effectively, providing evidence and expressing their views freely during the pre-trial and trial phase.

*"I'm referring to a situation related to the criminal investigation of a rape case. So we were there, in the same office, victim and perpetrator, with the police officer in charge of the investigation. [...Then] the driver kept coming in, saying he must hurry and buy gas, so [the officer] should give him money [...]. At some point I got upset and told them 'Gentlemen, please stop!'. A colleague asked 'Don't you have a room, can't we go there?' [...] 'Well, we don't have, these are the conditions'. So the outcome of the case was affected to a large extent I think, because they didn't have conditions allowing us to focus [...]."*  
(Romania, lawyer, female)

### Providing child-friendly facilities

Respondents in Croatia, Estonia, France, Germany and the United Kingdom reported that efforts were made to equip police stations with child-friendly interviewing rooms, as the police often conduct the initial interviews. Such rooms have video recording tools to tape the hearings for possible later use in court, supportive interview tools such as anatomical dolls for collecting evidence, as well as toys, child furniture and decorations.

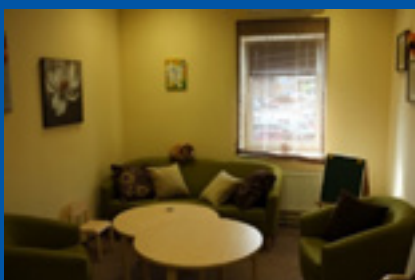
Respondents from Estonia noted several additional measures taken to make interview rooms more protective and child-friendly, including the establishment of a new separate entrance for extremely traumatised children at the back of the Tartumaa Victim Support Centre (*Tartumaa Ohvriabikeskus*; see [Section 3.2.2](#)). Such a measure is potentially crucial. Respondents in France said they had noticed that at some police stations, notwithstanding the child-friendly hearing rooms, children were still exposed to a potentially intimidating environment before entering the room. They might, for example, have to go through security checks or risk encountering defendants in corridors or waiting rooms.



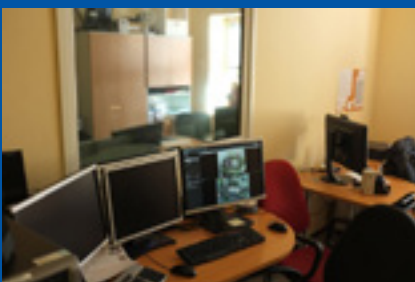
## Promising practice

### Equipping police stations with child-friendly spaces

In Estonia, pre-trial investigations usually take place at Police and Border Guard Board (*Politseija Piirivalveamet*) offices, which are furnished for child hearings with toys, anatomical dolls for collecting evidence and video recording equipment. Specially trained police conduct these hearings,\* and may ask psychologists or victim support specialists to assist them.



Estonia, Tartu. Police station hearing room.



Estonia, Tartu. Behind the mirror, a police station hearing room.

\* Legislation changes in 2011 to the Code of Criminal Procedure foresee that specially trained police officers will conduct child hearings.

When children testify at the main trial, different procedural safeguards are put in place and a number of techniques used to help them through the experience. Since trial hearings are a core element of judicial proceedings, the way they are conducted is crucial to ensuring the child-friendliness of justice. One major concern shared by all respondents was that of the child seeing the defendant in the courtroom, which increases the child's trauma and raises the risk of re-traumatisation.

Respondents described several beneficial measures taken when hearing children during the trial phase, such as hearings:

- being **video recorded** and shown as evidence, to avoid multiple hearings during the trial phase;
- taking place in a separate room during the trial using a **live video link**. In this case the child is not present,

but can hear what is happening in the courtroom. Persons in the courtroom can also hear and see the child;

- taking place in the courtroom **with protective measures**, such as screening the defendant and public from view.

Other measures concern potential alternatives to judicial proceedings and the regulation of the contact with other parties.

During the main trial, one child-friendly option is to conduct and record child hearings in separate rooms. The use of this option, however, varies. Respondents in Croatia and Romania said that in practice children are almost always heard in regular courtrooms, regardless of whether they are victims or witnesses. Although in Finland child-friendly rooms are available for pre-trial investigations, if a trial hearing takes place (which is generally avoided for children under 15, but required for those over 15), it usually takes place in normal courtrooms. Video recording of interviews with child victims is a requirement in seven of the 10 countries researched, with diverse age limits regarding such protective measures (see Table 7; Croatia, Estonia, Finland, France, Germany, Poland and the United Kingdom), and an option for child victims in Bulgaria and Romania.

The Polish legal framework foresees that the court conducts interviews of children under 15 years of age during a court hearing. The interview must take place in the presence of a psychologist and be video recorded during the court trial. The recording is later shown in the main courtroom and attached to the files.<sup>31</sup> In Spain, the transposition of the Victims' Directive ensures the right for child victims to be heard in an adapted room and with specially trained professionals. The recording is stored on a safe server managed by the Spanish Ministry of Justice. The High Court of Murcia has launched a pilot project with a child-friendly room and video equipment.<sup>32</sup>

German national law prescribes that hearings of witnesses and victims be video recorded. The screening of such footage in court can be a substitute for the public hearing of victims in cases of abuse, sexual abuse and other serious violence. Child witnesses to lower level offences or offences against other children are unlikely to be video interviewed. The problems mentioned by respondents in relation to recording the hearings were: the non-recording of interviews in some courts, quality problems with the recording and the videos' unavailability due to a lack of equipment or other technical issues.

<sup>31</sup> Poland, Code of Criminal Procedure (1997), S. 185a; 147 (2); European Commission (2013), pp. 12–13.

<sup>32</sup> Spain, Draft law for crime victims (2013).

In the United Kingdom, using live video links is standard practice when hearing children under the age of 16, and it is an option in Croatia, Estonia, Germany and Romania. In exceptional cases in Romania, the child's image will be blurred and his or her voice distorted to protect his or her identity.

#### Promising practice

### Developing special measures for hearing child victims and witnesses

In the United Kingdom (England and Wales), the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) lays down a framework which aims to keep hearings of child victims and witnesses out of the courtroom. This is achieved through two primary 'special measures': video-recorded evidence and live television links. Additional special measures are available if necessary. They include an intermediary to assist during examinations and courtroom screens when a child declines to use a live television link. The Witness Service also conducts pre-trial familiarisation visits to courts and provides support during the trial. The Witness Care Unit Young Witness Checklist requires the preparation of a tailored needs assessment for each child giving evidence.

Scotland uses special measures similar to those of the United Kingdom (England and Wales). The Criminal Procedure (Scotland) Act 1995 provides standard and non-standard special measures and the Vulnerable Witness (Scotland) Act 2004 creates a presumption that all children under 16 years of age will use standard measures unless they are unnecessary. These measures consist of testifying using a live television link, a screened witness box in the courtroom and witness supporters who may accompany the child in both the live television link room and the courtroom.

For more information see [www.cps.gov.uk/victims\\_witnesses](http://www.cps.gov.uk/victims_witnesses)

Despite the existence of legal provisions, separate hearing rooms may not necessarily be equipped for children. They may, for instance, be simple offices. Respondents from several EU Member States were concerned that this lack of child-friendly features could be intimidating. They agreed that instituting child-friendly hearing spaces helps children to share and thereby participate effectively in judicial proceedings. Bulgaria, Croatia, Estonia, France, Poland and the United Kingdom have adopted such models to varying degrees, with measures in Poland considered particularly promising.

Respondents from Croatia report that 20 Croatian police stations have special rooms for conducting child interviews, whereas courts do not. Respondents from Poland agreed that child hearings in criminal proceedings have

significantly improved and that 'blue room' hearings are a child-friendly practice. They considered that this practice would benefit from a legal framework and financial resources to make sure that these rooms are established country wide. There are currently approximately 50 certified 'blue rooms', a number that Polish respondents perceived as insufficient.

In Bulgaria, the Social Activities and Practices Institute<sup>33</sup> has begun developing similar 'blue rooms' for pre-trial hearings, despite the absence of clear legal provisions. At the time of the research, only three such rooms existed in Bulgaria, but if a child is heard in a blue room it is unlikely that this child will be required to be heard again.

The establishment and use of such child-friendly interview rooms, however, does not guarantee that all professionals, such as the police, will be sensitive to the needs of children. In addition, the number of hearings is sometimes not reduced, due to technical difficulties or lack of training.

*"Despite the fact that the hearing was in the 'blue room', the child did not feel comfortable; especially the younger child. This is because some pressure was used. The policemen have this approach of theirs which is too different. No matter how hard they try to spare the trauma, they lack the skill. They have not been trained to do this."* (Bulgaria, social worker, female)

Some respondents in Poland were critical of the rooms' decoration, suggesting that they distract children.

*"Toys often distract children. One of our psychologists told a story of a hearing at which the first part of the hearing had to be spent on trying to detach the child from a huge teddy bear which was placed in the hearing room. This child came from a family which did not have such [beautiful] toys."* (Poland, NGO lawyer, female)

Those respondents also raised the issue that different age groups have different needs and that 'blue rooms' are currently designed for younger children.

*"I think they [older children] don't feel uncomfortable in this room. I, as an adult, feel comfortable in this room. It's not a room for teenagers, though, it's a room for children up to, I'd say, 10 years of age."* (Poland, judge, female)

Overall, child-friendly rooms are perceived as good practices. Clear rules, however, seem necessary to implement uniform standards. Even where such rules exist, however, respondents noted the need for improvement. There are problems regarding their availability, linked with financial resources, their use, and their suitability

<sup>33</sup> See the Social Activities and Practices Institute, [www.sapibg.org](http://www.sapibg.org); for information on blue rooms (Сини стаи) see [www.sapibg.org/en/dobri-praktiki/sini-stai](http://www.sapibg.org/en/dobri-praktiki/sini-stai).

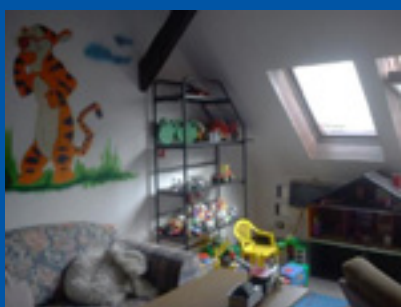


## Promising practice

### Creating safe spaces: the 'Blue Room'

The Nobody's Children Foundation\* (*Fundacja Dzieci Niczyje*) in Poland has developed special 'Blue rooms' to host hearings for victims and witnesses under 15 years of age. These rooms have colourful walls, child-friendly furniture, toys, drawing materials and children's books. They are also furnished with one-way mirrors and recording equipment. The interview is conducted by a judge, who conveys questions through a microphone to a psychologist or social worker, who then relays the questions to the child in an appropriate manner. The legal representatives of the accused, the prosecutor, a recording clerk and the parents of the child are among those who observe the hearing from behind the mirror. The people behind the mirror, such as defence lawyers, can also ask additional questions by phone.

Evidence obtained from the statements made in the blue rooms has the same legal validity as statements obtained during hearings in the courtroom. Nobody's Children Foundation certifies the blue rooms, which is seen as a good practice since it guarantees the fulfilment of the required standards to conduct hearings, which include the certification of proper recording devices.



Poland, blue room.

\* For more information, see the Nobody's Children Foundation; for specific information on blue rooms, see <http://dziekoswiadek.fdn.pl/przyjazny-pokoj-przesluchan>

for different age groups (such as those between aged between 15 and 18). Technical problems should also not be neglected, as respondents reported that hearings may not be recorded due to the lack of equipment, or that the quality of the recordings is poor. In addition, judges may sometimes be reluctant to record the hearings, as they do not want to be recorded, or they do not see the significance of doing so.

*"Judging from the information that we have, it is not always the technical reasons which influence that. [...] It happens that during the hearing in the hearing room the judge says that she has not been at the hairdresser's, so she cannot be recorded."* (Poland, NGO lawyer, female)

## Promising practice

### Developing 'children's houses'

In Estonia, there is a new project to develop 'children's houses' modelled on those in Norway, an example of a special preventive measure outlined in more detail in Section 7.1. The planned houses would be built with the Norwegian government's assistance and would provide a special environment in which children could be heard and when necessary also temporarily reside. Instead of bringing children to the court, judges would themselves reach out to the children, questioning them in familiar rooms provided by the children's house and broadcasting the interview to the courtroom.

## Controlling contact with other parties in the judicial proceeding

When the child is present in the courtroom during a trial, respondents across the 10 EU Member States reported steps taken to shield children from the defendant. In Spain for instance, visual contact between the child and the accused is forbidden, and a screen or similar method

is used to separate the two.<sup>34</sup> Children in the United Kingdom may choose between video conferencing or using screens, but if they choose video conferencing they cannot switch back to a courtroom hearing later in the trial. Finnish courts have different measures to ensure that the victim does not have to face the defendant: a separate room with blinds for either the injured party or the defendant, or screens. The judge, the prosecutor and the child’s legal representative usually discuss these arrangements before the trial.



Spain, Madrid, Trial hearing in a courtroom.



Spain, Madrid, Trial hearing in a courtroom.

*“The police came with a child victim to the courtroom, in the public session. The victim was left there and the police officers left. It’s not their fault, it’s because [...] there is no special training. The victim sat in the courtroom for three hours, where the offenders were also present. I didn’t know what she looked like so I didn’t realise what was happening. The clerk and the ex officio lawyer pointed her out to me, I requested that she be escorted out of the courtroom but it was too late because her entire statement changed.” (Romania, judge, female)*

Respondents from different countries indicated that some courts, even if equipped with a child-friendly hearing room, may expose children to an intimidating environment. These might include waiting rooms or corridors with defendants, or security checks at the entrance. Social professionals from France commented that tribunal waiting rooms are often excessively dark and shared with others, which will not help children overcome fear and insecurity. They agreed that there is

<sup>34</sup> Spain, Criminal Procedure Act, Art. 448 and 707; Spain, Organic Law 19/1994.

a need for dedicated waiting spaces reserved for children. German interviewees reported that child-friendly waiting rooms at courts exist to varying degrees.

In Bulgaria and Romania, the waiting time before being brought to court can be a couple of hours, as the progress of the daily caseload cannot be anticipated. The child must either wait in hallways with other people, sometimes even encountering the defendants, or in other courtrooms where potentially disturbing cases may be tried. Child victims are rarely escorted to a judge’s office to wait for the hearing, and one of the judges highlighted that even these private offices are not completely safe from intrusions.

### Promising practice

#### Liaising to offer support

In the United Kingdom (England and Wales), Witness Care Units liaise with the court-based Witness Service to arrange support measures such as pre-trial familiarisation visits, arrival at a separate entrance from the public and the defendant, and the use of separate waiting areas. Similarly, in Scotland, Children’s Hearing Centres generally comprise a hearing room and at least one waiting room.

### 1.2.3. Providing legal representation and legal aid to children

The systems to provide legal aid vary across EU Member State. Among the countries studied there are some good examples of how children access free legal aid, including free and easy access to legal representation. Estonia has a list of lawyers who offer free legal assistance, who are then randomly chosen. Children in France can access specialised lawyers via contact points (see the [promising practice in the introduction of Chapter 2](#)). In Finland, every child has the right to a free legal representative during legal proceedings. The investigating police officers are responsible for informing the child’s guardian(s) about the preliminary investigation. The presiding judge must then ensure that the child is represented at the court session. One of the Finnish judges interviewed said that he always telephones the guardian(s) or parents of the child to ensure that the child has adequate legal representation.

Professionals in other countries criticised the lack of guidelines on how to access legal aid, of training for lawyers representing children – and the subsequent lack of available expertise (a point substantiated by the training participation rates presented in [Chapter 6](#)) – and also of timely and systematic designation of independent lawyers. When clear guidelines are lacking, the



task of finding a legal representative often falls to the child's parents, who do not always know that it is free and do not understand that it is necessary.

*“Let me put it straight – I feel that the first thing I need to look at is who is the judge and who is the lawyer, that is what determines the amount of work I need to put in, if I need to do the job of the child's lawyer, because he is not competent enough or he just does not want to, maybe he's not paid enough, whatever. And then there's the judge – if I must bring forth some applications or will the judge himself be active. A pure lottery.”* (Estonia, social worker, female)

In Romania, legal representation and aid for child victims of trafficking is mandatory. The lawyer assigned to the case may, however, be difficult to reach.

*“[...] although we sent a request to the Bar Association and they gave us three lawyers who should be permanently at the disposal of victims. They never answer the phone or they are always busy.”* (Romania, psychologist, female)

Lawyers may also change from one hearing/court session to another, resulting in a lack of consistency. Criminal investigation authorities might appoint a lawyer specialised in other types of crimes, but interviewees indicated that in practice this provision is rarely used.

#### 1.2.4. Reducing the length of proceedings

##### Avoiding undue delay

Seven out of the 10 EU Member States studied have legislation to avoid undue delay in child justice cases. For Member States without specific timelines, respondents argued that in practice the delay varies. In the three countries without any such legislation, stipulations for avoiding undue delay in criminal cases with children are contained in policies, case law or practical guidelines. In France, for example, hearings with children are generally scheduled as priorities under the guidance of the Prosecutor's office, particularly if the child is exposed to an intra-familial conflict. In Germany, there can be long delays between each of the proceedings. Some respondents suggested that very serious cases can take up to four years to finish, and others one to two years.

One main reason for lengthy proceedings is the repeated questioning of children. Respondents gave a number of reasons for this repetition:

- procedural mistakes;
- too many actors, such as police officers and medical and social welfare institutions, who want to organise their own interviews;
- lack of the technology necessary for pre-trial recordings or technical difficulties with the equipment;

- lack of care for the child's protection by the actors involved;
- perceived need to clarify unclear points from the initial testimony particularly in severe cases or under changed circumstances.

#### Prioritising cases involving children

Restricting trial timelines, speeding up child case proceedings, providing separate courts for children or ordinary courts with specialised panels or judges can all contribute to faster and more efficient proceedings.

##### Promising practice

##### Speeding up proceedings

In the Espoo area of Finland, criminal courts have developed a practice called 'Jouko-days', during which children's cases are prioritised and automatically skip forward in the queue. This results in shorter proceedings and less stress for the children involved.

Interviewees report that multidisciplinary cooperation can also contribute to speedier judicial proceedings. The Munich Model in Germany allows professionals in parallel criminal and civil investigations to share information and resources such as video recorded testimony, to avoid multiple hearings. Promising practices of formal multidisciplinary cooperation are described in detail in [Section 7.1](#).

#### Reducing the number of hearings

In criminal proceedings, it is often difficult to avoid multiple hearings. This is particularly the case when a child's testimony is the only evidence available and when the victim's statements differ from the defendant's.

*“The testimony of the child is often the only evidence. Therefore, children must be heard. [...] It is also not an exception that they need to be heard several times in court. No one is asked: ‘Would you like to now or not?’”* (Germany, victim support, female)

Spain traditionally avoids multiple interviews in criminal proceedings with children aged under 12 unless the child is the only witness. Poland mandates that children under the age of 15 involved in domestic and sexual abuse cases should only be interviewed once. However, the child may be re-interviewed when new circumstances needing to be explained appear or when another interview is requested by the defendant who, at the time of the child's first testimony, had no defence counsel. Professionals from Estonia noted that the defendant has the right to ask his/her own questions to the witness when he/she is above 14 years of age,

which may again necessitate additional hearings. Germany's Guidelines on Criminal Procedure<sup>35</sup> state that repeated interviews of children should be avoided, although in practice children are sometimes heard four to six times. Other EU Member States such as Bulgaria and Romania, however, report that multiple pre-trial hearings in addition to court hearings are the norm.

A number of French interviewees noted that judges have a tendency to hear the child without having watched the recording from the pre-trial hearing, as they want to have 'their own version'. This is even more frequent in cases of serious criminal offences. Other professionals witnessed hearings organised only to complement or clarify specific doubts, rather than go over the entire evidence.

*"[...] the child comes with his parents to the police and says, I've said it to the police, thinking that the police are the state institution where one should not lie. He/she comes to the investigation, says I've said it in court, a county court during the investigation, and now for the third time we call him/her to come here and say, now you repeat it again. Terrible."* (Croatia, psychologist, female)

Respondents stated that ensuring judges are involved in the pre-trial investigation phase and conduct the first hearing is one of the best protections against multiple hearings. These hearings are more reliable than a police hearing. Given the traumatic nature of such procedures for children, all German police officers interviewed who investigate serious crimes affecting children said that they can – and often do – recommend waiving a police hearing and instead propose an immediate video recorded hearing by a pre-trial phase judge (*Ermittlungsrichter*). Practices, nevertheless, seem to vary: one officer said he recommends video hearings on a regular basis, while another only suggests this measure in very serious cases and if the victim is under 10-to-12 years old. Under the Bulgarian Criminal Procedure Code, a pre-trial child hearing before a judge can be arranged to avoid multiple hearings. According to the respondents, this is mainly applied in human trafficking and sexual abuse cases. In the United Kingdom (England and Wales) the prosecutor (together with the investigating judge) may also perform a pre-trial interview, but this is rare.

Most respondents believe that hearings should if possible only occur once and at most twice. Some respondents from France and Germany say that a second hearing gives the child another chance to say something and may prove beneficial for him or her.

*"Previously it was thought [...] that the child should only be heard once, that everything else is harmful for the child, but now we know according to new research that the child should always be heard at least twice, because a person's memory just works that way that different things come to mind at different times, and if it has been a long time since the incident took place, the memory can pick up and so on. And then, I have to say from experience, that with some children, they just feel so nervous about the first meeting that they can be a lot more relaxed during the second meeting."* (Finland, psychologist, female)

### 1.3. Outcome indicators (making rights a reality)

Outcome indicators show the extent to which a child's right to be heard, to express his/her views and to participate effectively in criminal proceedings are actually fulfilled. These indicators are partly populated with qualitative data based on the observations and assessments given by the professionals interviewed. The population of the outcome indicators will be completed with the second phase of the research which involves interviews with children who have experienced judicial proceedings.

#### 1.3.1. Deciding to hear the child

*"The criminal trial is an extremely important moment since the accused may admit to the offences, and it may be that at the same time society also recognises what the child has lived through and also recognises the child as a citizen in law in society. This is an important time for the socialising of children; it's extremely important. They learn the law, that they have rights, this is a crucial moment."* (France, lawyer, female)

In those EU Member States where there is no minimum age limit for hearing children in criminal law cases, the judge decides whether the child is mature enough to understand and reply to the judges' questions and whether additional information is necessary to hear him/her. This is also the case when children are under any minimum age limit. In Spain for example, respondents identified a tendency to hear children once they reach the age of 12. If children are younger, a team of specialist psychologists will generally assess maturity and veracity. In Finland, children under the age of 15 are not heard in court and are generally heard only by specialised investigators during the preliminary investigation.

In Germany, several respondents reported that they have observed or conducted hearings with children as young as four-years old. One French judge noted that he only heard children aged seven and above, provided there was no adverse opinion from the medical/psychological assessment. He stressed the importance of having the assessment precede the decision to re-hear.

<sup>35</sup> Germany, Richtlinien für das Straf- und Bußgeldverfahren, 1977.



*“We don’t summon young children of 5-6 because they have already been heard by the police, by the gynaecological and medical expert. Often we also ask for psychological expertise [...] There are already three evaluations, three reports of the hearing of the child. So, at five years old, it’s traumatising to see the judge again.”* (France, judge, male)

The age threshold also applies to pre-trial hearings. In the United Kingdom (England and Wales), there is no minimum age for a so-called achieving-best-evidence interview (ABE);<sup>36</sup> the police officer involved decides whether the child is mature enough to understand the questions and in turn be understood. However, children under three-years old are seen as unlikely to be able to take part in a criminal prosecution. In practice most children interviewed are over the age of seven or eight. In Germany too police officers agreed that very young children (aged under three- or four-years old) should not be heard. Nonetheless, they recalled a few cases when even three-year-old children were interrogated, but said that this rarely happens nowadays as attitudes have changed.

In line with the principle of evolving capacities, most respondents say that each child is approached individually to address his/her needs adequately.

Respondents across countries state that they try to design hearings targeted to the age of the child, taking, for instance, their limited attention span into account. Respondents from Estonia stated that the younger the child, the shorter the hearing. For younger children, a hearing usually takes 15–20 minutes, whereas for older ones it can take from 30 minutes to one hour.

The length of hearings may differ within as well as between countries. This variation depends not only on the severity and complexity of cases, but also on the child’s maturity, his or her responsiveness to questions and the interviewer’s skill. In Romania, the lengthiest hearings seem to concern child victims of trafficking, which can take half a day or more and sometimes even an entire night. Several professionals explained that these cases are very complex. Victims or witnesses are not always willing to communicate. They often change their initial declaration or provide contradictory statements. In France the average length cited was 30 to 45 minutes, but there were also reports of hearings lasting several hours in cases with multiple allegations or contentious elements.

The majority of respondents did not consider that children become re-traumatised by hearings *per se*, noting

<sup>36</sup> ABE is a national protocol for interviewing children and vulnerable adults as part of a criminal investigation, see: United Kingdom, Ministry of Justice (2011).

that a sensitive hearing can also support and strengthen children since it gives them an opportunity to express their personal viewpoint and contribute to the case’s resolution.

*“I’m thinking of a 10-year-old boy who then said [...]: ‘I want to tell this to the judge myself, children also have a right, children also have rights.’ [...] Well, for the elder ones this is an experience of self-efficacy.”* (Germany, psychologist, female)

Respondents considered attempts to avoid hearings as counterproductive.

*“We (as investigators trained to hear children) are sometimes criticised for working in the interest of the child, and not in the interest of the procedure.”* (France, police investigator, female)

Furthermore, as a judge from the United Kingdom made clear, justice must be served.

*“We do have to balance not just the child’s needs but those of the defendant. We can’t just approach everything from the viewpoint of the child, but we can try and make it the best possible experience we can in the awful circumstances that they are.”* (United Kingdom, judge, female)

### 1.3.2. Reducing the length of proceedings

Respondents in all countries studied commented on the duration of judicial proceedings, which affects children who potentially have to participate in multiple hearings at different procedural stages. This, they said, can be stressful for children and even traumatise them.

*“The child will get another trauma when he or she has to go to a hearing again. Usually the child is already overcoming the situation and trauma, time has passed, and then the case finally gets to court and it all starts over again. This is horribly complicated.”* (Estonia, victim support, female)

*“Acting for the interest of the child, is (making sure) that justice doesn’t generate more violence. Which is ambitious. Because the meeting of the child victim with justice is too often violent. Our duty as adults around him/her is to limit [...] the violence he/she might suffer during the procedure. The duration can be a form of violence. The way the trial is led can be a form of violence. The lack of information can be a form of violence. I think we can work on that. It’s a question of practices.”* (France, judge, female)

### 1.3.3. Assessing the measures in place and their effects on children

Professionals commented positively on the use of procedural safeguards, such as the physical adaptation of

the hearing environment, the use of video recordings and/or video links and controlled contact with other parties. These safeguards are designed to make children feel comfortable and safe, improving their well-being and effective participation.

Measures to avoid direct contact between the child and adults involved in the proceedings, which could hinder the child's effective participation in criminal and civil proceedings, include the use of video recording. The majority of countries studied cover video recording in their legislation, but they use the option differently, depending upon factors such as the availability of (functioning) technology, access to locations with recording equipment and judges' personal preferences. Finland, Germany and Poland mandate the video recording of all pre-trial interviews with children up to a certain age. Respondents reported that video recording commonly replaces child testimony before the court in Croatia, Estonia, Germany, Spain and the United Kingdom (England and Wales). Although it is legally possible to use video evidence in Bulgaria and Romania, inconsistent guidelines and/or access to technology prevent this from happening regularly. While meant to protect, the practice of video recording sometimes has the opposite effect, particularly if recordings were part of the crime committed, as may be the case for victims of trafficking and sexual abuse. In Estonia all witnesses are required to watch their video interviews before they can be used in court, which some see as a form of re-victimisation. A Bulgarian psychologist describes how he experiences child hearings:

*“When I have been present, the main idea was to help the child in some way so as not to feel re-traumatised by everything he/she has to tell one more time. Usually, when I have participated I have tried to change the questions of the investigating officers, so that these do not sound as accusations to the child or create a sense of guilt in them. The questions are usually formulated as ‘What were you doing at that time?’ or ‘Why did you not call?’ These are some of the frequently asked questions which lead to a traumatic experience for the child because he/she feels as if he/she has failed to do what was necessary [...] In such cases the children often refuse to continue talking or give up their testimony so far. Such questions are being asked many times and their purpose is not so much to receive information but to confuse the child – at least this is what happens in reality. This happens very often with the children – at some point they can no longer stand the pressure.”* (Bulgaria, psychologist, male)

When there are clear mandatory rules on who hears the child and video recordings are used as evidence, professionals say that the number of hearings decrease and children are better protected. They feel safer and are thus able to participate effectively.

When guidelines, technology and tools exist on how to hear children, respondents say professionals behaved more appropriately.

Professionals see particularly positive effects on children if they are prepared for hearings, accompanied and supported. Various respondents indicate that the presence of social care professionals or psychologists helps the child feel more comfortable and communicate better.

All in all, findings show that the successful implementation of relevant structural and process indicators leads to professionals' observing that children feel more secure, give more valid, less influenced statements and – in the end – can make better use of their rights.

The indicator of how satisfied children themselves are with the way their right to be heard was respected will be populated at a later stage with evidence from the children's interviews.

## CIVIL PROCEEDINGS

### 1.4. Structural indicators (legal obligations)

#### 1.4.1. Fulfilling the child's right to be heard

In European law the violation of a child's right to be heard is one of the grounds for non-recognition of judgments in matters of parental responsibility under Regulation Brussels II bis (Article 15). The existence of a statutory provision on the right of a child to be heard varies in Member States depending on the area of law. The right to be heard could for instance be applied differently in the areas of family, employment, or placement law. It also depends on the role of the child in the specific proceedings – whether he/she appears as a witness, plaintiff, defendant or subject.<sup>37</sup> In most cases, children in the role of witnesses or subjects are entitled to fewer procedural safeguards than children in the role of defendants or plaintiffs. As with criminal proceedings, this report does not cover children as defendants in civil proceedings either.

Given that the focus of this research and of the interviews with professionals was on family proceedings, and more specifically on issues of custody and visitation in divorce and separation proceedings, all the sections of this report dealing with civil law mainly refer to family law.

According to the 2014 European Commission summary report, all 10 Member States covered by this study

<sup>37</sup> For a full overview of the national civil proceedings in different areas of law and the different roles of children, see European Commission (2014).





except for France expressly guarantee the right of the child to be heard in family law proceedings. In the case of France, it is up to the adult representative to decide whether or not to consult with and voice the child's opinions.

Age limitations frequently apply to the right to be heard. In addition, the scope of the right to be heard also varies. In some cases children above a certain age only have the right to be interviewed by the judge, while in others the right to be heard includes the right to provide evidence, receive court rulings and intervene in the proceedings.

Table 16 shows the minimum age at which children can bring a case to court in their own right in family law cases.

### 1.4.2. Ensuring children are heard in the most favourable settings

Civil hearings are generally less regulated than criminal hearings, with judges often left to decide whether to hear the child and how to arrange the hearing. Most EU Member States that have rules for criminal child hearings do not apply the same rules to civil proceedings.

Nevertheless, based on the international standards of the CRC and the Council of Europe Guidelines, national rules should include a requirement for specialised courts, legally define the maturity of the child (in correspondence with age requirements) and specify the

most favourable settings and the most suitable conditions. The aim is that children can express their views in civil proceedings too, and participate effectively in a child-friendly manner, bearing in mind their level of understanding and any communication difficulties they may have.

### Provisions for specialised courts or services

Depending on the area of law, EU Member States deal with cases in ordinary or specialised civil courts. In the area of family law, the following countries have specialised family courts or specialised divisions within ordinary courts: Bulgaria (only in Sofia), France, Germany, Spain (in certain cities), Poland and the United Kingdom (England and Wales).

Divisions for family matters operate at the local courts in Germany. These courts decide on cases regarding guardianship for children, care, adoption, divorce and protection from violence. Likewise, in Poland family divisions can be created within district courts to adjudicate cases concerning family and guardianship law. The United Kingdom (England) has a family division of the High Court. In France, specific family courts deal with divorce and separation cases as well as guardianship issues.

Scotland has a specialised system in place. The same system of children's hearings deals with both children who commit offences and those who are in need of care and protection. Concerned parties such as family

**Table 16: Minimum age at which a child plaintiff can bring a case to court in their own right in family law, by EU Member State**

EU Member State	BG <sup>(a)</sup>	DE	EE <sup>(b)</sup>	ES <sup>(c)</sup>	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Minimum age	14	14	15	18	18	— <sup>(d)</sup>	18 <sup>(e)</sup>	16 <sup>(f)</sup>	14 <sup>(g)</sup>	18 <sup>(h)</sup>	16

Notes: a) In Bulgaria, only children aged 14 plus have the right to start administrative proceedings as long as they have their parent's/guardian's consent. Unaccompanied child can act with the consent of the appointed guardian or with the help of a social worker.

b) In Estonia, children aged 15 plus can bring a case to court under the nine listed areas of law if the judge considers they are mature enough.

c) In Spain, only emancipated children can bring a claim in their own right (without the assistance of a legal representative). In general emancipation is reached at the age of 18, or at the age of 16 through judicial authorization, parental authorization or marriage. In some regions, emancipation (derecho foral) can be obtained at the age of 14.

d) In France, in family and placement in care cases, where the child is deemed to be in danger, the child of any age can take the case to a juvenile court in search of protection.

e) In Croatia, children cannot bring family cases to court unless they are married or have been 'emancipated'.

f) In Poland, only girls aged 16 plus can bring family cases to court in order to file an application to get married, or boys and girls aged 16 plus in cases concerning claiming or denial of paternity or maternity or contesting previously determined paternity.

g) In Romania, children aged 14 plus can bring cases to court, but only with the approval of the guardian. Approval of the guardian is not needed for children aged 16 plus who are married, or who have received an explicit order in this regard by the tutelary court.

h) In the United Kingdom (Scotland), the age of legal capacity is 16, but there is a presumption that a child aged 12 has sufficient understanding to have legal capacity to instruct a lawyer and therefore also to raise an action in any civil matter.

Source: European Commission, 2014

members, teachers, social workers or police officers, may refer a child to the Scottish Children’s Reporters Administration. This administration is responsible for the so-called ‘Children’s Reporters’ – primarily social workers who investigate referrals and decide whether the case should go to a children’s hearing. Family law cases are usually tried in an ordinary civil court.

### Taking into account the age and maturity of the child

As in criminal proceedings, the age at which a child is supposed to be heard varies in the different EU Member States. Some countries have not established a minimum age (Croatia, Poland and the United Kingdom: England and Wales). Others have set clear minimum age limits, starting at 10 years old in Bulgaria and Romania, and going up to 14 in Spain and 15 in Finland. At the court’s discretion, however, children younger than those limits may be heard. Concerning more specifically custody and visitation issues, more countries have minimum age limits (Estonia: 10 years; the United Kingdom (Scotland): 12 years; Germany: 14 years), or countries with existing age limits lower those limits (Spain and Finland: 12 years). In France, the law foresees a minimum age for the child to be heard only in specific proceedings: 13 years old for a name change and at least seven years old to be heard by the Judge for Family Affairs. Croatia, Estonia, Poland, and the United Kingdom set no minimum age for a child to give evidence, with a few exceptions based on the type of case. In Scottish family proceedings, children aged 12 and above are asked if they want to express their point of view.

Furthermore, as in criminal proceedings, national laws frequently lack a clear definition of maturity within the civil area. Croatia and France do not define maturity; instead, an individual judge determines it, evaluating the child’s maturity and best interests on a case-by-case basis. Polish civil law states that children can be heard if their maturity, development and health enable

them to participate in the proceedings, but it does not define maturity. In contrast, maturity plays a crucial role in Finland. If the child is deemed mature, his/her views must be taken into account in custody or visitation cases, even in cases where the parents disagree with those views. In the United Kingdom (England and Wales), the ‘Gillick’ competency assessment is used, derived from English case law.<sup>38</sup> A child is regarded as ‘Gillick competent’ when he or she has sufficient levels of understanding and intelligence to be able to make up his or her own mind on the matter in question.

### Specifying the most favourable settings and suitable conditions

Specifications should refer to aspects such as who hears, accompanies and supports the child, how many people are present during hearings, the use of child-friendly facilities with technological equipment for video recordings, the existence of a child-friendly hearing environment and any other adaptations to children’s needs. Though there are generally fewer regulations than in criminal proceedings, certain Member States have instituted a number of these measures in family law proceedings too to better adapt the experience of being heard to children’s needs.

In a number of Member States, as shown in Table 17, the court has a legal obligation to obtain a comprehensive understanding of the child involved in family law proceedings by assessing his or her legal, psychological, social, emotional, physical and cognitive situation. This requires basic cooperation between professionals.

A few EU Member States regulate the manner in which children are consulted and the presence of professionals. All the countries studied except Romania have statutory provisions on the right of a child to receive assistance when attending family law proceedings, including from an interpreter, social worker, lawyer or friend. The Scottish Children’s Hearing Rules (1996)

**Table 17: Legal obligation to obtain a comprehensive understanding of the child involved in family law proceedings**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
	✓		✓			✓		✓		✓	

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

<sup>38</sup> United Kingdom, Decision of the House of Lords (1985), *Gillick v. West Norfolk and Wisbech Area Health Authority and the Department of Health and Social Security*, Doc. [1985] 3 ALL ER 402.



contain various mechanisms through which the child can express his/her views. These include writing, audio or video tape, through an interpreter, or through the appointment of a so-called 'Safeguarder.' Similarly, in England and Wales, a children's guardian from the Children and Family Court Advisory Service may represent the child's wishes.

In Finland, social welfare officials ascertain the child's views. A child can also be heard in court, although in that case, it may be a social worker who questions him/her in front of the judge. When social welfare officials hear a child in custody or enforcement cases, the authorities must draft a memorandum reflecting the child's own replies and not just the interviewer's interpretation of them. The interviewer can also describe the child's gestures, and the interview may be video recorded.

Although less frequent than in criminal law proceedings, there are still a few Member States with a legal obligation to conduct court hearings with children in a non-intimidating and child-friendly environment. In the area of family law, this applies to France, Poland and the United Kingdom (England and Wales).

The possibility to provide evidence through video recording, a common feature in criminal law proceedings, is still an exception in civil proceedings. At the time of the research, evidence provided through video recordings was admissible in family law proceedings only in Croatia, Estonia, Poland and the United Kingdom (England and Wales).

### 1.4.3. Training professionals

Training for professionals working with children in civil proceedings is not generally mandatory. Exceptions are made in Finland for judges who work in expert-assisted judicial mediation, in France for judges, public prosecutors and child's lawyers, in Germany for social workers

of the youth offices, and in Scotland for the volunteers of the Children's Panels. As Table 18 shows, only a few countries are legally obliged to provide multidisciplinary training in the area of family law to all professionals who work with children, as part of capacity building programmes.

### 1.4.4. Encouraging multi-disciplinary cooperation

The multi-disciplinary cooperation of professionals is generally not regulated by law, and it occurs in a more or less formal way depending on Member State, region or individuals involved. The need in certain Member States to provide a multi-disciplinary assessment of the understanding of the child involved in family law proceedings requires, however, basic cooperation between legal, social and psychology professionals (Table 17).

### 1.4.5. Providing children with free legal aid including access to legal representation

The Legal Aid Directive (2002/8/EC) sets certain minimum standards for legal aid schemes in the EU but applies only to cross-border disputes.<sup>39</sup> The directive applies to civil and commercial disputes, including family disputes.

In family proceedings, children have the statutory right to counsel and representation in their own name when there are potential conflicts of interest between the child and the parent in all Member States studied except Finland, Spain and Poland. In these countries a legal guardian might be appointed instead.

In France and Scotland, children have the right to seek legal advice. Regardless of their representation by their parents/guardians or by an administrator, French children are always authorised to have a lawyer. In fact, judges are obliged to ask the child to choose a lawyer

**Table 18: Legal obligation to provide multidisciplinary training in family law**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
			✓	✓		✓		✓		✓	

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

<sup>39</sup> Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

during his/her first interview. A person under the age of 16 also has the legal capacity to have a solicitor in Scotland.

In the area of family law, all EU Member States studied except Romania have a statutory provision on the right of children involved in family law proceedings to have free legal aid. This is granted more often to children who are plaintiffs than those who are witnesses or subjects of the proceedings. Only Estonia, France and Scotland make the right to legal aid available to all children regardless of their role in the proceedings. In some Member States, legal aid is automatically available, whereas in others it is subject to certain conditions. In France, when the child spontaneously seeks consultation from a lawyer, legal advice is provided free of charge. In contrast, provision of legal aid is means tested in Croatia and in the United Kingdom (England and Wales). Croatian and English courts may exempt a party from payment of litigation costs if in light of his/her financial situation the party is unable to pay those costs.

#### 1.4.6. Reducing the length of proceedings

Articles 31 and 32 of Regulation Brussels II bis provide that decisions shall be made and participants notified without delay.

The majority of the Member States studied have statutory provisions to avoid undue delays in civil cases where children are involved. In some countries, exceptions allow for a quicker adjudication in certain cases. In France, for example, appeals against a juvenile court decision can be decided more quickly, while Croatia fast tracks some family procedures. The legal obligation to avoid delays applies most frequently before and during

the proceedings, and in fewer Member States it also applies during proceedings to enforce the sentence.

### 1.5. Process indicators (procedures)

As in criminal law, process indicators refer to measures specifically adapted to children’s needs. They are designed to ensure children feel comfortable and safe and participate fully. They focus on two major aspects of the proceedings: the persons working with children who are being heard and the organisation of the hearings.

#### 1.5.1. Ensuring professionals are adequately equipped to work with children

##### Requiring training and specialisation of professionals involved

Social professionals have a much bigger role to play in child hearings in civil cases than in criminal ones. Judges still generally perform interviews in Bulgaria, France, Germany and Romania, but they frequently ask for social or psychological assessments. In France, judges with mandatory training generally conduct child hearings, but they may assign an interview to an expert, such as a psychologist, when appropriate.

In Croatia, Estonia, Finland and Poland, hearings are predominantly conducted by social professionals. Children in Spain are either heard by a social professional, usually a psychologist, or a judge, and sometimes by both. Courts in the United Kingdom (England and Wales) do not routinely directly hear children in family law proceedings. When a child is party to the proceedings,

Table 19: Statutory provisions on legal representation and free legal aid in family law

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Right to legal counsel and representation, in their own name, in proceedings where there are potential conflicts of interest between child and parents	✓	✓	✓			✓	✓		✓	✓	✓
Right to legal aid	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

a guardian is assigned to ascertain the child's feelings and report back to the court.

Respondents in Croatia and Estonia said that psychologists usually conduct children's hearings, often in centres for social welfare. Judges perform hearings only exceptionally, when there are welfare concerns. Children in Poland are usually heard in indirect hearings with psychologists in family diagnostic centres. Alternatively, a court-appointed family guardian may conduct interviews with children in their homes during the pre-trial period, to prepare a 'community interview' that gives information about the children's social environment based on a guided conversation. Parents have the right, however, to ask the judge to hear their child in person. Judges may also opt to hear the child if they have doubts arising from the family diagnostics centre's psychological opinion. Respondents suggested that indirect child hearings have a positive impact on the proceedings. The court-appointed guardian may also stay in regular contact with the child during the pre-trial and trial period.

Respondents in countries where social professionals have an important role in the hearing, such as Bulgaria, Croatia and Poland, complained of a lack of trained staff or of resources for training staff.

The United Kingdom (Scotland) uses a special system of lay judges to hear children in civil cases. These 'Children's Panels' seek to obtain the views of the child, their family or carers, and relevant professionals such as social workers and teachers. Children also give their views prior to the hearings. If children are unable or reluctant to express themselves sufficiently, a 'Safeguarder' may be appointed to report back. Some professionals consider the Scottish Children's Hearing System a good practice, because of children's active engagement and the mandatory training for professionals and volunteers.

As for criminal proceedings, respondents in countries where judges play a particularly strong role in child hearings criticise the lack of both mandatory training and of judges' specialisation in family law (see also [Chapter 6](#)). They suggest the need for further regulation concerning their qualifications and appointments. Respondents say that judges working in family law are at two ends of the spectrum: either very young or older and more experienced, with the latter very engaged and personally motivated to stay in family law.

In countries where social professionals predominantly hear children, respondents stressed the need for the judge to also hear the views of the child. They argued that judges sometimes rely more on both parents' expert opinions than on the child's views, which can be problematic if parents have tried to influence or manipulate these opinions.

*"A problem is that in child custody disputes the child can be manipulated. And in some cases, these applications and doctor's references [expert opinions] are completely relevant, but in some cases I have come into contact with, the parent really is just trying to get an upper hand."*  
(Estonia, lawyer, female)

The need for a judge to hear the child is also echoed by respondents in countries where children are predominantly heard by judges, such as France.

*"I think the presence of even young children is necessary because they are a source of information for the judge and also an element of information for the child, even if we have the impression that he/she is not listening."*  
(France, judge, female)

Many respondents across all countries mentioned excessive workload, the need for further training, specialisation and multidisciplinary cooperation as important challenges in making hearings more child friendly.

*"I think there are a lot of very good committed professionals, I think that I have worries about the way the system is going, the pressures on the system. [...] Children's voices are not going to be heard as effectively."*  
(United Kingdom, social worker, male)

## Elaborating guidelines and tools for professionals involved

Respondents across countries reported that there is a lack of specific rules and common standards on how civil child hearings should be conducted. They argued that it is up to the individual professional to determine how a child is heard. Respondents also mentioned non-binding guidelines on how to interview children, for example in family disputes in Spain,<sup>40</sup> or in mediation processes in Finland. In Poland the NGO *Dzieci Niczyje*, in cooperation with the Ministry of Justice, provides certain instructions concerning the length and time of interviews. Pointing to children's concentration spans, they suggest 20–30 minute interviews for very young children and 45 minutes for school-age children. The *Guidance on Interviewing Child Witnesses* is used in the United Kingdom (Scotland) for interviewing children in civil proceedings. In countries where judges predominantly hear children, such as Bulgaria, France, Germany and Romania, respondents were not aware of any guidelines. The same applies to Croatia, where social professionals mostly hear children.

Even in countries that do have such guidelines, respondents were not always aware of them. In Estonia, for example, very few of the social professionals interviewed had any knowledge of the manual on evaluating children and the family.<sup>41</sup> Others argued that the

<sup>40</sup> Spain, Caso Senal, M. (2010).

<sup>41</sup> Estonia, Ministry of Social Affairs (2009).



manual, developed by the Estonian Ministry of Social Affairs, is not practical.

*“[The manual is] so long and does not work in practice at all. Nobody pays any attention to it because it takes up so much time and then [name] has drawn up a shorter [version] so that the [assessment] could work, because otherwise there are no rules, and decisions are made based on personal experience. Everybody does this. This is the greatest problem. The courts, the child protection officials, it is no secret: also the child’s lawyers”.*  
(Estonia, lawyer, female)

When guidelines are absent or not used, professionals may vary in their approach to hearing children. Judges interviewed in Germany felt confident about their own hearing techniques, although they admitted lacking training and specialisation in child-related topics. Social professionals in Germany who observed hearings run by judges, however, often criticised their treatment of children. They described the judges’ approach as either patronising or said they treated the children like adults or did not take them seriously. Some social professionals argued that there may be a risk that without training or guidelines, judges may make incorrect assumptions about children’s feelings and behaviour based on experiences with their own children.

*“I’m for mandatory practice of obtaining the views of the child, we have to hear what the child thinks, what he feels, but we have to give him a chance to do it in a way suited to him [...]. I as a judge was never trained how to talk with children, so I can only use my private knowledge. And that is one dangerous zone. In my opinion.”*  
(Croatia, judge, female)

Judges interviewed reported borrowing practices from criminal proceedings and using them in civil ones, to adapt their interaction to children’s needs and put the children more at ease. Some judges also said they developed child-friendly texts for their individual use. Judges conduct hearings with children in their own offices or even in neutral places more often in civil than in criminal proceedings.

Respondents highlight the provision of supporting materials as a promising practice. Such materials include crayons, drawing materials, toys, puppets and sweets. As in criminal proceedings, however, not all countries routinely provide supporting material. Finland and the United Kingdom, however, have guidelines and supporting material specifically developed for both criminal and civil proceedings.

In the United Kingdom (England and Wales), the Children and Family Court Advisory and Support Service has developed supporting material to assist guardians in discussions with children. These materials include a ‘How it looks to me’ booklet and ‘My needs, wishes and feelings pack’, which contain forms that allow children to express their thoughts. In Finland, social workers use booklets and ‘Teddy bears cards’ to help children relay their wishes to the court.

Overall, guidelines tend to exist in countries where social professionals play a more dominant role in child hearings as they use this supporting material more.

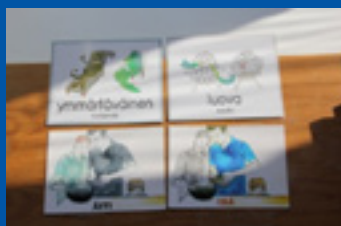
## Promising practice

### Using toys to make it easier for children to communicate

Several countries use toy-like props during hearings in civil proceedings to make it easier for children to communicate. Examples from Finland include wooden figures or dolls that can be used to demonstrate relationships between people, such as the child’s family. Finland also uses special cards that have a picture of a family member (‘mother’, ‘father’) which they sort with other cards (‘compassionate’, ‘creative’) to describe those relationships. For custody cases, social workers use a magic toy crown and wand. Children are encouraged to wish three wishes for the future while wearing the crown and waving the wand.



Finland, Helsinki, Materials provided to children during hearings: wooden figures or dolls that they can use to explain who is part of their family.



Finland, Helsinki, Materials provided to children during hearings: special cards that have a picture of a family and words like, ‘mother’, ‘father’, ‘compassionate’ and ‘creative’.



Finland, Helsinki, A magic toy crown and wand used in child hearings concerning custody cases. Children are encouraged to make three wishes for the future while wearing the crown and waving the wand.



### Providing procedures to help support a child before, during and after hearings

Social professionals play a pivotal role in civil judicial proceedings not only when they conduct hearings directly, but also when they gather children’s wishes and feelings, accompany them to court and attend hearings. Most respondents consider it a poor practice to leave the child alone in a court room with the judge.

*“Sadly, in October there was an instance where a 10-year-old’s hearing was held without the parent present, even I was kicked out – and there he was, alone in the big room, the judge behind his large table. Fortunately the child was not afraid, else there would’ve been a protest from me and the child’s representative. And that has also happened.”*  
(Estonia, social worker, female)

Respondents from most countries provided positive examples of social professionals accompanying children throughout the proceedings. Training for professionals working with children is usually not mandatory. Their expertise stems from their professional qualifications but is not specifically targeted to judicial proceedings.

Romanian respondents, however, said that psychologists and social workers are rarely present during proceedings, although they are legally required to be. Instead, they are mostly involved in preparing the pre-hearing social assessment reports in response to judges’ requests.

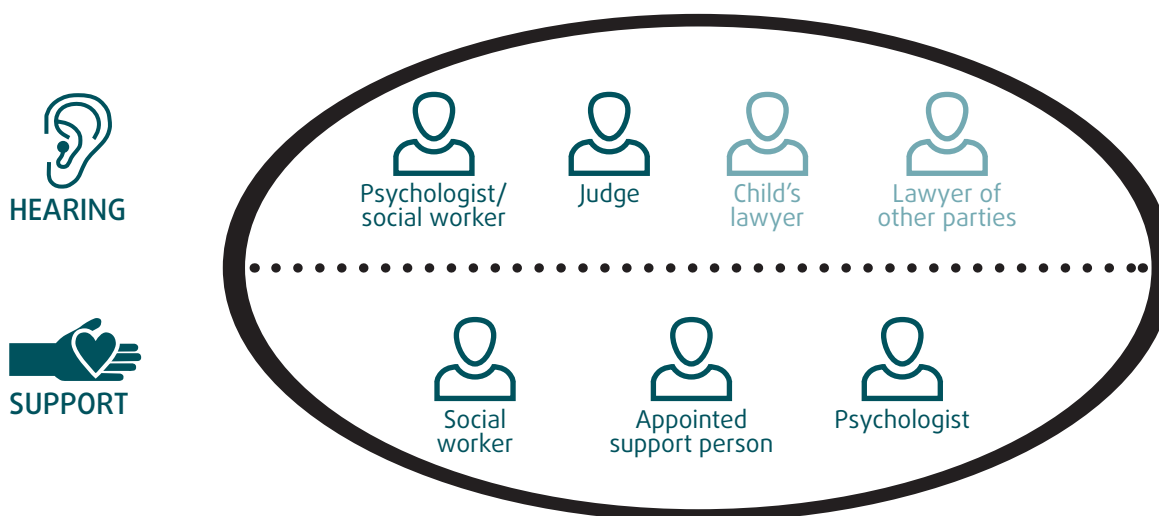
Some countries have established specific professional roles, such as the Children’s Reporter in Scotland (see Section 1.4.2.), the intermediary in the United Kingdom (England and Wales; see promising practice in Section 2.2.1.) or the legal counsels in Germany (*Verfahrenspfleger*; see Section 1.5.3.). They all have either a legal or social professional background and receive guidelines and specific training on child-related justice issues. These roles are unanimously assessed to be very useful for supporting children appropriately before, during and after hearings.

All in all, support provided to children often occurs on a bilateral basis, via social workers, psychologists or specifically appointed professionals (Figure 4).

### Allowing persons to attend hearings

In cases of divorce, custody, and other family law cases, respondents in many countries reported that parental influence was an issue during child hearings. Children can be reluctant to speak freely in front of their parents. Parents are often barred from child interviews in civil proceedings, so that children need not declare preferences about their living situations with their parents present. Parents are excluded from hearings by law in Germany and typically by practice in Croatia, Estonia, Poland and Spain. Finnish legislation does not mention the attendance of parents or accompanying persons of trust, however in practice their presence is generally accepted. Respondents in Estonia said that to avoid parental influence, children are frequently heard in their

Figure 4: Most commonly involved professionals – civil proceedings



Note: Figures in dark green stand for professionals who are frequently in direct contact with the child in civil proceedings; figures in light green for professionals who are either not in direct contact with the child in most countries or are generally less present in civil proceedings.

Source: FRA, 2014

school or kindergarten. In Romania, parents are normally present only if the judge allows it. France is an exception: when appearing before the judge for Family Affairs, children are seen with their parents unless a judge chooses to hear the child alone.

In most cases across countries, parents bring their children to the hearings. It is often up to the person hearing the child to then explain to them why it is better that they do not attend. Croatian respondents, for instance, said that the parent with whom the child is living typically brings him or her to the Centres for Social Welfare. After a short introductory chat, the parent is asked to wait outside. Interviewees uniformly state that children accept such an arrangement and that even those who are initially anxious tend to relax after a couple of minutes. The psychologists interviewed said that the parent's presence undermines the interview process, and creates the risk that the child's responses are based on the need to conform to the parents' expectations.

*“It is not easy for children to find the words in the middle of all those adults, to say what is on their minds, what they don't want.”* (France, educator, female)

As in criminal proceedings, there is a need to balance the number of people present during a hearing. In countries that support the involvement of social professionals and parents, more people attend hearings. Up to nine adults may be present. In the United Kingdom (England and Wales), the following persons could be present: local authority and legal representative, parents and their legal representative, guardian and legal representative, judge, legal clerk and, potentially, any other intervening party such as a grandparent and legal representative. In Scotland there could be: a three-member lay panel, the child, parents, the 'Children's Reporter' and maybe also foster carers or other family members, legal representatives if approved, a 'Safeguarder', education or health professionals or other supporters such as a child's legal representative. Other countries manage to keep the number of persons present lower.

### 1.5.2. Adapting settings to children's needs

#### Providing child-friendly facilities

Civil hearings involving children take place in a wide range of settings, in part because a variety of professionals perform the interviews. Most countries that have standard practices for child criminal hearings (such as screens, video recording, live video-links, presence of professional support, accompanying person of trust, etc.) do not offer the same possibilities for civil proceedings. Exceptionally, the United Kingdom (England and Scotland) and Finland (for child

witnesses under 15 years of age) allow live video-links. Another four countries included in the research – Croatia, Estonia, Poland and the United Kingdom (England and Wales) – admit video recordings as evidence. Respondents said, however, that such special measures are rarely used.

The location where the child is heard varies. The most common settings are in the courtroom, which respondents in some countries describe as less formal than criminal ones, the judge's office, interview rooms in family or specialised centres, or in the child's home or school. Scottish children's hearing centres, for example, generally have a hearing room arranged like a boardroom with chairs around a large, oval table and a waiting room furnished with toys and reading materials.

If children are heard in regular offices or at court, respondents across countries said that those rooms are rarely specifically designed for children. Legal requirements to hear children in a non-intimidating and child-friendly environment are generally lacking. They can only be found in family law in France, Poland and the United Kingdom (England and Wales). The adaptation of the physical environment thus depends on the professional's personal approach and the commitment of the judge and other professionals involved. A social professional's office is more likely to be specifically equipped for children than a judge's chambers.

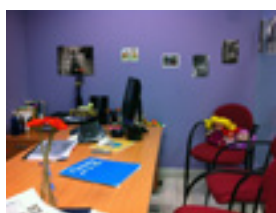
Some promising examples illustrate how individual judges' commitment can make a difference. A Bulgarian judge, for example, holds her child hearings outside the court at a social services facility in a child-friendly room. She also refers children to child protection departments to help them prepare for their hearings. A group of Polish family judges reported on a private initiative to establish a child-friendly hearing room.

*“We have in our court this special hearing room, set up according to the guidelines of the Nobody's Children Foundation. [...] I furnished this room, it was my idea, when the district court was established in our city we needed to obtain funding which wasn't that easy at all. This room has been here from the day our court was created. The room wasn't originally planned, but the family judges interfered and it has been built. This room was set up on the personal initiative of the judges who at the time worked in the family division. We personally bought furniture, I called the Nobody Children's Foundation to find out how this should be furnished. [...] The room is very nicely furnished. It comprises two sections: there's an entrance area where you can leave your overcoats, and there's a room we furnished with children's furniture [...], with toys and board games in boxes. On the walls we have pictures of cartoon characters, I got them from a video shop. There's a table adjusted to the child's height, coloured armchairs. Obviously, a two-way mirror, a huge one, and recording equipment.”* (Poland, judge, female)





Germany, Hearing room: a family judge's office at a district court.



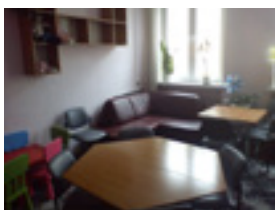
Spain, A psychologist in the family court system's hearing room.



Croatia, Psychologist's hearing room at the Centre for Social Welfare.



France, Office or waiting room for Family mediators.



Poland, FDCC Family examinations.



Poland, FDCC Family examinations.



United Kingdom, Family law meeting room



United Kingdom, Family law meeting room

## Promising practice

### Mediating disputes

Most countries consider it to be beneficial for families to settle their disputes through mediation rather than by trial. In Croatia, mediation is a mandatory first step for parents involved in divorce and custody disputes, and is performed by psychologists from Centres for Social Welfare. Some critics, however, say mediation should not be mandatory in cases involving family violence. Sometimes mediation is combined with other functions. In Estonia, the child support specialist assists parents with mediation during the early stages of a trial. In Germany one of the child's legal counsel's responsibilities is to provide parental mediation assistance.

### Providing multi-disciplinary team mediation

The Espoo area of Finland is pioneering an expert-assisted judicial mediation model as an alternative to civil trial in custody cases. The 'Follo-model' teams a judge with a social expert to help parents find a solution through mediation, with the child's best interests as the focus. This method helps families solve custody disputes more quickly and with less conflict. Children are only heard if the parents decide to take the child's opinion into consideration. The hearings do, however, offer children the chance to speak about their preferences privately; as information shared during mediation, unlike in legal proceedings, is confidential. They have the right to choose what information from their hearing may be shared with their parents, and whether they would like some of it to be left out.

Tarascon, France, has developed a similar practice known as 'co-hearing', where judges hear children together with a social care professional during civil proceedings. The judge focuses on the information sought while relying on the social professional to facilitate the child's expression of his/her point of view. The social worker helps to create a more child-friendly environment by reassuring the child if they find themselves intimidated by the judge. Co-hearing also ensures two separate interpretations of the child's responses, providing a more fair hearing. The co-hearing project was recognised in the context of the Council of Europe and European Commission 'Crystal Scales of Justice' 2012 Prize for innovative practices in the field of civil justice.

*For more information, see the co-hearing project.*

Hearings may also take place outside the court or professionals' offices. Social professionals in the United Kingdom (England and Wales) generally talk to children at home, and informal settings are preferred. In Finland, the hearing of a child under 15 years of age can take place outside a court room. In addition, if the child who is heard as witness or in some other role is

under 15 years old, he/she may be heard without being present at court, by using video equipment or something similar.<sup>42</sup> In Croatia, Estonia and Finland children are often heard at home, particularly the very young,

<sup>42</sup> Finland, Code of Judicial Procedure 4/1734, 2012, Chapter 17 Sections 21 and 34a.

which also allows the assessment of the family circumstances. Respondents from Estonia add that these home visits are usually unannounced, to avoid undue parent influence. Respondents from Estonia, Finland, Germany, Poland and the United Kingdom gave examples in which children were heard in a more neutral but familiar place, such as a school or shopping centre. Such practices aim to alleviate a child’s fear of unfamiliar or authoritarian settings and avoid potential parental influence.

*“Quite often when you are taking people in your car to another venue they will begin a conversation [...] because there is not that face to face [element] and they feel more comfortable. I remember taking some young people to the [shopping centre] which is a huge shopping complex and we were just walking around and they began opening up. Again I think they felt less pressured and more comfortable.”* (United Kingdom, family court advisor, male)

### 1.5.3. Providing legal representation and legal aid to children

*“The lawyer of the child is present when it is necessary, it’s complicated, there are tensions, stakes. He/she brings calm [...], because he/she is neutral and doesn’t have this need to satisfy clients who are the father or mother. He/she is truly here for the interest of the child. And so he/she can implement the law, respect for justice, even if the judge is already in a position of equality.”* (France, social worker, male)

Despite the existing rights to legal representation and legal aid in most of the countries researched, respondents from all countries spoke of the poor legal aid given to children in civil law cases, and in particular the poor legal representation. Usually, parents, but not the children, have a lawyer in family law cases. If a legal representative for the child is appointed, this lawyer does not necessarily have any special training to work with children. The lawyer may sometimes not even have met the child before the hearing, but only have read the case file. In Finland, France, Germany, Romania and the United Kingdom (England and Wales), however, legal counsels or guardians are responsible for representing the child’s interest, a practice seen as positive.

#### Promising practice

##### Introducing tandem guardians

In the United Kingdom (England and Wales), any child who is party to a civil case is appointed a guardian from the Child and Family Court Advisory and Support Service to conduct the proceedings on the child’s behalf. Guardians stand in for children at court, and are responsible for reporting on the children’s wishes and feelings. They are also responsible for explaining the legal process and keeping the children informed about the case’s progress and its final outcome. Guardians also appoint solicitors to provide legal representation for the children in what is known as the ‘tandem model’ of representation. Where the guardian’s opinion on the child’s best interest conflicts with the child’s view, a second solicitor can represent the child separately.

In Finland, when a conflict of interests prevents a child’s parents from being their guardians during a legal proceedings, a guardian is appointed to represent the child’s best interests in court. In some Finnish municipalities of Finland (for example in the Kouvola-Kotka region), both a social professional and a legal counsel can be appointed as guardians ad litem, a system of cooperation also known as the ‘tandem model’.

A clear majority of respondents regard the presence of a trained lawyer favourably, particularly in difficult cases, as they can act as facilitators and ensure a respectful hearing.

*“You have procedures where there is the lawyer of the father and the lawyer of the mother. There it is not good because in the extreme, if there should be only one lawyer, it should be the one from the child.”* (France, lawyer specialised in children’s issues, female)

In Germany, only legal counsels are allowed to be present at hearings, not parents or their lawyers. Legal counsels (*Verfahrenspfleger*) can be appointed in difficult family disputes and in cases involving domestic violence. As the children’s legal representatives, they are appointed by family judges to examine the child’s situation, prepare the child for the hearing, report to the judge and represent the child’s interests throughout the proceeding. Legal counsels may have a legal or social professional background.

Some legal professionals from the United Kingdom, however, question whether the views of younger children who disagree with their guardians, but are unlikely to achieve separate representation, can be heard over that of the guardian. What is more, in private law proceedings, children’s voices are reported to be far less prominent.





### 1.5.4. Reducing the length of proceedings

The data do not really provide solid information on procedures and mechanisms implemented to avoid undue delay and multiple hearings in civil judicial proceedings. Data mainly refer to individual practices on reducing the number of hearings or not even hearing the child (see Section 1.6.1). This shows the lack of procedural safeguards, reflected in the fact that only four countries allow video recordings to be used as evidence in family law proceedings. Respondents repeatedly mentioned the advantages of specialised courts and multidisciplinary cooperation within civil cases, as well as across civil and criminal justice cases, to reduce the length of proceedings and the number of hearings.

Civil proceedings are often lengthy, sometimes lasting for years, as respondents from Finland, France, Germany and Poland reported. In custody, living arrangements, visitation rights and alimony-related cases, the ‘family circumstance assessment process’ can take several months. Children are usually heard two to four times during this period, depending on the case and the municipality. The frequently stated lack of resources further lengthens proceedings. German interviewees, for example, refer to ‘stubborn parents’ fighting difficult cases through several court instances. Respondents from France, Romania and Spain also say that the nature of judicial systems facilitates lengthy proceedings, for example when it comes to the renewal of special protection measures.

*“We often talk about child hearing. The place of the child has to be respected regarding procedures as well as hearings because sometimes I have the impression that we involve them in all those procedures where they have a role which does not deal carefully with the fact that they are children. [...] The fact that hearings are necessary, that they have a meaning, that we don’t only hear the child because he/she is fine, but sometimes the interest of the child is to stop involving him/her in the judicial procedures.”* (France, judge, female)

## 1.6. Outcome indicators (making rights a reality)

Outcome indicators are designed to monitor the extent to which children are heard and able to express their views and participate effectively in civil proceedings. Data populating these indicators stem from the observations and assessments given by the professionals interviewed, which are not as numerous as for criminal proceedings.

### 1.6.1. Deciding to hear the child

*“I’ve changed a lot, because initially I thought ‘the less we hear the child the better, let’s distance the child from all the adversarial procedures, let’s work first on the parents. But a child who is heard and who has been able to speak out will purge their suffering better. [...] When the procedure is truly adversarial, taking the child into consideration, and making the child aware that they exist and that they have the right to express their suffering somewhere and not just to a psychiatrist or psychologist, but that this suffering is recorded in a room that the parents are aware of. I think it’s very good for the child. And that, that’s really about protecting childhood.”* (France, judge, male)

Unlike in criminal cases, where children may be the only witness, judges hear children less often in civil cases, and the rules for participation are generally less stringent. Countries are split between two types of approaches: avoiding child hearings or encouraging child participation.

Professionals from Bulgaria, Croatia, Estonia, Finland, Romania and the United Kingdom report that hearings tend to be avoided unless minimum age limits require that the child be heard. In Bulgaria and Romania the age limit is 10 years – children are thus heard from a comparatively young age, but not younger. In Finland and the United Kingdom, children are rarely heard in person by the court; instead, their views are usually ascertained separately by a social professional or through written declarations. In child welfare cases in Finland, all children over the age of 12 have the right to be heard by the court. During custody cases, however, a child’s opinion is usually ascertained by social workers as the child is not considered a party to the proceedings (as in Croatia). In addition, as in criminal proceedings, a child in Finland who has reached 15 years of age has an independent right to be heard. In Scotland, children may be heard by a Children’s Panel. Child hearings also tend to be avoided in Croatia, and are only conducted when there are concerns over the child’s best interests. In such cases children are generally heard at school by psychologists. In the rare cases where judges hear children themselves, they are usually at least 12 years of age.

In contrast, respondents from France, Germany, Poland and Spain reported that it is common practice to hear children during civil proceedings, and that where a minimum age limits exists, its interpretation is flexible. Children are often heard in France, though judges may replace hearings with a social assessment or a psycho-medical exam. Children who are heard can be as young as three or four years old.

Poland is somewhere in the middle of the spectrum. While children are heard less often in civil than in criminal cases, it is seen as increasingly important to hear them in civil cases as well. In Spain, children over 12

must be heard, and younger children are heard if the court considers that the children have sufficient judgment to be heard. In practice, social workers will often interview children as young as five and judges will hear children aged 12 and above.

In Germany, if parents do not reach a settlement, children are generally heard. Germany requires judges to hear children over the age of 14 in family cases, such as custody or visitation rights.<sup>43</sup> If and under what circumstances younger children are heard depends on the judges in charge. Most judges interviewed report that they follow the Federal Court ruling that children over the age of three must be heard in custody cases. If their explanation for waiving a hearing is not deemed sufficient, they risk an appeal. Social workers and lawyers say that hearings of young children in custody cases have become 'living practice'. Some, however, disagree. A judge in Berlin considers this age threshold too low and only hears children aged five and above – a view several other respondents shared.

One of the reasons to hear children is that their testimony could also lead to a criminal case.

*“An agreement at a hearing (nb: of parents)... gives the child the chance of not going to the tribunal in order to take a position in a conflict opposing his/her parents [...] if we can avoid that, I think the child would be better playing football rather than waiting in a hall. [...] I am not very happy that the legislator transformed the child's hearing into a legal hearing. I preferred when we had the latitude of asking or not for a hearing. [...] But in some cases it can be justified: the child has something to talk about beyond the parental conflict [...] confidential information which can then lead towards a criminal procedure.”*  
(France, judge, female)

Other important reasons given for hearing children is to listen to their point of view, assess the family situation from different perspectives and empower the child.

*“What young people want is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people don't want to make the decision themselves, they understand that it's not for them to make it, they don't want that pressure. But they want to feel that the person making the decision has heard their voice in the process.”* (United Kingdom, social worker, male)

### 1.6.2. Reducing the length of proceedings

Respondents across countries agree that lengthy proceedings are traumatic for children, as they prolong the

pain of the situation. In family law cases it can worsen the relationship between the child and the parents. Nevertheless, respondents from several EU Member States give examples of long delays between the different stages of the case, making the overall proceedings last for years.

*“Every hearing re-activates all the psychological suffering experienced. Coming back from a hearing is always an extremely difficult time, heavy, burdensome, difficult. The period of the hearing is long; it puts off [...] the repairing process, which starts at the time when he/she manages to talk. It's a mixture, with permanent oscillations, and that's difficult.”* (France, social worker, male)

### 1.6.3. Assessing the measures in place and their effects on children

All respondents agreed that hearings supported by social professionals are more child-friendly, ensure better protection of children's interests and often compile better information. Notwithstanding the ambivalent views on the decision to hear children, many professionals who hear children, including children who are younger than may be required, reported that children are positively affected by the experience of voicing their opinions. As for criminal proceedings, if clear rules are in place and child-friendly hearing techniques are used, children are able to participate effectively in the proceedings. The indicator of how satisfied children themselves are with the way their right to be heard was respected will be populated at a later stage with evidence from the children's interviews.

## Ways forward

The following considerations for action can help ensure that children's right to be heard takes place in an as child-friendly manner as possible, ensuring that children feel comfortable and safe and are able to effectively and freely express their opinions.

### Establishing specialised courts, panels or judges for children

- Not all EU Member States have specialised criminal and civil courts. Yet, such structures are more likely to have child-friendly facilities, safeguarding tools and trained child specialists. If they do not have them, EU Member States should set up such specialist structures as well as a system of legal/judicial professionals with competences on the rights of the child and child-friendly justice.

<sup>43</sup> Germany, Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, 2008, Section 9(1) no. 3, Section 60, Section 167(3).



## Defining the child's maturity

- The child's maturity is critical to determining how he or she should participate in judicial proceedings. EU Member States should introduce a clear legal definition of maturity.
- Failing such clear criteria, individual judges may use their own discretion to assess the child's maturity. EU Member States should adopt a more objective method to assess children's maturity, taking into account their age and capacity for understanding.

## Establishing procedural safeguards to ensure child participation

- Professionals consider that procedural safeguards in criminal proceedings, such as the child-friendly adaptation of the hearing environment, reduce children's stress and the risk of secondary victimisation. For criminal and civil proceedings, EU Member States should video record hearings, including pre-trial hearings, to avoid unnecessary repetition and ensure they are legally admissible evidence. For criminal proceedings, EU Member States should introduce measures to avoid contact between the child and the defendant and any other parties that the child may perceive as threatening. For civil proceedings, EU Member States should consider the use of mediation more often as an alternative to trial.
- Eight of the 10 Member States studied have criminal law provisions on the child's right to be heard as a victim and six on his or her right to be heard as a witness. In civil law, depending on the type of case, hearing the child can be mandatory, optional or not regulated at all. The Member States and, as appropriate, the EU should apply a more inclusive approach, so that procedural safeguards cover all cases involving children in judicial proceedings, while applying an assessment of a child's maturity.
- EU Member States should ensure that only trained professionals hear children and increase the presence of specialised, trained professionals during hearings. This requires providing training for professionals in child-friendly hearing techniques. Authorities should also ensure that a person of trust, independent of the child's parents, supports the child during all stages of judicial proceedings, particularly in informing and preparing the child for hearings. EU policy planning should also focus on training professionals and harmonising curricula.

## Making free legal aid available, including children's free and easy access to legal representation

- In criminal cases, some EU Member States make free legal aid available only to those who are financially eligible. In civil cases, respondents from all countries report a lack of legal representation for children. EU Member States should provide legal aid unconditionally to all children. This should include free access to legal representation throughout the proceedings and the removal of bureaucratic hurdles, such as lengthy proceedings or economic means testing.
- EU Member States should ensure that clear guidelines on accessing legal aid be provided to all children and their parents/guardians, and that specialised child lawyers be available to represent children in both civil and criminal proceedings.

## Reducing the length of proceedings

- Seven of the 10 EU Member States examined have specific legal provisions to prevent undue delays in child justice cases in the criminal field, while only three Member States fast-track cases involving children in the civil field, and then only under certain conditions. EU Member States should introduce effective safeguards to avoid undue delays.
- Member States should introduce clear rules to limit the overall number of child interviews and hearings permitted in both civil and criminal cases. EU Member States should strengthen cooperation between professionals from the different disciplines involved to reduce the number of hearings.

## Providing professionals with rules and guidelines on how to hear children

- FRA fieldwork findings show that hearing practices generally depend on individual professional skills and vary by court and region. Standardised, detailed rules or guidelines, such as those used in Finland or in the United Kingdom, help reduce the number of hearings and improve communication with the child. EU Member States should ensure that all professionals involved in all judicial proceedings are provided with clear and child-friendly rules and guidelines on how to hear children. These should go hand in hand with a standardisation of procedures and coordination among different actors to harmonise hearings. Promising practices can serve as points of reference. An exchange of guidelines and promising practices within and between EU Member States would help improving procedures.

## Using child-friendly facilities to hear children

- Even when child-friendly rooms are available for use in criminal proceedings, they are rarely used in civil cases. Member States should ensure that child-friendly interview rooms are available not only for all criminal justice cases, but are, in the absence of other child-friendly facilities, also an option for civil cases. Such rooms should be available throughout a country, including in rural areas.
- Member States also vary widely in their use of existing child-friendly rooms, hinging upon factors such as access to locations with recording equipment. They should remove technical and logistical obstacles to make the use of child-friendly rooms standard practice.
- Child-friendly rooms usually contain toys, video recorders, and tools to collect evidence, but professionals say that the equipment is often not age-group appropriate. EU Member States should ensure that such child-friendly waiting, interviewing and hearing rooms are equipped to address the needs of different age groups.



# 2

## Right to information



### Convention on the Rights of the Child – General Comment No. 12

Concerning Article 12: “Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff [...] (Paragraph 34)

### Council of Europe Guidelines on child-friendly justice

#### Section IV A. 1.

1. From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed.

The right of children involved in judicial procedures to be informed is crucial to their effective participation and well-being. Concrete information offered in small, digestible doses throughout all stages of the proceedings can relieve children’s anxiety at facing a potentially intimidating justice system for what is likely to be the first time. Well-informed children gain greater trust and confidence in themselves and the judicial system. They then feel more secure and talk more freely, which means their statements are more taken into account and they can participate more fully in proceedings.

For criminal judicial proceedings, the right to information is enshrined in the legislation of all the EU Member States studied except Scotland in the United Kingdom. The interviews show, however, that there is significant variation in the way children are informed, in terms of what information is provided, when and by whom.

The right to information is less regulated in civil judicial proceedings, where legal and social professionals have more freedom to judge what information should be provided to a child.

*“[Information] is very important because if we don’t communicate the child’s rights, the child could not find out about them from any other place. [...] I believe it is an advantage for the child to know that the child can benefit from something, allowing him or her to want and wish to benefit of it.” (Romania, psychologist, female)*

This chapter assesses how the 10 EU Member States studied deliver on the right of a child to be informed in judicial proceedings through structural, process and outcome indicators. Structural and process indicators on the right to information distinguish between criminal and civil judicial proceedings, whereas outcome indicators combine them.

Tables 20 and 21 provide an initial overview of the population of structural and process indicators in criminal and civil law in the Member States surveyed (see detailed tables analysing the population of individual indicators by country in Annex 2). Where indicators are populated using results from qualitative research they should be read as indicative of a situation. The data populating the structural indicators are based on the analysis of European Commission data on national legislation. The data populating process indicators stem from FRA fieldwork research based on the respondents’ reports and assessments of practices and procedures in place. Outcome indicators are not included, as they can only be fully populated once the forthcoming work on children’s interviews is complete (for a fuller description of the data analysis see the methodology section in Annex 1).

Parents are usually the first to receive information on proceedings and play a major role in providing it. They

are often expected to act as the primary informer, explaining the material to their children, even when that same information is also sent directly to their children. This practice was a contested issue among the professionals interviewed, since parental influence is liable to be biased, particularly in civil proceedings.

When it comes to what type of information to give, professionals in both the criminal and civil justice field agreed that children should be informed about their rights, the stages of the proceedings, what to expect from the hearings and the availability of protective measures. Several professionals discussed how to find the right balance between properly informing children and not overwhelming them with information. Concrete understandable information can ease anxiety, whereas an overload of information can increase it.

*“The child must have some information, but it needs to be dispensed in certain dosages.”* (Estonia, lawyer, female)

The age and the developmental level of the child affect his/her ability to understand information about the proceedings. Thus, information should be tailored to children’s age, developmental phase, background and psychological condition. Professionals agreed that children need to be given adequate information and that even very young children are able to understand the importance of their testimony. Professionals felt, however, that younger children needed only to understand the general process and their role in it, not the fine legal details.

*“Children receive as much information as they can understand.”* (Croatia, psychologist, female)

The question of the right amount of information applies in particular to files containing sensitive data, such as information about the children’s parents or psychological assessments of the children themselves. Such information should not necessarily be shared, since it could be harmful. Respondents repeatedly said that it is important to convey to the child that the hearing is an opportunity to express opinions, and that it is not up to the child to make decisions. For criminal cases this would, for example, mean telling the child that a negative outcome does not mean that the jury did not believe his or her story. In family cases, numerous respondents reported emphasising that the child will not decide what happens to their parents or with whom he or she will live.

Channels used for how information is provided range from online material guiding professionals how and on what to inform children, letters of summons or informational letters written with adults in mind, oral explanations given to children about their rights, or specifically developed information booklets for children of different age groups and language backgrounds.

One also needs to consider how the information is given to people in the children’s close environment, such as the relatives or professionals working with them who are assumed or supposed to inform the child. Sometimes parents or social workers are unaware of aspects of the procedure and consequently unable to assist children. Parents and professionals supporting the child (social workers, legal representatives) should thus also receive the information material prepared for children, so that they can convey the information in simple and accessible language. Interviewees from only a few countries (Finland, Spain and the United Kingdom)

**Table 20: Criminal law – Population of structural and process indicators, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Structural</b>	Often not implemented	Usually implemented	Usually implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Usually implemented	Often not implemented
<b>Process</b>	Often not implemented	Usually implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Usually implemented	Usually implemented

Usually implemented
  Partly implemented
  Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014

**Table 21: Civil law – Population of structural and process indicators, by EU Member State**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
<b>Structural</b>	Often not implemented	Usually implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Usually implemented	Often not implemented
<b>Process</b>	Often not implemented	Usually implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Often not implemented	Usually implemented	Usually implemented

Usually implemented
  Partly implemented
  Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014



gave examples of guidelines for professionals on how to inform both children and parents, and those only for criminal proceedings.

The right to information does not only apply when children are already involved in judicial proceedings but also before proceedings start, to raise their awareness of their right to be heard on matters that affect them. France takes such a comprehensive approach.

### FRA ACTIVITY

#### Making children aware of their fundamental rights

FRA created a website where children can obtain information on their fundamental rights and on the main principles of child-friendly justice as outlined in the Council of Europe guidelines. They find answers to questions such as: “What are my rights?”, “Where do my rights come from?”, “What does FRA do for children?” and where to go to if “you want to know more?”

Children participating in FRA fieldwork can read more about their rights in relation to their own experience in judicial proceedings and learn more about the FRA project on children and justice.

They can download a leaflet that explains key elements of child-friendly justice to children in nine languages: Bulgarian, Croatian, English, Estonian, French, German, Polish, Romanian and Spanish.

See the dedicated link for children: <http://fra.europa.eu/en/children-s-rights>

### Promising practice

#### Implementing the right to information in a child-friendly environment

German legal provisions (structural indicators) comprehensively cover different aspects of informing children involved in civil and criminal proceedings, including a child’s rights to receive information at first contact with authorities and to be informed about the consequences of participating in judicial proceedings. The professionals interviewed stated that the German regulatory framework is accompanied by a strong implementation of measures (process indicators) that allow children to enjoy professional support and receive information on other relevant support services.

Finland has a weaker legal basis than Germany for informing children in family law cases, but it has related measures in place. Children are, for instance, informed about the proceedings through the efforts of several professionals working together.

In Spain, there are gaps in both structural and process indicators in civil proceedings. The professionals interviewed said more emphasis needs to be placed on strengthening the legal framework, to serve as a base for putting measures in place.

Table 22 provides an overview of the indicators presented in this chapter.

### Promising practice

#### Making legal information and advice accessible to children

In France, contact points have been established in several cities where children can access specialised lawyers for information about their rights, and advice and support on civil or criminal legal matters. These meetings are free and confidential, and often offer drop-in services, as well as hotlines and awareness-raising sessions in schools.



This advertisement is for a child lawyer programme (Avoc'enfants), where children and young adults involved in civil or criminal cases may contact a lawyer specialising in children's issues for advice and information on their rights.

**Table 22: Structural, process and outcome indicators on the right to information**

	Indicators
<b>Structural indicators</b> Legal, statutory provision or obligation:	2.1.1./2.3.1. Fulfilling the child’s right to information
	2.1.2./2.3.2. Ensuring children are informed in the most appropriate way, having regard to their age, maturity and level of understanding and any communication difficulties they may have, including provisions for specifying the responsible authority, persons, time, content and format of information provided and imparting information in a child-friendly manner.
<b>Process indicators</b> Measures and procedures:	2.2.1./2.4.1. Ensuring that children are appropriately informed and facilitating understanding of procedures and court rulings <ul style="list-style-type: none"> <li>• Setting clear responsibilities for who informs</li> <li>• Providing a multidisciplinary approach to information and support (criminal only)*</li> <li>• Elaborating guidelines and protocols on how to inform (criminal only), when and on what</li> </ul>
	2.2.2./2.4.2. Ensuring there is information material adapted to children’s needs
	2.2.3./2.4.3. Providing information and advice to children through targeted, adapted information services (criminal only)
<b>Outcome indicators</b> Results:	2.5.1. Assessing the importance of information and its effect on children
	2.5.2. Assessing measures and their effect on children
Outcome indicators to be populated through evidence from interviews with children**	
<b>Outcome indicators</b> Results:	Evidence of children’s understanding of their rights
	Evidence of children’s understanding of the procedures, including the final decision and its consequences
	Evidence of children’s assessment of the child-friendly character of information/material provided

Notes: \* These indicators are applicable to both proceedings but data are not always available to populate both.

\*\* The second report, based on interviews with children, will be published at a later stage.

Source: FRA, 2014

## CRIMINAL PROCEEDINGS

### 2.1. Structural indicators (legal obligations)

#### 2.1.1. Fulfilling the child’s right to information

The right to be informed is provided for by various provisions in EU secondary law:

- Articles 3 (right to understand and to be understood), 4 (right to receive information from the first contact with a competent authority) and 6 (right to receive information about their case) of the Victims’ Directive;
- the Directive on combating sexual abuse, sexual exploitation of children and child pornography;

- the Human Trafficking Directive.

The majority of countries studied have explicit legal provisions in the context of criminal law concerning the right of a child to receive information about his/her rights and judicial procedures. In Scotland, however, this right is not enshrined in legislation for either victims or witnesses. In certain countries, the right to information is more extensive for victims of certain crimes, such as domestic and sexual abuse. In Poland and Romania, for instance, such victims have a right to more comprehensive information.

#### 2.1.2. Ensuring children are informed in the most appropriate way

These legal obligations concern children’s right to receive information in the most appropriate way, taking into account their age, maturity, level of understanding





and any communication difficulties they may have. The obligations should include provisions specifying the person(s) responsible for providing information, the way the information is provided (timing and content), and the use of a child-friendly manner.

Legal provisions in several countries cover the role of victims and witnesses differently. They tend to be more elaborate for victims, as in Bulgaria, Estonia and Germany, and specifically for victims of domestic and sexual abuse in Poland and Romania.

Not all countries have laws specifying who is responsible for providing a child with information. Again, whether the child is a victim or a witness affects what professionals are expected to do. Legal provisions in all countries except Bulgaria and Spain refer to the child victim's first contact with authorities, for instance, but fewer countries mention the child witness's first contact (see Table 23).

The professionals responsible for informing children at first contact differ by country. In the United Kingdom (England and Wales), witness care units, staffed jointly by police and prosecutors, are responsible, while in Estonia and France, police officers or prosecutors are. The child welfare authorities are responsible in Romania, and the public prosecutors in Spain. In Bulgaria and Poland, reference is not made to those responsible for providing information at first contact, but to those hearing the child, such as judges.

In Bulgaria, child victims have the right to receive information about their appeal rights. While the majority of EU Member States have the court's judgment communicated to child victims, in Bulgaria this is only mandated if the child is registered as a civil claimant, or upon request in Germany.

In Bulgaria, information can be obtained from leaflets at court or verbally. In Romania, victim support organisations publish information on websites.

### Promising practice

#### Informing child victims of the outcome of proceedings

In Germany, the Victims Protection Act of 1986 and two Victims' Rights Reform Acts strengthened victims' and witnesses' rights. These include the obligation to inform victims about the final verdict and to ensure that they have access to the court files. Similarly, practices in Finland ensure that child victims are informed of the outcome of proceedings. The verdict for victims under 15 years old is delivered to the child's legal counsel or guardian. The legal counsel is then responsible for informing the child and the family. The guardian or the legal counsel also informs the child about all practicalities of a verdict, for example the payment of damages. If the child is over 15, the verdict is delivered personally.

Table 23: Legal provisions on the right to information

EU Member State	Authorities provide information to the child at first contact		Information provided in a child-friendly format	
	Victim	Witness	Victim	Witness
BG				
DE	✓			✓
EE	✓	✓		✓
ES				
FI	✓	✓		
FR	✓	✓		
HR	✓	✓		
PL	✓	Partly		
RO	✓	✓	Partly	✓
UK (England and Wales)	✓	✓	✓	✓
UK (Scotland)	✓	✓		

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

As Table 23 shows, providing information in a child-friendly manner is only mandatory in four of the countries researched: legislation in Estonia, Germany, Romania (only in cases of domestic violence) and the United Kingdom (with the exception of Scotland) specifies that how a child is informed must be adapted to his/her level of understanding.

## 2.2. Process indicators (procedures)

Measures to safeguard a child’s right to be informed focus on helping them understand their rights and justice procedures. These measures should enable them to make informed decisions and participate fully in proceedings. Process indicators examine measures that:

- define who is responsible for providing information;
- ensure a multidisciplinary approach to providing information and support;
- establish guidelines and protocols on how to inform, when and on what issues;
- ensure the elaboration of child-friendly information material, namely material specifically adapted to a child’s age, level of maturity and developmental stage;

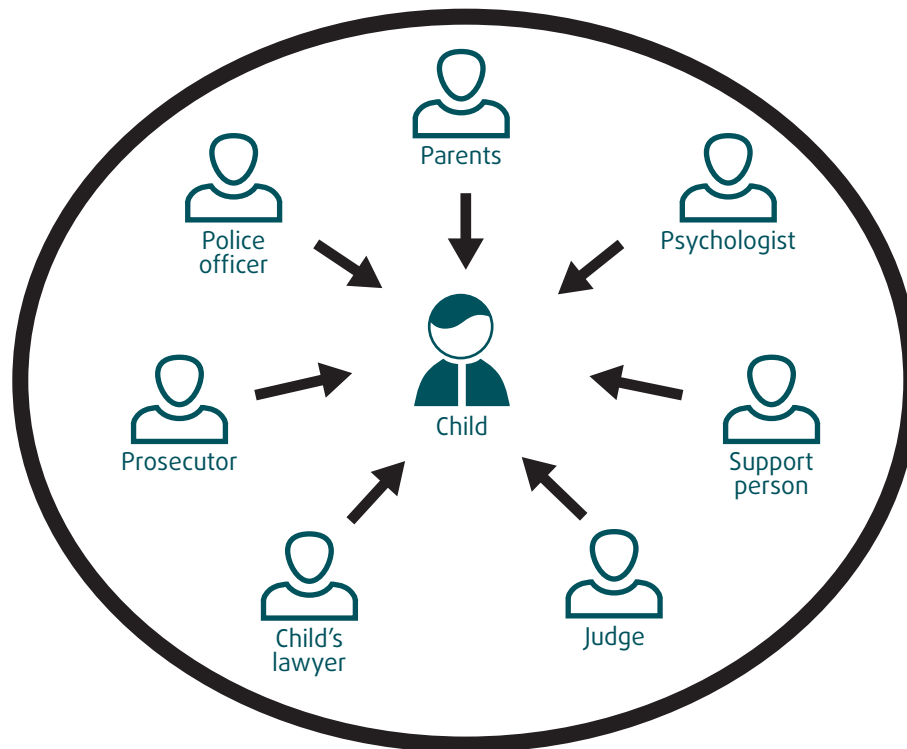
- govern the existence and operation of information and advice services specifically for children.

### 2.2.1. Ensuring that children are appropriately informed and facilitating the understanding of procedures and court rulings

#### Setting clear responsibilities for who informs

Respondents said that standardised procedures for professionals are rare; they receive little guidance on how best to inform the child. Aside from parents, most countries assign primary responsibility for informing children to police officers or legal professionals (prosecutors, judges, lawyers, court staff). This stems from their role as the child’s first point of contact with authorities, a part of child victim legislation in most of the EU Member States researched. Child protection services and NGOs also play a major role in informing children, although the exact nature of this role is not always specified. This leads to an often fragmented approach, in which multiple actors inform children (Figure 5).

Figure 5: Provision of information by professionals – fragmented model



Source: FRA, 2014

## Role of parents

Respondents, particularly in Estonia and Finland, consider that parents bear the main responsibility for informing a child, as well as for assessing the amount of information a child should receive. Provided the nature of the case allows it, they prefer to filter all the information through them. In Finland, however, a child's legal counsel also plays an important role.

Most respondents expressed concern over the undesirable and possibly negative effect parents and other relatives, such as grandparents, may have on the child, particularly – but not only – when a parent commits a crime. Respondents gave examples of parents or legal guardians attempting to influence children through intimidation or by trying to buy them off with gifts. They said some even tried to prevent children from testifying. Professionals in Estonia reported cases in which parents were informed before it was established whether they were also defendants, which had serious negative consequences. In Poland, if the perpetrator is a parent, the other parent is automatically excluded from the proceedings and a guardian represents the child. In this case, the guardian receives all written notifications. Although respondents considered this a good practice, some expressed concern that the guardian might be unfamiliar with the case and the child's situation. He or she may thus not properly prepare the child and inform him or her for the hearings.

Respondents were also critical of the practice of informing only the parents, even when they were not involved in the case, as there is no way of ensuring that critical information will reach the child. Respondents repeatedly recounted problems caused by a child's lack of information, such as children attending a hearing without knowing why they were there. They also emphasised the importance of giving the responsibility for informing children to a professional, such as a guardian or a psychologist, who can check a child's level of information and understanding, so that parents are not solely responsible for informing and supporting the child. In Poland, for example, the child should have a conversation with a psychologist or the judge before all proceedings, to detect any undue parental influence.

## Role of the police

The police, usually the first point of contact, plays a critical role in informing children. In Finland, police officers are sometimes the only professionals to hear a child officially. They usually contact the parents to tell them how to prepare their child for the hearing. If the child is 15 years old or above, they contact him or her personally. Respondents say that because children are often familiar with the police's role, they may find it easier to

communicate with them than with, for example, a legal representative or prosecutor.

In Germany, police officers interviewed said that they inform children – and usually also parents – about criminal proceedings in general, the rights and obligations of witnesses, and, if they are victims, about support services. Before children are heard, police investigators inform children about their right to refuse to testify against family members or themselves, and tell them that their testimony can result in somebody being punished. Children aged 14 and above are also informed about their duty to tell the truth, which is not relevant for younger unaccountable children. If police officers face language barriers, they may request informal support from colleagues, teachers, siblings or other persons who are able to translate, as interpreters are only appointed for the formal hearing. In the United Kingdom, police officers can play a role in explaining the video-recording procedures and, depending on the child's age and maturity, may also describe later court processes. Romanian police officers mentioned that the information may refer to the role of the child in identifying the perpetrator or the fact that the child can ask for the support of a psychologist from the social protection authorities. In many cases, however, the information given is quite sparse.

*“Yes, he is informed what he has been called for, so about the fact that he was called to be heard in a criminal case, where he is to be heard as – and now it depends on the role he has – and everything will take place at [...] the police station he is informed. Orally. ‘Mate, you are being heard.’” (Romania, law enforcement official, male)*

## Role of judges and prosecutors

Prosecutors and judges also provide children with information. The extent to which they do this, however, varies. They often assume that either parents, legal representatives or police officers have already informed the child. Several French respondents mentioned that the prosecutor was responsible for informing defendants and victims, but one former prosecutor said:

*“It's true that nothing is planned. We don't really worry about getting to know what information is given to the child.” (France, prosecutor, female)*

Professionals nevertheless stressed that the need to inform children about their rights is a minimum requirement during proceedings.

Various respondents were concerned that legal professionals may not always have the time or the training to inform a child appropriately. Moreover, judges often don't know the child well, as they may meet him or her for the first time at the hearing itself.

The ambiguity around who informs the child may also encourage the involvement of too many professionals in the process, as Finnish, French and Polish respondents stressed. In France, for example, it is possible that lawyers, ad hoc administrators, and support services will inform the child simultaneously. Multiple sources risk confusing the child and, if their work is uncoordinated, can lead to the provision of either too much or too little information.

*“Every new person who comes has a different approach towards the children, he/she has a different view and understanding of the work that should be performed [...] things do not work effectively. For example, if a year ago we had a case for something [...] and some colleague (or I) worked with the child, then, if some time after that a new colleague has a new subpoena and new case with the same child, he/she goes and presents the information in a different way. The child might be confused, or he or she might not be confused.”* (Bulgaria, social worker, female)

Croatian, French, German and Romanian respondents point out that specialists are uncertain about who exactly is responsible for informing the child. One specialist thus passes the ball to another, where it may bounce between the social and legal field or even within the same field. When prompted, some even said that it would be improper for them or for others involved in criminal proceedings to share information with a child regarding the material facts of the case.

Even where the law specifically obliges courts to inform children about their rights during the hearing, professionals criticised its implementation. None of the Bulgarian judges, for instance, thought that judges informed children properly.

*“Children are surprised to hear that they have rights. As to the legal provision saying that the child has to be informed about the consequences of his/her testimony, frankly speaking, I cannot recall cause this is a place to tell the truth.’ Such statements sound scary, very threatening. And the judge has no intention of intimidating the child; judges simply don’t know how a child perceives such statements [as they are] in the courtroom for the first or second time. As a matter of fact the child is entitled not to tell the whole truth. The child is entitled to share the part of the truth he/she wants to. Yes, the child is not supposed to lie but he/she is not obliged to tell the whole truth. This is something they fail to explain to the child. Or another statement: ‘You tell me the truth and I’ll convict him/her.’ When this statement is made the child literally freezes. This represents such a burden for the child. [...] And such a statement of the judge is often well intended. Right, but this is not the way to put it.”* (Bulgaria, court-appointed expert for children’s cases, female)

There are, nevertheless, also promising practices, such as in Finland and the United Kingdom (England and Wales), where specifically assigned legal professionals accompany children throughout proceedings.

## Promising practices

### Providing an intermediary for interviews and hearings

Intermediaries are an important addition to the legal support measures available to children in the United Kingdom (England and Wales). An intermediary can assist in planning and executing the police interview, provide a written report to the court on the child’s communication capabilities and advise during the child’s hearing if questioning is inappropriate. The cost and limited availability of intermediaries, however, prevents them from becoming a standard support measure. While registered intermediaries are increasingly used to support very young children or children with a specific disability that makes communication difficult, they are not generally available to young people without additional vulnerabilities. Judges report that they have been encouraged by their experience with intermediaries, however, to stop inappropriate questioning techniques even in an intermediary’s absence.

*For more information, see Youth Justice and Criminal Evidence Act 1999*

### Supplying information from a familiar person

In Finland, when a child is appointed a legal guardian in a criminal process, this guardian plays an important role in ensuring that the child is kept informed. Some guardians feel a greater responsibility to provide information than others, who see it as their role to ensure that other professionals inform the child and then fill any gaps.

Guardians have an unofficial and often quite close relationship with a child. They are always appointed to a specific case, and when the proceedings come to an end, so does the guardianship. As they often meet the child multiple times, they have the opportunity to ask the child questions in a confidential setting. If the child is very young, a guardian might write a report about the proceedings for the child to read. The legal guardians interviewed thought that children often understood the information quite well, which suggests that it is easier for children to understand information coming from a familiar adult.

When a child is appointed a guardian in criminal proceedings, the guardian has some responsibility for informing the child. He or she is not under an obligation to inform the parents but has the discretion to do so. The guardians have their own procedures, detailed in a guidebook produced by Save the Children Finland.



The process of informing children thus moves away from the frequently described fragmented model of providing information (Figure 5) towards a coordinated approach in which professionals inform the child as well as his or her parents (Figure 6).<sup>44</sup>

## Providing a multidisciplinary approach to information and support

### Multidisciplinary cooperation

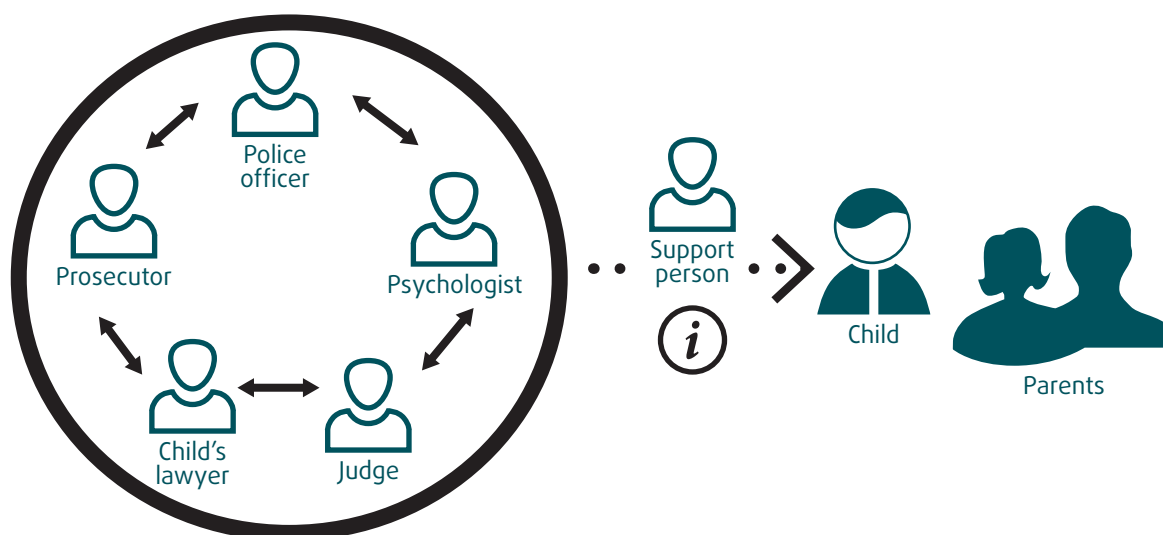
Multidisciplinary cooperation also ensures that children are kept informed (see Chapter 7). This means limiting the number of professionals involved and ensuring that one main contact person participates in the entirety of the proceedings and coordinates the other professionals in contact with the child. This person needs to check whether the child is informed and how well he or she has understood the information. As respondents said, it is not always clear whether a child absorbed everything at first. Several professionals suggested that it does no harm to repeat information.

Several respondents from the criminal justice field commented that written informational materials alone are not very helpful, and are more useful when combined with counselling and support. In Spain, for

example, associations providing psychosocial support implement a comprehensive psychological approach protocol when informing the child. They combine informational material with contextualisation, difficulties assessment, anxiety prevention, role-play and other techniques. Support services, particularly victim and witness support services in Croatia, Estonia, Finland, France, Germany, Spain and the United Kingdom are considered to have a particularly relevant role in providing information to children and their parents, as well as in preparing children for trial hearings. Their services can include pre-trial visits, home visits, and support provided before, during and after a trial, all of which are not only relevant for properly informing children and monitoring their understanding but also for their overall protection.

Respondents from Bulgaria, Croatia and Estonia noted that victim and witness support specialists do not necessarily play as active a role in informing children as they should, either because they lack availability or because they are assigned a more passive role. Respondents in Bulgaria were critical of the minimal role social professionals play. They said that judges, prosecutors and investigators may not always implement the legislative framework. They may not inform social workers, for example, about child hearings in child abuse cases;

Figure 6: Provision of information by professionals – coordinated support model



Source: FRA, 2014

44 This process of providing information is not unidirectional. The child and parents inform one another and the professionals about the child's situation and understanding, but the professionals involved should be responsible for making sure that the child receives appropriate and sufficient information, preferably through one main contact person. Both models refer to cases where parents are not accused and there is no conflict of interest.



as a result, children do not benefit from information or preparation prior to hearings.

In a positive practice from Finland, voluntary support persons continue providing information to children even after the hearings. The support persons, from Victim Support Finland, are seen as neutral information providers, since they are also obliged to inform parents – even if the child contacts them independently. Victim Support Finland also provides information on aftercare services for the child.

Children also need to receive information about the proceedings' outcome, which legislation in Germany and Poland ensures. Once a child has a legal counsel or a guardian, it is up to them to inform their client about their rights and to explain the court's decisions and available appeals in an appropriate manner. In Scotland, the Chair of the so-called 'Children's Panel' is responsible for explaining the panel's decision to the child.

Respondents also noted that children may forget some information over time, particularly during lengthy procedures. These factors make continuous support and information, including the repetition of information, critical, which requires the various professionals involved to coordinate.

*“We are available for them. We have a very important educating role. We can repeat things, re-explain. Children live things in a cyclical way. When a case starts we can feel that children in particular are not always psychologically available. They are so submerged or traumatised that they don't always register what is said. We can also bring complementarity, with lawyers for children. [...] There is a real need for reassurance.”* (France, victims' support organisation staff member, female)

### Elaborating guidelines and protocols on how to inform, when and on what

Guidelines and protocols help to clarify how, when and on what children are best informed. The English and Welsh guidelines by the Ministry of Justice (2011), *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures* (ABE) (see promising practice box in Section 1.2.1) outline the procedures for informing the child. They require that meetings take place between the child, the prosecutor, the police officer and any intermediary if the case goes to court, thus stressing the benefit of multidisciplinary cooperation. Though time and resource pressures make these meetings the exception rather than the rule, one prosecutor interviewed found them to be extremely useful in ensuring that the child's voice is properly heard. Wider use of such meetings would allay the concern of other criminal justice professionals that children do not understand all the options available to them, and so do not make an informed choice.

### Promising practice

#### Elaborating guidelines to inform children at a hearing

The Finnish National Research and Development Centre for Welfare and Health (*Stakes*) and the police drafted instructions for hearing and informing children during preliminary investigation hearings (*Stakes 2003: Opas lapsen seksuaalisen hyväksikäytön ja pahoinpitelyn selvittämisestä*). The instructions, which are not publicly available, provide guidance on what issues should be covered. The person conducting the interview explains that it is his or her job to ask questions and find out what happened, and the psychologists usually explain that they are helping the police. Practical issues must also be covered: the child must be informed that the hearing is recorded and that the recording will be played at the trial. The children are told that they may ask questions and take breaks during a hearing. If people are observing the hearing from an observation room, this must be explained to the child. On a more abstract level, children are informed about their obligation to tell the truth and their right to remain silent. Child witnesses must be informed about their right not to testify. Additionally, children are given a chance to ask about the hearing. They are often interested in finding out who filed the police report; this must be explained. Finland has also developed a special set of guidelines on interviewing children who are victims of sexual abuse and/or assault and battery.

The victims' support offices in the Spanish regions of Andalusia and Catalonia have standardised protocols to inform children as well as their parents throughout the proceedings. These often include pre-trial familiarisation visits to court facilities – a practice the Witness Care Units in the United Kingdom (England and Wales) also consistently implement. The English and Welsh as well as the Finnish guidelines are reported to be widely used and systematically in place.

Respondents from other EU Member States, such as Bulgaria and Estonia, said that they do not have detailed guidelines on how to inform children. Interviewees from Estonia who are directly involved in informing children said that because the law does not specify exactly how to do so, general practices have evolved over time. They can differ somewhat depending on the region and the individual investigators involved.

*“And all over Estonia [...] the applicable know-how should be the same. Right now, everybody reads laws and interprets them their own way.”* (Estonia, social worker, female)



Most information provided in criminal proceedings relates to pre-trial and trial hearings, including topics such as the setting of the courtroom, the potential use of recordings, the roles and appearance of the participants, the role of the child during the hearing and questions the court might ask the child. The initial information given during the pre-trial phase – the notification/summons – is usually not child-friendly and often only addressed to parents. One Croatian education specialist sums up her approach as follows:

*“We say to a child: you will be questioned as a witness, there is a proceeding where you will be a witness. You will go to a room with me, and the judge, state attorney etc. will be in the other room. You will tell me what happened, and if there are any questions; I will pass them on to you. You have to tell the truth, the conversation will be recorded and may be used as the basis for the verdict.”* (Croatia, special education professional, female)

According to the professionals interviewed, information provided before the trial should focus on what to expect and convey a realistic picture of the process. Overall, children should have a basic understanding of:

- the different phases of the proceedings (what happens next);
- their rights in relation to their roles as victims or witnesses (including the right to remain silent and the non-obligation to testify against family members if foreseen by law);
- the availability of victim or witness support or other special measures;
- the proceedings’ outcome.

*“Because they have been victims of something, they need to know that the world of adults is not a world of bad persons, that there are persons there for them, and rules as well. They will grow up in a society where there are rules, and once one breaks those rules, one gets punished. They also need to understand the logic, of course with their own logic, of the society in which they live. I think one needs to explain. Don’t believe that minors don’t understand anything. They understand much more than we think. There are subtleties they won’t understand, but they will understand what is essential.”* (France, lawyer, female)

In addition to written and verbal information about the hearings, several countries arrange pre-trial visits to the court, to familiarise children with the physical setting of, and people involved with, the hearing. Children sometimes meet the judge or see the hearing and observation rooms. This familiarisation makes them less fearful at proceedings and more confident in their testimony and is thus seen as essential support. This practice was not reported by professionals involved in civil proceedings.

## Promising practice

### Familiarising children with the court environment

Familiarising children with their surroundings is a method employed in the United Kingdom. The child is first sent written information on the criminal justice process and his/her role in it and is subsequently invited to a pre-trial familiarisation visit. Witness Care Units in the United Kingdom (England and Wales), and Victim Information and Advice staff or the Children’s Reporter in Scotland make the referrals for pre-trial familiarisation visits. The Witness Service in the relevant court arranges for children to visit the court where they will give evidence ahead of the scheduled trial date. During the visit, children are shown the separate child’s entrance, an empty court room, the witness waiting area and the live link room. They meet the court staff, practice with the live television equipment and ask any questions they may have.

Some areas offer a specialised Young Witness Service whose staff visit the child at home and conduct the pre-trial familiarisation visit. In France, this procedure includes allowing the child to see the recording room and informing them of the presence of a second investigator or tinted window. Children will also meet law enforcement officers, learn where parents or other accompanying persons will be waiting for him/her, and have an opportunity to ask any questions before the hearing. Some witness supporters in Germany also visit the court building with their clients and ‘say hello’ to the judge before the main trial.

Most respondents said that children are informed that they should tell the truth. In Germany and Spain, children from a specific age onwards are told that there may be consequences for false testimony. Romanian respondents actually reported issues of misinformation, where children are sometimes misleadingly made to believe that they must make a statement when they have the right to remain silent. Professionals sometimes prefer not to provide information that might be harmful (such as files including information with sensitive data). Estonian and Finnish interviewees in particular consider providing information about the right not to testify against a family member as sometimes controversial. At times this information is not provided.

When child testimonies are recorded, details given concerning purpose, people present and possible future use vary between countries. In France, children are generally told that they are being recorded and that they may be requested to make comments on the recording.

Witnesses in Estonia are required to watch the recording after their pre-trial hearing. In Finland it is explained that the recording will be played in court during trial and that there will be other observers to the hearing. Respondents from Croatia and Spain reported that children are usually unaware who else is present. When they are heard in a separate room via video link, they are given very little information on who is on the other side of the two-way mirror.

Several respondents, however, stressed the importance of informing children that they are being recorded and observed from behind a two-way mirror. As one respondent from Poland pointed out, adults have already cheated children who are being heard. If legal professionals cheat them again, they will lose all trust in the justice system. None of the important aspects of the hearing should therefore be hidden. Some of the respondents also suggested putting recording devices in visible places in the hearing room to make sure that the children have an opportunity to note that their testimony is being recorded. Furthermore, children are able to concentrate more on the hearing itself if they know what the devices are for.

*“And I would like to add one more thing when we’re talking about how you inform the child. We have to inform the child, in my opinion, that something is being recorded or that there’s someone on the other side of that mirror. I sometimes show children the other room because they are curious. By doing this I let them feel more at ease and safer in the situation. We show them the mirror and say that it’s switched off at the moment. We tell them about it because children often ask, regardless of their age actually, who is going to watch the recording and for whom it is intended. And I believe we have to tell them honestly what the situation is.”* (Poland, psychologist, female)

After the trial, the child needs to be informed about the verdict, possible imprisonment of the perpetrator, potential compensation and psychological support for both children and parents (role of the victim assistance professionals). Informing children about the outcomes, which is enshrined in law in Germany and Poland, and consequences of the trial is seen as

important, particularly because of the length of many proceedings. Overall, it is best ensured when children have specific contact points for support, such as legal counsellors or legal guardians. This, however, seems to be the weakest aspect of information provision in all 10 EU Member States surveyed, with a promising practice identified in Finland.

### Promising practice

#### Ensuring proper aftercare services

In Finland’s Helsinki Police Department, each police district has a psychiatric nurse attached to its department. This nurse can sometimes meet with a family immediately after a child hearing and help to provide information on aftercare services.

### 2.2.2. Ensuring there is information material adapted to children’s needs

In general, more informational material exists for child victims and witnesses in criminal judicial proceedings than for children involved in civil proceedings. In five of the EU Member States researched (Estonia, Germany, Poland, Romania and the United Kingdom – England and Wales), there is an explicit obligation to communicate information in a child-friendly manner to child victims and, Poland and the United Kingdom (Scotland) aside, also to child witnesses.

In countries with no minimum age requirements, children tend to be heard from a very young age. Professionals in the criminal justice field thus repeatedly stress that the age of the child and his/her intellectual capacity and emotional maturity are key factors to keep in mind when informing children. In Finland, for example, children who have turned 15 are generally heard during trial and need to be informed precisely about the proceedings. A Finnish judge described how he introduces everybody present in the courtroom to the child and



Plovdiv, Bulgaria. Blue room. Note that the camera is visible.



Berlin Criminal Police Office, Germany. Video hearing room. Note that camera and microphone are visible.



Germany. Video hearing room equipped with a video camera.

then explains how the session will proceed. All German respondents said that they use different approaches for youth or younger children based on their individual experiences and their assessments of the child. They make sure that they speak in simple language, and that legal and bureaucratic terms are explained. Most judges and police officers underlined that they try to talk in a child-friendly manner and explain to the child what will happen during the hearing.

*“One just has to try to explain that appropriately to the age but this is not predetermined, [it occurs] somehow intuitively. And one looks whether they understood it. [...] I let them explain it to me again, in [their] own words, [checking] whether they actually can repeat it or not.”*  
(Germany, law enforcement officer, female)

### 2.2.3. Providing information and advice to children through targeted, adapted information services

Respondents from most countries provided examples of material used to inform children, although it is often simply what is provided to adults. In this case, professionals said that they must adapt the material themselves to make it more reader-friendly and child appropriate.

Some countries have developed special child-friendly materials to inform children about criminal proceedings, although these are not necessarily uniformly available. Only respondents from the United Kingdom said that child-friendly materials are made available to all children involved in judicial proceedings through a variety of booklets for different age groups on both criminal and civil proceedings. They are not, however, always available in different languages:

*“[Foreign language leaflets?] No there isn’t actually, how bad is that?”* (United Kingdom, victims’ support organisation staff member, female)

The Scottish Executive publishes booklets that are available in English in print and also online in a number of other languages: Arabic, Bengali, Cantonese, Gaelic, Hindi, Punjabi and Urdu. In the United Kingdom (England and Wales), the Ministry of Justice publishes a range of booklets for children appearing as witnesses in criminal proceedings which are based on a series of Young Witness Packs originally published by the National Society for the Prevention of Cruelty to Children.

Examples of information material developed and provided by NGOs can also be found in Bulgaria, Croatia, France, Germany, Poland, Romania and Spain. The Polish Ministry of Justice and the Nobody’s Children Foundation, for instance, organise awareness-raising

campaigns targeting children involved in judicial proceedings (‘Your Honour, I’m Afraid’ in 2004, ‘Your Honour, I Have the Right not to be Afraid’ in 2007 and ‘I will be giving testimony’). Interviewees in Poland mentioned, as an example of good practice, that court clerks in one small-town court sent the booklets ‘I will be a witness in court’ (*Będę świadkiem w sądzie*) and ‘I am going to court’ (*Idę do sądu*) alongside court postal notifications. These booklets, published by the Nobody’s Children Foundation, explain in an easy and clear manner basic information on a witness’ duties and proceedings.<sup>45</sup>

NGOs in Bulgaria have translated the Polish material and provide it to children in Bulgaria. This, however, is problematic, since the material has not been tailored to the national judicial system and reflects the Polish national context. Children are thus prepared for a certain setting but heard in a completely different one, and with different participants.

#### Promising practice

##### Providing child-friendly informational booklets

The Scottish Children Reporter Administration has developed a range of leaflets for children about the Children’s Hearing system and their role in it. They are available for different age groups: five-to-eight years of age; eight-to-12; and 13 and above.\* The Children’s Reporter sends these leaflets to the child (or, for under 12s, to the child’s parents) at the same time as he/she sends the ‘Grounds for Referral’. The social worker bases discussions with the child on these materials, explaining what will happen at the hearing and answering any questions. Depending on the child’s age and abilities the social worker may engage in play therapy. The Scottish Children’s Reporters Administration conducted research with children on the effectiveness of its current child advocacy, finding that children were not given enough information. The administration devised a project to revise its materials with input from children with experience in the system.\*\*

\* Scottish booklets: [www.scotland.gov.uk](http://www.scotland.gov.uk).

\*\* *Getting it right for every child – Children and young people’s experiences of advocacy support and participation in the children’s hearings system: Big words and big tables.*

In Romania, various NGO initiatives, sometimes in cooperation with the local Association of Magistrates, have also produced child-friendly leaflets. Professionals from

<sup>45</sup> See: Nobody’s Children Foundation; and their educational materials: <http://fdn.pl/materialy-do-pobrania-o>.



Bulgaria. Drawing depicting figures in the courtroom and their roles.

Shumen, Bulgaria. Information leaflets used by a social professional.

Croatia. Information materials used during child hearings.

Cadiz, Spain. Child-friendly information materials.

Croatia and Germany mentioned that leaflets are used to prepare children to take part as witnesses during criminal investigations. Most of the leaflets, however, are not adapted to younger children, and are mainly used by young people and parents.

Professionals also gave examples of techniques that they use to inform children, such as using toys and drawings to illustrate the situation in court and explain who will be present and their roles. A Polish psychologist described a narrative cartoon technique that she developed to explain difficult legal concepts to children. Such concepts include the role of the psychologist and the legal system, the right to refuse to testify, and the child’s power to speak up and be heard:

*“I’ve got such a narrative cartoon technique for informing children about the right to refuse to testify, in such a way that the child understands the consequences of refusal. I draw a house for the child. The house’s door and windows are closed and I say that now we are together going to create our story of this house and the child who lives there. [...] And I tell stories. In this house there lives a child, a boy or a girl, depending on who I am working with, who has a problem but doesn’t want to tell anyone. He/she doesn’t tell anyone, keeps the doors and windows closed and nobody knows what is actually going on in there. Other children are playing, and now I draw balls, bikes and other wonderful things outside. The children are playing and the child inside won’t go outside to other children because he/she is slightly afraid, the child doesn’t want anyone to know that he/she has a special problem. A woman is walking past the house; this is a woman who has already helped many children and is ready to help children, she wants to, she knows how to help and would definitely like to speak to the child if she only knew that there was a child inside and that the child has a problem. ‘And what can we do now?’ You tell the story further, what can the child do? ‘What would you recommend the child do?’ Naturally, 100 % of children say you must open a window or the door of this house or let the woman inside and tell her about the problem. ‘And what will happen next?’ Usually children project some positive solutions. A sense of support that the child has now, that he/she can leave the house now and go play with other children. Then I start talking about the child. ‘Let’s now imagine that you may have a problem and may be so closed like in a closed house, and nobody*

*knows about this problem, but now you know perfectly well that, just like the child in our story, if you do not talk about it to somebody who could help you, then nothing can be done. Try to tell me whether you would like to tell me what it is that you have problem with or not.’ This is how I manage to explain it to children.” (Poland, psychologist, female)*

## CIVIL PROCEEDINGS

### 2.3. Structural indicators (legal obligations)

#### 2.3.1. Fulfilling the child’s right to information

The rules concerning children’s access to information before, during and after civil proceedings vary between as well as within Member States, depending on the area of law and the role that the child has in the proceedings. In the area of family law, as shown in Table 24, children in seven of the Member States studied have a statutory right to receive information on the systems and procedures involved. This information includes: the consequences of the proceedings, the time and place of court proceedings, progress and outcome, review of the decision affecting the child, the rights of remedy and the availability of support services.

In Croatia, Finland, France, Poland and the United Kingdom (England and Wales) this right is guaranteed before, during and after the proceedings for children in any role, including that of witness, plaintiff and even party to the proceedings. This is not the case in all Member States, however, and in Bulgaria and Germany for instance, child parties to the proceedings are not entitled to information. Furthermore, in Germany, those entitled to information only receive it before and after, and not during proceedings. Child plaintiffs are granted certain procedural rights more often than child witnesses or parties to the proceedings. Children involved in divorce and separation cases are generally heard as parties to the proceedings, and are thus less entitled to procedural rights.



### 2.3.2. Ensuring children are informed in the most appropriate way

To ensure that children receive information in the most appropriate way, legal obligations for civil proceedings should specify the person(s) responsible for providing information and how this information is provided: timing, content and the use of a child-friendly manner.

In general, the EU Member States studied do not have detailed statutory provisions defining how information should be provided to children, although there are general rules for all types of civil proceedings on information provision to the other party in the case.

As in criminal proceedings, those responsible for informing children in civil proceedings vary widely by country. They include judges (Croatia, Estonia and Poland), social workers (Bulgaria, Croatia, Finland and Germany), guardians (Finland and France) and lawyers (Germany and Poland).

Germany, France, Poland and the United Kingdom (England and Wales) have provisions for informing a child at first contact with authorities. The United Kingdom (England and Wales) also makes guidance or codes of conduct available to judicial or other competent authorities to ensure that children receive information in family law proceedings. In Bulgaria, a child has the right to be informed and consulted by the child protection department, which along with the court must provide information to children to help them form opinions, make choices and understand the consequences of these choices.

Provisions in the Member States studied are generally more detailed on the right to information in family law cases. In all countries except Spain, there is a legal obligation to communicate a decision or judgment to a child involved in family proceedings. Children in Bulgaria, Croatia, Finland, France, Germany and Poland have the right to receive information on the consequences of participating in judicial proceedings in the area of family law. In France, parents must confirm in a sworn written statement that they informed their child of his/her right to be heard in separation proceedings. In Germany,

youth offices are responsible for informing the child in family law cases.

Legal requirements on how information should be provided to a child in family proceedings are apparently rare. The research only found provisions in Germany and the United Kingdom (England and Wales).

## 2.4. Process indicators (procedures)

FRA research provided no evidence for civil proceedings on the following indicators: guidelines and protocols on how to inform, multidisciplinary approach to information and support and information services specifically for children involved in civil proceedings.

### 2.4.1. Ensuring that children are appropriately informed and facilitating the understanding of procedures and court rulings

#### Setting clear responsibilities for who informs

In civil proceedings, in contrast to criminal ones, legal professionals such as judges tend to play a smaller role in informing children and social professionals a larger one. This is also true during hearings themselves. Social professionals interviewed stress that children need special care, as they are particularly sensitive to difficulties as well as to the information received. Trained social professionals, especially child psychologists, are therefore considered to be best equipped to inform children, as they can understand their psychological needs and know how to communicate with them about the hearing.

#### Role of parents

Aside from social professionals, parents are seen as critical in informing children, even more than in criminal proceedings. The responsibility is often left to them, a practice which is approved of by many professionals interviewed across different countries.

**Table 24: Legal provisions on the right to information in family law**

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Right to information in family law	✓	✓			✓	✓	✓	✓	✓	✓	

Note: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

Source: European Commission, 2014

*“The obvious thing would be for parents to prepare their children, given that they have decided to embark on judicial proceedings and to accept that the children should be seen by a psychosocial team, so they should at least prepare them in advance.”* (Spain, psychologist, female)

To formalise parents’ important role in, for instance, receiving court notifications, France is attempting to institute a certification process, requiring parents to sign a form stating that they have informed their child or children.

Other interviewees, however, note that parents are sometimes not adequately able to inform their child because they are themselves party to the conflict or they lack a basic understanding of the justice system. Some children might even be misled, receive incorrect or contradictory information, or be influenced or manipulated by parents, particularly in family law cases. This is seen as deeply problematic given that children’s access to objective information can be limited. Parents, too, may be preoccupied with their conflict and own feelings; they may thus not pay enough attention to the child’s needs.

*“Parents think that we are here to protect their interests. They are so obsessed with their negative emotions and thoughts that they forget about the child. And sometimes it is very hard to draw them away from their feelings; they feel affected by the needs of the child.”* (Bulgaria, social worker, female)

Several respondents suggested referring children to neutral persons and external supporters who can inform and prepare the child for the hearing, or even arranging hearings for children without previously notifying the parents. Estonian judges and lawyers also reported that they consult grandparents to gain the broadest possible understanding of family cases. Grandparents often have time for, and take care of, the child while the parents are occupied with the legal proceedings.

### **Role of legal professionals**

Despite the existence of legal provisions, the research shows that legal professionals play a smaller role in informing children. Respondents from most countries reported that judges provide information, particularly at the beginning of a hearing, but to varying degrees. Several respondents from Bulgaria, Croatia and Romania said that judges mainly check whether the child is informed about the hearing.

Another Romanian judge mentioned, however, that judges are not responsible for checking whether other institutions or people have informed the child about the hearing. Most of the judges interviewed believe that this task is carried out either by the specialists from the General Direction of Social Welfare and Child Protection, lawyers or parents/foster parents/legal

representatives. Judges provided some examples, however, suggesting children brought before the court might have no information about what is about to happen and don’t know what to expect:

*“My opinion is that they are quite scared and frightened about coming here and they don’t actually know what is happening to them, why they are brought here and they are scared, this is the child’s perception. For instance, a little girl once asked me: “Are you going to give me an injection?”* (Romania, judge, female)

As in criminal proceedings, time constraints and workload are given as explanations for why judges may not sufficiently inform children about either the proceedings or their rights.

One good practice, or perhaps more of an exceptional example, is the case of a Bulgarian judge who refers children to the Child Protection Department, where they are informed and heard in a child’s room. This practice is in accordance with Bulgarian law, which states that every child has the right to be informed and consulted by the Child Protection Department, even without the knowledge or agreement of their parents.

In Germany, the judge usually appoints a guardian for children under the age of 14, who informs them about the subject, time, place and procedure in an appropriate manner. Likewise, in Spain, children in theory have the right to request, receive and use information, but in practice relevant information tends to be passed directly to the legal representatives. In France, some juvenile court judges and public prosecutors are specifically trained to deal with children involved in civil proceedings and therefore usually inform children when coming into contact with them, adjusting the information to the child’s age and maturity. If the child has a legal representative (which he/she seemingly does not in the majority of cases), this representative plays an important role in terms of information and preparation, even when the hearing is delegated to a social care professional.

In Finland, France, Germany and the United Kingdom (England and Wales), specifically assigned legal professionals such as legal counsels, legal guardians, ad hoc administrators or advisers, take greater responsibility in informing children throughout the proceedings. This way they not only inform, but also support children before, during and after hearings (see also [Section 1.5.1](#)). In civil proceedings, there is a tendency to follow a bilateral rather than a group approach; the latter seems to be favoured in criminal proceedings by using victim and witness support services, specialised medical units or children’s houses (see [Section 1.2.2](#)). As in criminal law, legal guardians in Finland provide information on the legal process and, in child welfare





cases, on the hearing itself. In the United Kingdom (England and Wales), guardians or family court advisers are primarily responsible for informing the child about the family law process. They become involved with older children at a very early stage to explain proceedings and how and why adults will be making decisions about their future.

In the United Kingdom (England), the Children and Family Court Advisory and Support Services officer is responsible for explaining the entire civil court case process to the child. This is, however, a matter of practice rather than law, as no statutes set forth what information must be provided when.

How guardians interact with a child varies according to the child's age. In France and Germany legal counsels play an important and valued role in informing children. German respondents said, however, that they are not made available on a regular basis; they only have the duty to inform children when they are appointed in high-conflict cases. In France, legal counsels seem to play a more active role in informing children before, during and after the hearing.

### Role of social professionals

Social professionals inform children in Bulgaria, Croatia, Estonia, Finland, Poland and the United Kingdom (Scotland). Trained psychologists have a particularly valued role in supporting the judge in deciding how best to approach the child, and what to do if the child seems not to understand the information provided.

Social workers at the Bulgarian Child Protection Department first meet the parents, to get an idea of family relationships/conflicts and to explain the role of social workers in child hearings. They then ask the parents to bring the children so that they can be informed about the hearing. Generally, social workers first ask the children whether they know about the case and if so, what exactly they know. Based on this response, they decide how to explain the hearing to that particular child.

In Finland, children generally do not have a legal representative and social workers play a major role in providing information. The social worker makes sure that the child knows what will happen next. If the child has a legal counsel and a guardian they cooperate on the details of informing the child, usually agreeing that the guardian is to provide most of the information.

Similarly, in Scotland, social workers inform children about the Children's Hearing process and their role in it. Respondents, however, were concerned that they are often too critical of the current system to explain the process objectively.

*"[Social workers] see no good at all in this hearing system and given that it's their responsibility to prepare the child for the hearing, it may go some way to explain why it is often not done very well!"* (United Kingdom, judge, male)

*"That's why we do rely a lot on social work to prepare a child for a hearing. Sometimes they do so really well. Sometimes it's absolutely abysmal: children turn up thinking they are going to be taken away from their parents. That's awful and it's where the system fails."* (United Kingdom, assistant reporter, male)

Despite the – potentially biased – involvement of social professionals, their role in informing children is often secondary to that of parents. This is based on the assumption that parents are best suited to provide information in family cases and that it is mainly their responsibility to do so. Psychologists in Croatia for instance provide advice on scenarios or resources available to facilitate the process, but only if parents inform professionals at the Center for Social Welfare. This procedure highlights the need for parents to establish contact with potential support services who could then take over the role of informing the child.

Promising practices concerning the roles of professionals informing children appropriately were given for half of the countries researched. The examples, however, often related to specific types of cases. It is rarely standard procedure to appoint one specific professional to systematically inform children and check their understanding, no matter the type of case or the child's role in it.

### Elaborating guidelines on how to inform, when and on what

In some countries, specific mechanisms ensure that children are appropriately informed. These include rules for specific professionals such as legal counsellors, legal guardians or children's reporters supporting children during civil proceedings, or guidelines on interviewing children for social professionals in countries where they are predominantly responsible for hearing children (see [Section 1.5.1](#) and the references to national legislation in [Annex 2](#)). In Germany, for example, the Family Court usually ensures, although it is not legally required to do so, that children receive information on support services for health, psychological and social needs. Legal counsels organised under the umbrella of the Federal Working Group for Legal Counselling follow guidelines. In child welfare cases in Finland, the guardians ensure that information is provided on the proceedings and on the hearing situation itself. If the child is over 10 years old, the guardian explains the whole process in detail. When a decision is made, the guardian informs the child.

If legislation specifies the type of information to be given to children, respondents confirm that it is implemented.

What precisely children must be informed about varies by country, even though respondents agreed that certain aspects are important for children to know. In Bulgaria, Finland, Scotland and Spain professionals make sure that children are directly informed about the time, date and place of hearings; in Croatia, Finland, Romania, Estonia and Scotland about the results of hearings and their consequences; in Bulgaria and Germany about specific support services; and in Estonia, Finland and Scotland about remedies for possible violations of child rights.

If the type of information is not specified in law (as in France, Poland and the United Kingdom (England and Wales)), its content varies even more within a country. Respondents in all countries, including countries with no guidelines, say that information is typically given about the courtroom setting, the participants' roles and appearance, the child's role during the hearing and the questions the court might put to the child. Information about the proceedings' outcomes and support services are said to be provided the least systematically.

Respondents reported that if the child does not have a specific professional for support, judges explain the most important issues to the child at the beginning of a hearing. These include who the judge is, what the conversation's purpose is, and, how the hearing will proceed. The amount of time devoted to this differs widely and is often thought to be too short.

*"Yes, of course, I explain that I am a judge. The child is not a witness, so I don't caution him/her on the liability for perjury or any other official matters. But I inform the child that he/she is here in connection with a case concerning e.g. his/her parents, his/her contacts with the parent. I give a short introduction, but generally I try to get to know the child, ask some questions to determine what he/she already knows, what information was put into his/her head, to make the child tell me about him/herself."*  
(Poland, judge, female)

### 2.4.2. Ensuring there is information material adapted to children's needs

As in the criminal justice field, some EU Member States use special materials to provide information to children, though there are fewer examples of this in civil justice. Legal requirements to provide information in a child-friendly format are rarer for civil than for criminal proceedings. Where materials exist, they are generally produced by private initiatives or NGOs. One notable exception is the United Kingdom, where child-friendly materials are published by the executive and are therefore more uniformly available.

Finnish social services in Helsinki have produced two children's informational booklets about custody dispute proceedings, one for younger children and one for teenagers. These booklets are given to children in the presence of a parent, so that the parents will know to read the booklet with their child. Helsinki social

#### Promising practice

##### Providing age-specific informational materials

In the United Kingdom (England and Wales), the Children and Family Court Advisory and Support Services (CAFCASS) has developed a range of factsheets available on its website. These materials are customised for various age groups. They have broadly the same content but use age-appropriate language and communication styles. Booklets for younger children are highly pictorial and use puzzles and games to engage the child's interest, while booklets for older children use fewer and more realistic images or diagrammes and give information in greater detail. While most of these books are in English, some have also been translated into Arabic, Bengali, Cantonese, Gaelic, Hindi, Punjabi, Urdu and Welsh, reflecting the linguistic diversity of the United Kingdom.\*



United Kingdom, wall of CAFCASS leaflets in a family court advisor's office. Note that there is information tailored for teenagers, children and families.

\* CAFCASS leaflets for children

services also have a brochure on mediation in custody disagreements. In the Finnish Administrative Court of Helsinki, child-friendly cover letters have been drafted to send out with invitations to attend a court hearing. The cover letters explain in child-friendly language why the matter has been brought up at court and what the child's rights and duties are. The letters tell the child that he/she can express his/her opinion in written form and that the court might hear him/her on the matter later on. The more systematic use of material for civil proceedings thus stems from the same countries as in criminal proceedings, namely Finland and the United Kingdom.

Similar to the question of who informs children and whether guidelines exist, the relevant role of specially appointed professionals becomes clear: not only do they try to systematically inform children, but they also tend to use child-friendly material to do so. In Germany, for example, legal counsellors use leaflets developed by the Federal Working Group for Legal Counselling or point children to its website, which provides information for children in a language deemed appropriate.

### 2.4.3. Providing information and advice to children through targeted, adapted information services

Many respondents, however, complain about the lack of child-friendly materials. Even when such materials are available, they do not always regard them as appropriate. Some believe that written material is not the best way of informing a child, especially for young children, who need information in a simpler form.

*“To give him/her a brochure to read [...] No, this is an approach for an adult.”* (Romania, lawyer, female)

Respondents describe several techniques that they use to inform children and prepare them for hearings.

Social professionals from Germany said that they use dolls or models of courtrooms, adapt their language to the child's age, try to avoid difficult legal terms, explain the situation by using examples and relate the information to children's daily experiences. They said, however, that it can be difficult to explain issues or legal concepts such as parental care, or the decision in custody cases, which is said to be more difficult to explain than visitation rights.

Several Romanian judges said that they start child hearings with a brief talk, letting the child know that they are interested in understanding his/her viewpoint and wishes.

French respondents described the following practices: usually the judge introduces him/herself and spells out

his/her role, explaining the reason for the summons and the child's presence. If and when the child is heard separately from his parents and social services, he or she is often informed explicitly that his/her point of view matters, but that it remains only one source of information and does not automatically lead to the decision. The judge usually shares this decision with all parties present at the end of the hearing. Some judges then check the child's and parents' understanding by restating the grounds and allowing them to ask questions. Some also make clear that some decisions will be re-evaluated in a given time-frame, leading to termination, prolongation or change. Some judges verbally inform parents and children on the possibility of appeal. As reported, including by children's judges, children may, over time, establish a relationship of trust with a judge ('my judge'), which can facilitate their participation in the hearing. French children are also reportedly generally aware that they can write directly to their judge and ask questions during the hearing.

## 2.5. Outcome indicators (making rights a reality) – criminal and civil proceedings

### 2.5.1. Assessing the importance of information and its effect on children

All respondents share the view that the provision of information can significantly affect how children experience the various stages of the procedure, their ability to make informed decisions and to participate and sustain their participation in often lengthy procedures. Respondents said that by being informed, the child is empowered to choose what to say and how to behave during the judicial proceedings and to ask for his/her rights.

*“It's extremely important because by having information they know how to choose the source of information, to choose, if you like, the way of expressing themselves. Yes, because if you inform him/her, then he/she will be aware and could make a choice, he/she will have an option: I will tell or I won't tell what I know, I remember or I don't remember; I will make an effort or I won't make an effort. These are things concerning them as individuals and also about observing the law. Yes, you must inform the child.”* (Romania, lawyer, male)

Respondents highlight that informing the child in criminal proceedings has a positive effect both on the child's emotional well-being and on the proceedings themselves. Professionals observe that children who are well-informed gain more trust in themselves and in the judicial system and feel more secure. This is especially true if they are

informed about the stages of the proceedings, the roles of professionals involved (such as the investigator – e.g. that he or she is seeking factual elements, not to be empathetic – or the judge – who is bound by his/her neutrality) and what to expect during the hearing. Children are seen as having a psychological and emotional need to understand their surroundings, allowing them to anticipate and thus avoid the trauma of uncertainty and the unfamiliar. Children may have fears pertaining to the dissemination of the recording of the hearing – wondering whether it will be posted somewhere public like Facebook. They may fear medical examinations or the presence of the public and personal exposure in the courtroom. They may also fear the possible consequences of their claims for the person charged, especially if he or she is a parent. Interviewees said that young children may even fear that they will be the ones going to prison following their testimony – their abuser could have suggested this earlier to secure their silence. Preparation helps children overcome these fears and boost their confidence.

In the absence of information, children might not trust the professionals or fail to understand what is happening. They may also not feel comfortable enough to talk about their experiences or even refuse to cooperate. A confused child may not provide all the details necessary to help build the case or might make statements that could lead to a wrong conviction. The experience of the hearing could even lead to re-traumatisation.

If adequately informed, interviewees observe that children are more active, motivated and cooperative with the criminal investigation bodies and judges. They provide more accurate and precise answers, tell the truth and contribute to the successful prosecution of the offender, especially when it is adequately explained why their own words are needed. Some respondents added that children can see themselves as heroes who help the police by testifying, thereby protecting other children. If children are helped to see their role in a positive manner, a hearing need not be a traumatising experience. Furthermore, children may cope better with potential harassment, intimidation or re-victimisation during proceedings if they are forewarned and taught how to react.

In civil proceedings, personalised information is seen as equally crucial. In family cases, psychologists interviewed explain that children are often tormented by feelings of guilt. One purpose of informing children about the hearings is thus to calm them and dissipate their fears. If adequately informed, children can, they say, participate fully in matters that affect their family life.

Indicators on how well children have understood their rights, the procedures and how adequately they perceive they were informed throughout the proceedings, including about the final decision and its consequences,

can be populated with evidence from the children's interviews.

## 2.5.2. Assessing measures and their effect on children

Professionals employ various measures to inform children about their rights and the proceedings. Some measures are considered more effective than others, such as the use of child-friendly materials and child-friendly environments. Important factors to be kept in mind when informing children are their age and intellectual development, and the extent to which the information provided has been adapted to them. While it is not necessarily mandated, most professionals interviewed try to use child-friendly language when informing children, to adapt the information to the child's age, and to check for their understanding using methods such as verbal verification, watching for non-verbal communication and monitoring the child's reactions. When necessary, they rephrase the information.

When adapting their approach to the child's age, respondents seem to roughly distinguish between 'younger' and 'older' children. When a concrete age is given as cut-off point it is generally linked to national legal frameworks. Professionals in the criminal justice field refer to children older than 12 in Scotland, older than 14 in Germany and Estonia, and older than 15 in Finland. Additionally, many respondents refer to 'very young' children as those aged four years or younger. Overall, there is a tendency to use more detailed, verbal information for older children and visualisation tools for younger ones.

Respondents from all EU Member States reported a lack of the use of child-friendly materials. In some countries professionals may not use existing materials because they do not regard them as child-friendly, or because the materials are not uniformly available across the country. Written materials are also seen as having only a limited impact. To gain a real understanding of their rights and the procedures, children need someone who goes through the factsheets and leaflets with them.

Professionals see a clear link between non-existing or unclear rules and a lack of information. Bulgarian and Spanish respondents reported, for example, that information is often not provided and children are generally not informed about proceedings. German respondents said there is no guarantee that adequate information is provided. Special services such as legal counsels are usually left to handle the task, but they are not made available on a regular basis. Thus, as Estonian respondents also stressed, the responsibility of informing the child often falls to the parents. Findings suggest that in general, information is not systematically provided but instead left to personal initiatives, with obvious



inconsistencies. Furthermore, a theme emerging from various responses is that children's understanding is occasionally under-estimated, leading to the belief that in-depth information is superfluous or interferes with the procedure.

The lack of clear rules also leads to a wide range of practices. In Bulgaria, a country without specific legal provisions, practices differ depending on the city, the existence of service providers, and the agreements between different institutions such as investigation offices, courts, child protection departments and service providers for so-called 'preparation for child hearings'. The content of this service also varies by region. In regions where a 'blue room' exists, preparation includes showing the child the room, checking his/her vocabulary and his/her notion of 'true' and 'false'. Where a 'blue room' does not exist, the preparation includes explanations about the case, the participants' roles and what the child's hearing room will look like. It also includes calming the child and building a relationship of trust with him/her.

A number of legal professionals noted that minimalist regulations also have an advantage: they allow practices to be adapted to each child's individual case.

Interestingly, respondents from several countries were dissatisfied with the manner in which police officers provide information to children in criminal proceedings. Respondents from countries where police officers are more systematically trained, however, assessed very positively their ability to inform children in a manner appropriate to their age and maturity. [Chapter 6](#) further addresses the need for training and its positive effects.

## Ways forward

Respondents said that the overall fulfilment of the child's right to information in both criminal and civil proceedings can be improved. FRA research shows that most of the EU Member States surveyed lack clear requirements, rules and established practices, leaving much to the discretion of the individuals imparting the information. If information material is adapted to children's needs, taking into account their age and level of maturity, and specific information services are available, such as pre-trial visits, children feel more secure and talk more freely, which also means that their statements are more taken into account.

### Mandatory procedures on how to inform children when, on what and by whom

- In both criminal and civil law, professionals usually consider national frameworks too general. They lack details on where, when, what, how and by whom

children are to be informed. The information given thus varies, often leaving children inadequately informed. The Member States and, as appropriate, the EU should ensure that the right to information is guaranteed to all children and for all judicial proceedings through statutory provisions.

- The provision of information on the court decision seems to be the weakest element in all Member States studied. Post-trial information should include clear reference to the child's rights and the options available to them, including appeal rights and after-care services. Such information should always be conveyed in a child-friendly language and formatted as appropriate for their age and maturity.
- The obligation to provide information to children in the field of civil justice is even less prominent than in the field of criminal justice. Before reaching the age of legal capacity, children are mainly informed through their parents or legal representatives. Member States should consider increasing the role of psychologists and relevant social professionals in such provisions and expanding the scope of information provided to a child.

### Availability of support services to properly inform children and their parents

- Support services, particularly victim and witness support services, play an important role in providing information to children and their parents, preparing children for trial hearings, accompanying them through proceedings, monitoring their understanding and ensuring their overall protection. Their services can include pre-trial visits to familiarise children with the courts, home visits, and support provided before, during and after trial. The EU Member States and, as appropriate, the EU should ensure that support services are established and available to all children participating in judicial proceedings.
- While most EU Member States offer support services, there is a shared perception, particularly among social professionals, that much more should be done. Member States where no mandatory requirements for information procedures exist seem to focus their support programmes on severe cases and specific types of crimes, such as trafficking or sexual abuse, and on victims, not necessarily witnesses. Furthermore, children and their parents are often not given sufficient information about the support services available to them and are therefore unable to take advantage of their benefits. Steps should be taken to ensure that information on support services and how to access them is communicated to children and their parents or guardians. Member States should also acknowledge the important role that parents



play in informing and supporting children, supporting efforts to increase parents' awareness and support.

### **Single person responsible for preparing, informing and supporting a child before, during and after judicial proceedings**

- In both criminal and civil law, national frameworks are usually too general and do not specify who is to inform children. Parents may thus be left to provide the information, regardless of whether they themselves are well informed or are neutral parties. In other cases, professionals may develop their own, often differing, practices. The Member States and, as appropriate, the EU should ensure that professionals are provided with clear rules and guidelines for informing children, to guarantee a consistent, standardised child-friendly approach. This also requires appropriate training of all professionals informing children.
- Research shows that children are under-informed unless there is a single professional assigned as contact point person to inform and prepare them throughout the proceedings. Member States should thus consider designating one such responsible person. This person should be sufficiently trained and available at all stages of the proceedings, and act as an intermediary between the child and

support and child protection services, police officers, judges, prosecutors and lawyers and parents. Social professionals are considered well suited for this role, as they can support a child longer than judges and other legal professionals. If a single contact point is not made available, Member States should ensure that the different actors with information responsibilities coordinate efficiently amongst one another.

### **Availability of child-friendly information**

- A number of countries have developed child-friendly materials to explain the legal process, child rights, the roles of those involved, children's letter of summons and legal notifications and what children will experience in court. Others simply give children the same material used to inform adults and even that may not be available systematically. Member States should establish clear standardised rules for the provision of child-friendly information to children involved in all judicial proceedings, to ensure their equal treatment. They should use a variety of channels and formats, such as brochures and leaflets available online and as print-outs, and including written and oral information. Material that has already been developed should be shared and used, within and between EU Member States.





# 3

## Right to protection and privacy



Building on the CRC, the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')<sup>46</sup> and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>47</sup> constitute a new framework of reference at the European level. Both define general measures of protection for victims of violence, as well as specific measures targeting child witnesses<sup>48</sup>.

The ECHR in its Article 6 on the right to a fair trial allows for the exclusion of the press and public from the trial if necessary to protect the interests of juveniles or the private life of the parties.

The European Social Charter in its Articles 7 and 17 acknowledges the right to protection of children against physical and moral dangers and to social protection in general.

Protection and privacy are important elements of the *Council of Europe Guidelines on child-friendly justice*. The child should be kept safe from harm especially when the alleged perpetrator is a family member (Section IV). Protection is also mentioned in relation to private and family life. In particular, Section IV Article 2 states that media violations of privacy rights should be prevented through legislative measures or media self-regulation. Professionals should then observe confidentiality unless there is a risk of harm to the child.

International standards clearly prioritise the protection of children involved in judicial proceedings, while at the same time encouraging their participation. A protective and safe environment is necessary for children to participate fully and effectively and to avoid any potential re-traumatisation.

Measures to protect children exist on many different levels throughout the proceedings, and their implementation should be considered a key way of ensuring child-friendly justice. They are relevant to ensure a child's right to be heard and informed in a non-discriminatory way, while taking into account the best interests of the child, which include measures to protect his/her privacy. In general, the existence of consistent and systematic child-friendly practices that follow clear regulations and guidelines increases

the likelihood of a child being protected and safe. Nevertheless, professionals claim that in some areas flexibility is important to be able to adapt their approach on a case-by-case basis.

*"Of course you can't secure, that it [information] always creates security, quite the opposite, it can even create more anxiety. In a way we shouldn't think about it too much as adults, that children must be protected. Of course you inevitably have to think of that element too, that the function of protecting the child is more important than the function of the child being part of the case. [...] But then again if you only talk about the case and how it's going to go there can't ever be any harm in that."* (Finland, guardian, female)

FRA fieldwork findings and the European Commission's data collection show that the vast majority of Member States studied have made significant efforts to keep children participating in judicial proceedings safe from harm and protect their privacy. Children's rights to protection and privacy appear to be the most advanced from both

<sup>46</sup> Council of Europe (2011).

<sup>47</sup> Council of Europe (2007).

<sup>48</sup> For details on State Parties among EU Member States to these and other conventions, see <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

## Case law on the right to protection and privacy

### Court of Justice of the European Union

"[...] independently of whether a victim's minority is as a general rule sufficient to classify such a victim as particularly vulnerable within the meaning of the Framework Decision [2001/220/JHA on the standing of victims in criminal proceedings], it cannot be denied that where, as in this case, young children claim to have been maltreated, and maltreated, moreover, by a teacher, those children are suitable for such classification having regard in particular to their age and to the nature and consequences of the offences of which they consider themselves to have been victims, with a view to benefiting from the specific protection required by the provisions of the Framework Decision referred to above."

"a national court should be able, in respect of particularly vulnerable victims, to use a special procedure, such as the Special Inquiry for early gathering of evidence provided for in the law of a Member State, and the special arrangements for hearing testimony for which provision is also made, if that procedure best corresponds to the situation of those victims and is necessary in order to prevent the loss of evidence, to reduce the repetition of questioning to a minimum, and to prevent the damaging consequences, for those victims, of their giving testimony at the trial"

*CJEU, C-105/03, Criminal proceedings against Maria Pupino, C-105/03, 16 June 2005, paras. 53 and 56*

### European Court of Human Rights

"To enable the deciding judge to gain as full and accurate a picture as possible of the advantages and disadvantages of the various residence and contact options open to the child, it is essential that the parents and other witnesses feel able to express themselves candidly on highly personal issues without fear of public curiosity or comment. [...] [W]hile the Court agrees that Article 6 § 1 states a general rule that civil proceedings, inter alia, should take place in public, it does not find it inconsistent with this provision for a State to designate an entire class of case as an exception to the general rule where considered necessary in the interests of morals, public order or national security or where required by the interests of juveniles or the protection of the private life of the parties [...], although the need for such a measure must always be subject to the Court's control [...]."

*ECTHR, B and P. v. the United Kingdom, Nos. 36337/97 and 35974/97, 24 April 2001, paras. 38–39*

"[A]lthough M [10-year-old boy] did not testify at a court hearing, he should, for the purposes of Article 6 § 3 (d), be regarded as a witness – a term to be given its autonomous interpretation – because his statements, as recorded by the police, were used in evidence by the domestic courts."

"The Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor." (para. 47) "Having regard to the special features of criminal proceedings concerning sexual offences [...] this provision [article 6 § 3 (d)] cannot be interpreted as requiring in all cases that questions be put directly by the accused or his or her defence counsel, through cross-examination or by other means. In the circumstances of the case, these measures [showing the videotaping of the first interview, reading the record of the second interview] must be considered sufficient to have enabled the applicant to challenge M.'s statements and his credibility in the course of the criminal proceedings."

*ECTHR, S.N. v. Sweden, No. 34209/96, 2 July 2002, paras. 45 and 52*

a structural and procedural point of view. The right of children to privacy is also regulated in several forms in civil law.

The child's protection and safety is an important priority within the Council of Europe guidelines. Several aspects included in the principle of protection, such as avoiding contact between the child and the defendant, are covered in the chapter on the right to be heard. This chapter concentrates on protection aspects related to the child's right to privacy, confidentiality, and the role of the media, as well as on the child's safety.

Preventative measures should be adopted to keep children safe from wrongs such as reprisals, intimidation

and re-victimisation. These measures are particularly important when the child is a victim of domestic violence or abuse by close caregivers. A child's privacy is also at serious risk when he or she comes into contact with the justice system, especially when the case catches the attention of the media. Bearing this in mind, the Council of Europe guidelines establish a range of safeguards to ensure that children's privacy is fully protected. In particular, personal information about children and their families, including names, pictures, addresses, should not be published by the media. The use of video cameras should be encouraged whenever a child is being heard or giving evidence. In these cases, the people present should be limited to those who are directly involved, and any information provided by the



child should be kept confidential if there is a risk that the child might be hurt. Furthermore, access to and transfer of personal data should take place only when absolutely necessary, and taking into account the child's best interests.

Tables 25 and 26 provide an initial overview of the population of structural and process indicators in criminal and civil law in the Member States surveyed (see detailed tables analysing the population of individual indicators by country in Annex 2). Where indicators are populated using results from qualitative research they should be read as indicative of a situation. The data populating the structural indicators are based on the analysis of European Commission data on national legislation. The data populating process indicators stem from FRA fieldwork research based on the respondents' reports and assessments of practices and procedures in their countries. Outcome indicators are not included, as they can only be fully populated once the forthcoming work on children's interviews is complete (for a fuller description of the data analysis see the methodology section in Annex 1).

### Promising practice

#### Supporting lawmakers in safeguarding the child's rights

The United Nations has elaborated a model law to support lawmakers in safeguarding the rights of children who are victims and witnesses of crime. Countries can use the model, with its draft legal provisions on the protection of child victims and witnesses, to adapt their national legislation to international standards.

The model, a follow-up to the UN Economic and Social Council's Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, lays out important guarantees of the rights of the child, such as the right to be informed and to receive assistance, including through the appointment of a support person to guide the child throughout the criminal justice process.

The United Nations Office on Drugs and Crime and the United Nations International Children's Fund (UNICEF), which together drafted the model, have also developed a handbook for professionals and policy makers on involving child victims and witnesses of crime. The handbook aims at providing professionals with a practical framework in their daily work with children.

For more information see: UNODC, UNICEF (2009a) and (2009b)

Table 25: Criminal law – Population of structural and process indicators, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Structural	■	■	■	■	■	■	■	■	■	■	■
Process	■	■	■	■	■	■	■	■	■	■	■

■ Usually implemented   ■ Partly implemented   ■ Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014

Table 26: Civil law – Population of structural and process indicators, by EU Member State

EU Member State	BG	DE	EE	ES	FI	FR	HR	PL	RO	UK (England and Wales)	UK (Scotland)
Structural	■	■	■	■	■	■	■	■	■	■	■
Process	■	■	■	■	■	■	■	■	■	■	■

■ Usually implemented   ■ Partly implemented   ■ Often not implemented

Note: Where indicators are populated using results from qualitative research they should be read as indicative of a situation.  
Source: FRA, 2014

**Table 27: Structural, process and outcome indicators on the right to protection and privacy**

Indicators	
<b>Structural indicators</b> Legal, statutory provision or obligation:	3.1.1. Keeping children safe from harm and protecting them when involved in judicial proceedings specifying procedural safeguards
	3.1.2. Ensuring the right of privacy and confidentiality at all stages of the proceedings, including through state regulation of the media and by prohibiting the publication of information or personal data of children, ensuring that police officers, other officials, judges and legal practitioners working with children abide by strict rules of confidentiality, except where there is a risk of harm to the child
<b>Process indicators</b> Measures and procedures:	3.2.1. Ensuring the protection of children’s identity and privacy
	3.2.2. Keeping children safe from such wrongs as reprisals, intimidation and re-victimisation by implementing special procedural safeguards, preventing contact with alleged offender and regulating contact with parents as alleged perpetrators (criminal only)*
	3.2.3. Making protective support and guidance available to children before, during and after proceedings (criminal only)
<b>Outcome indicators</b> Results:	3.3. Assessing the measures in place and their impact
Outcome indicators to be populated through evidence from interviews with children**	
<b>Outcome indicators</b> Results:	Evidence for the extent of children who felt protected and safe during the proceedings
	Evidence for the extent of children who have been supported by specialists/services during court proceedings
	Evidence for the extent of cases where police, other officials, judges and legal practitioners working with children have not breached the data protection policy
	Evidence for the extent of cases where the media has published personal data
	Evidence for the extent of cases where children have had no contact with the alleged offender/perpetrator

Notes: \* These indicators are applicable to both proceedings but data are not always available to populate both.

\*\* The second report, based on interviews with children, will be published at a later stage.

Source: FRA, 2014

### Promising practice

#### Implementing the child’s right to protection and privacy in criminal proceedings

Most EU Member States have invested considerable effort in keeping children safe from harm and protecting their privacy. The legal framework in the area of criminal law in Poland, for instance, includes provisions on the right to privacy that apply to both child victims and witnesses, and that are guaranteed throughout the proceedings. State regulation of the media also ensures that all children are protected without exception. In Estonia, a complex set of procedural safeguards has been put in place to ensure the protection of children participating in criminal proceedings. These safeguards cover measures related to separate entrances, the option of removing the defendant from the courtroom during a child’s testimony and of a closed hearing.

Similar measures are also enshrined in relevant legal documents in Bulgaria, although professionals said that they are not always properly implemented.

Table 27 provides an overview of the indicators presented in this chapter.

## 3.1. Structural indicators (legal obligations)

### 3.1.1. Keeping children safe from harm and protecting them

The Victims’ Directive incorporates key child protection principles and establishes that due to their vulnerability to secondary victimisation children shall be presumed to have specific protection needs. Key provisions are included in:

- Article 22 (individual assessment of victims to identify specific protection needs);
- Article 23 (right to protection of victims with specific needs during criminal proceedings).

Several legal obligations to keep children safe from harm and protect them are closely interlinked with

their right to be heard to enable their full and effective participation in judicial proceedings (for these data, see [Section 1.1.](#) for criminal law and [1.4.](#) for civil law)<sup>49</sup>

### 3.1.2. Ensuring the right to privacy and confidentiality

The right to privacy and confidentiality is reflected in:

- the Victims' Directive (on the duties of competent authorities, Member States and the media concerning the protection of the privacy of victims and their family members);
- Article 20 (protection of child victims in criminal investigations and proceedings) of the Directive on combating sexual abuse, sexual exploitation of children and child pornography.

Authorities have developed specific methods, particularly in criminal law, to protect the identity and privacy of children involved in court proceedings, either through the use of live video links or pre-recorded testimony. Other measures ensure that a child's personal data remain confidential and are kept from the media and the general public, as [Tables 28](#) and [29](#) show.

Member States have also regulated the right of children to privacy in several forms in civil law. Measures include allowing judges to decide whether or not to disclose information to their parties, protecting personal data (processing, storing and transmitting court records), and setting up procedures to ensure children's records are kept confidential. As always, the extent to which they are applied may differ according to the area of civil law and the role of the child in the proceedings. Children who bring a case against another (plaintiffs) are granted protection measures more often than child witnesses or those who are parties to the proceedings, echoing other aspects of civil proceedings.

All Member States studied except Scotland in the United Kingdom have a statutory provision on the right to privacy of children involved in judicial proceedings in family law. This does not apply, however, to child parties or subjects to the proceedings in Germany, but only to children in the role of witnesses, plaintiffs or defendants. The right to privacy is also limited in Croatia, as it only applies during proceedings, and not before or after.

Measures to prevent the media from violating privacy rights vary according to the area of law and the child's

**Table 28: Criminal law – Statutory provisions protecting the privacy of children in court proceedings**

EU Member State	Right to privacy protective measures		Stages of proceedings where privacy protective measures can be used	
	Victim	Witness	Victim	Witness
BG	Yes	No	All stages	-
DE	Yes	Yes	All stages	All stages
EE	Yes	Yes	All stages	During trial
ES	Yes	Yes	All stages	All stages
FI	Yes	Yes	All stages	Pre-trial investigation
FR	Yes	In part*	All stages	All stages
HR	Yes	Yes	All stages	During trial
PL	Yes	Yes	All stages	All Stages
RO	Yes	In part**	All stages	During trial
UK (England and Wales)	In part***	In part***	During trial	During trial
UK (Scotland)	Yes	Yes	All stages	All stages

Notes: \* Some provisions apply only in cases of serious crimes

\*\* In some circumstances, the identity of the child witness is not hidden.

\*\*\* Members of the media must be permitted to remain in court but other members of the public may be excluded.

Source: European Commission, 2014

49 The structural indicator in Chapter 1 on the right to be heard covers legal representation, the use of video recordings and video links, controlling the presence of professionals, persons of trust accompanying the child, mandatory training and multidisciplinary cooperation and limiting the number of hearings.

Table 29: State regulation of the media protecting the identity of the child, the right to privacy and family life

EU Member State	Statutory provisions for the state regulation of the media	Children who are protected under regulation	Self-regulatory measures to protect children’s right to privacy and family life	Children who are protected under measure
BG	Yes	All children	Yes	Victims
DE	Yes	At court’s discretion for child witnesses	Yes	All children
EE	Yes	All children	No*	-
ES	Yes	All children	No*	-
FI	No	-	No*	-
FR	Yes	Victims	No*	-
HR	Yes	Victims and witnesses	No*	-
PL	Yes	All children	No*	-
RO	Yes	All children	No*	-
UK	-	-	-	-
UK (England and Wales)	Yes	All children	Yes	Victims, witnesses < 16
UK (Scotland)	In part	All children < 16	No*	-

Source: European Commission, 2014

role. All 10 Member States studied except Estonia and Germany have laws to prevent such violations at all stages of the proceedings. In Germany, a voluntary self-regulatory body established media guidelines stating that the child’s identity must not be revealed.

### 3.2. Process indicators (procedures)

These indicators refer to measures taken to implement laws and policies to keep children safe from harm and protect them, so that they can fully and effectively participate in judicial proceedings. These measures concern:

- data protection;
- protection from wrongs such as reprisals, intimidation and re-victimisation;
- availability of protective support and guidance of children before, during and after proceedings.

The research has already identified several special protective measures including procedural safeguards:

- specialised, qualified, and trained professionals to work with children before, during and after trials, including but not limited to police officers, lawyers, judges, prosecutors, social workers, psychologists, court staff, child protection departments,

NGOs, victim support services, hospital staff and educators;

- child-friendly organisation of hearings including but not limited to video recorded hearings, child-friendly premises, mandated legal assistance, protection from exposure to the defendant and/or the public, and limitations on the number/length of hearings;
- consistent access to child-friendly information on court settings and proceedings, child rights, and available supports and services before, during, and after proceedings;
- social protection measures including support from social professionals, child and parental counselling, and social support services;
- multidisciplinary teamwork and specialised cooperative institutions to streamline and harmonise child involvement;
- special safeguards for vulnerable groups, such as extra provisions for victims of sexual assault, guardians and other support persons when the alleged perpetrator is a parent, interpreters for children with communication barriers, and accessible facilities for children with disabilities.

Given their importance, this chapter also addresses protective measures to avoid contact with the defendant and support services for the protection of children.





### 3.2.1. Ensuring the protection of children's identity and privacy

A number of methods have been developed to protect the identity and privacy of children involved in court proceedings, particularly in criminal cases. As [Section 1.1.2](#) describes, many countries preserve the privacy of children testifying in criminal hearings by using either live video links or pre-recorded testimony. The use of technology provides a buffer between the child and both the defendant and the public, and helps to avoid revealing the child's identity. In extreme cases in Romania, the image of the child is blurred and his/her voice distorted, although this option, as well as the option of using video conferencing/pre-recording, is rarely used.

Steps are also taken to ensure that a child's personal data remain strictly confidential and are kept from the media and the general public. One judge in Bulgaria mentioned that child witnesses in criminal cases could be 'protected' by hiding their identity, although in the example given the child was still identifiable from other case details:

*"In this case we used a particular crime procedure figure – protected witness. This child was given protection in the sense that he/she is an anonymous witness. His/her name is not mentioned, there is only one corresponding number. It is very often understood who the protected witness is because he/she describes from where in the house he/she has looked out at the crime scene, so one could guess who he/she is. Nevertheless, this is a kind of protection."* (Bulgaria, judge, male)

#### Promising practice

##### Protecting children's identities online

In Estonia, court documents available to the public (including on the court's website) do not publish a child's identifying details, referring to a child only by his/her initials.

French press liberty laws also mandate protection against the public disclosure of the names of child victims.

*Source: Loi du 29 juillet 1881 sur la liberté de la presse (1881), Article 39 bis*

In contrast, information in Romanian cases is often made public on the courts' official web portal. One Romanian professional interviewed was easily able to find details about a case of child trafficking in which the full names of the child victims and their legal representatives (in some cases, clearly their parents or a close relative) were listed, published on the website of Romania's High Court of Cassation and Justice. The webpage plainly stated that the child [name] was

participating as an injured party. Romanian interviewees further recalled criminal cases in which children were harassed by the media, who managed to obtain case details. This invasion of privacy not only puts the child's health and safety at risk, it also undermines their chances of reintegrating into their communities and overcoming their trauma, since a simple internet search will reveal their history.

In cases of divorce, custody, and other family law cases, enforcing children's right to privacy sometimes includes protecting them from their own family. Many respondents report dealing with issues of undue parental influence, and children are sometimes reluctant to speak freely in front of their parents when they might have to declare preferences about their living situation. As a result, parents are often barred from child interviews in civil proceedings (this occurs less in criminal proceedings, where they are seen as relevant support persons accompanying their children). Parents are almost always excluded from hearings in Croatia, Estonia, Germany, Poland and Spain. In Finland, they are only allowed to attend hearings when the child is under the age of six, and in these cases the main focus of the interview is to observe parent-child interaction. In Bulgaria and Romania, judges decide whether or not parents may attend. In France, when parents are not present at their child's hearings, the judge may exclude some elements from the hearing file accessible to them, to preserve the child's privacy.

### 3.2.2. Keeping children safe from such wrongs as reprisals, intimidation and re-victimisation

The presence of the defendant is particularly problematic, and ensuring the child victim or witness is kept separate from him/her is an important element in the procedures' overall child-friendliness, as the chapter on the right to be heard established (see [Section 1.2.2](#)). When a child's presence in a courtroom or police station is necessary, a number of strategies are employed to prevent contact between the child and defendant before, during and after hearings.

A separate entrance is a good way of protecting the child from contact with the defendant before hearings and from exposure to a harsh waiting environment. Croatia, Estonia, France, Finland, Poland, Spain and the United Kingdom employ such measures.

Promising practice

Preventing contact between the child and the defendant

The Tartumaa Victim Support Center (*Tartumaa Ohvriabikeskus*) in Estonia has set up a separate entrance at the back of the building for especially traumatised children. Some courtrooms in Finland also have separate entrances, and separate entrances and waiting rooms are highly valued aspects of courts in the United Kingdom.

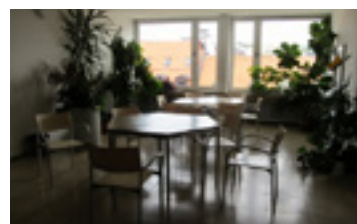


Estonia. Separate entrance at the back of the building of Tartumaa Victim Support Center.

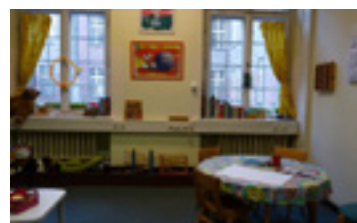
Child-friendly waiting rooms, particularly in courtrooms or police stations, ensure that a child is protected from exposure to both the defendant and the courthouse or station's general activity. But even in countries where they exist, separate waiting rooms are inconsistently available. In Germany for example, half of the interviewees said there were playrooms, child-friendly waiting rooms or even 'child houses' in courts, but the other half were not aware of such facilities. Others were aware of courts both with and without such rooms, or noted that 'would-be' child-friendly rooms exist. No patterns emerged from the interviewees' accounts. They reported that a small district court in a rural area of North Rhine Westphalia has an extraordinarily nice playroom, whereas major courts in urban areas of the same state lack such facilities. In contrast, major courts in urban agglomerations of other states are more adequately prepared for children than smaller courts.

Without separate waiting rooms, the experience can be intimidating and traumatic for children in both civil and criminal cases. In France, a number of social care professionals reported that children who are heard by the Judge for Children sometimes share waiting spaces with child offenders, and may meet children in handcuffs. In Romania, children are sometimes left alone in hallways or other courtrooms where potentially disturbing cases are being tried. One judge described the disturbing case of a child victim being left alone in the courtroom with the offenders for three hours.

During court hearings where the child must be present, screens are often used to prevent visual contact between the child and the defendant (in Estonia, Finland, Spain and the United Kingdom). Estonia, Finland, Germany, Romania and Spain also allow judges



Munich, Germany. Waiting room at a district court.



Berlin, Germany. Children's waiting room at the Berlin Criminal Police Office.

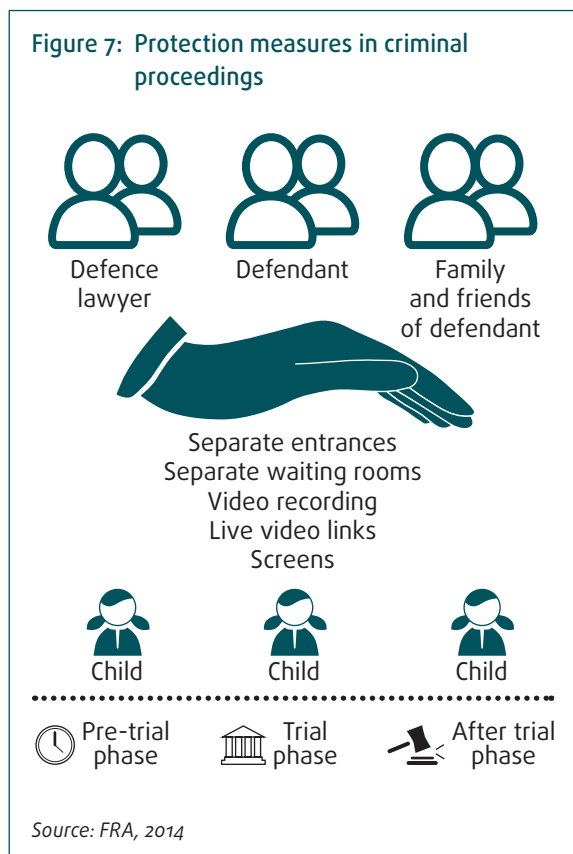
to remove the defendant from the courtroom for the duration of the child's testimony. Legislation in Croatia, Estonia, Germany, Poland, Romania and in some cases in France allows the option of the public to be excluded in a closed hearing.

In Estonia court sessions can be declared closed to all third persons either for the entire length of the proceeding or for the time the child is heard. Respondents reported several problematic examples concerning the defendant's presence, however, even in countries that allow judges to remove him/her.

The right of the child to be protected is sometimes seen as conflicting with the defendant's rights. When children are heard by a Romanian court, those generally present are: judges, prosecutors, court clerks, lawyers of the defendant, legal representatives of the victim (if available/appointed), legal representatives of the children, defendants and security personnel. Some respondents from Bulgaria also mentioned cases in which defendants and their lawyers were present during child hearings; judges and prosecutors interviewed explained that this may be necessary to avoid violating the defendant's rights, which could lead to a verdict being declared unlawful.

All in all, great care should be taken to keep the child from running into the defendant in criminal proceedings and from having any direct interaction with the defence lawyer and the defendant's family and friends (Figure 7).<sup>50</sup>

<sup>50</sup> Note that similar considerations are also necessary for civil proceedings. However, since it may not be as clear which parties could potentially intimidate and re-traumatise the child, the child may need to be consulted before procedures begin.



### 3.2.3. Making protective support and guidance available to children before, during and after proceedings

The people who can protect children are those professionals specialised, trained and qualified to support children throughout the proceedings, monitoring the proceedings to ensure they do not cause them any harm.

The role of support services is crucial in ensuring that child rights are consistently upheld throughout the judicial process, and professionals recommend that children receive continuous support. They frequently give two types of recommendations for such support. First, children should have one major contact person to monitor their protection and safety throughout the proceedings, making sure that they are continuously informed and communicating their needs and wishes to other people involved. Examples include the Finnish voluntary support persons from Victim Support Finland, victim support specialists in Spain, intermediaries and guardians in the United Kingdom, legal counsels in Germany and ad hoc administrators in France (see [Figure 3](#) for criminal and [Figure 4](#) for civil proceedings in [Chapter 1](#) on the right to be heard).

*“From the perspective of a child-friendly environment, I think there should be continuity between the persons who conduct the criminal investigation, those who interact with the child during the proceedings, so that the child does not – how to put this? – go through too many hands. [...] There should be continuity or at least [...] at least this same person should be a professional who accompanies the child from the beginning towards the end, going through all judicial procedures, because the child does not have anybody to relate to, this is what I could tell you. And there should be a higher availability of the professionals working in these cases, in terms of time, energy [...].”*  
(Romania, prosecutor, female)

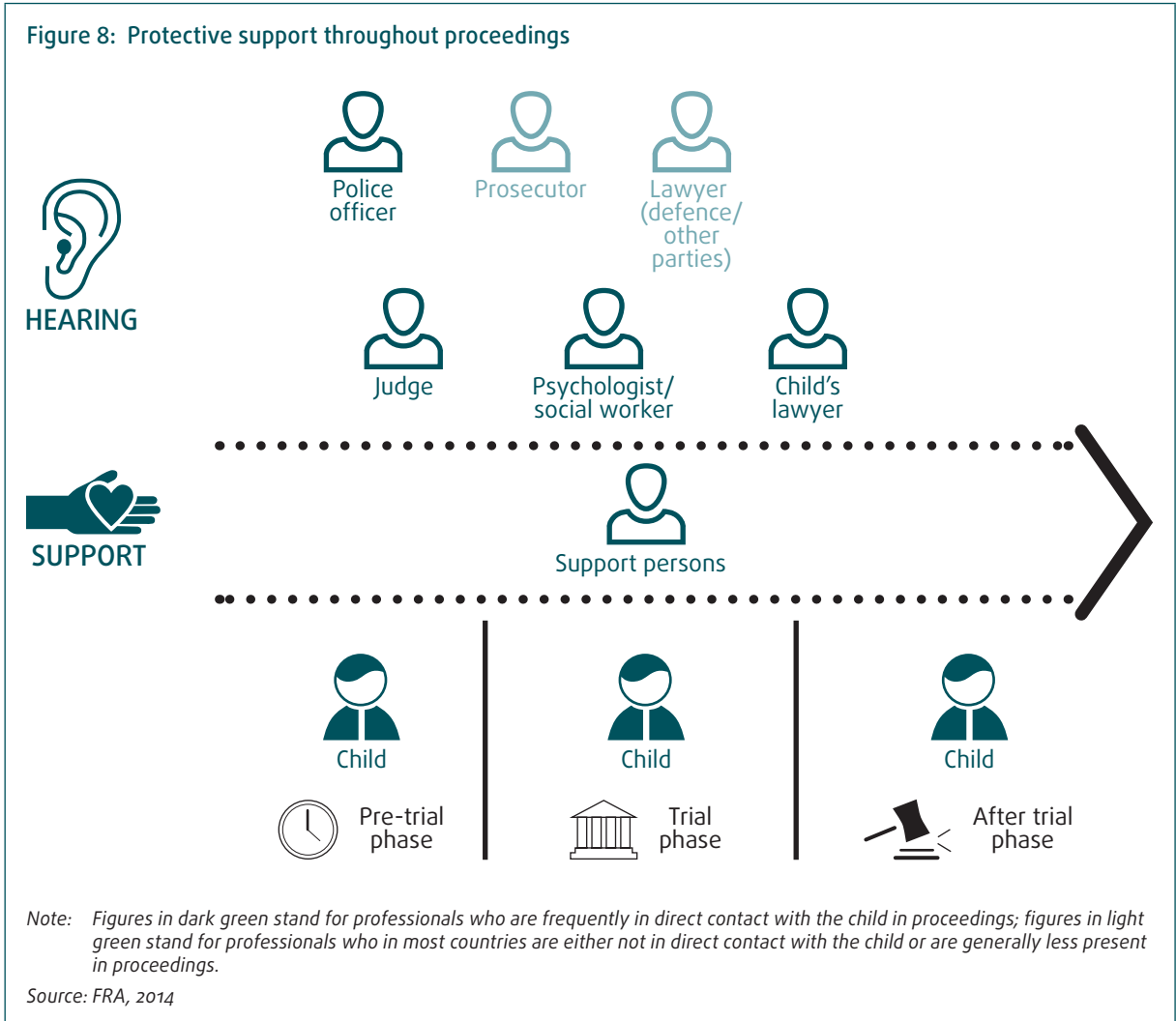
The second recommendation advocates that a multidisciplinary team take care of children’s cases, to ensure a consistent and integrative approach. Several promising practices offer examples of such teams involved in criminal proceedings or criminal and civil proceedings: victims’ support offices in Spain, the Family Diagnostic and Consultation Centres in Poland, French combined medical and legal hospital units for victims (*Unités d’Accueil Médico-Judiciaire*), and specialised institutions such as the Finnish Forensic Child and Adolescent Psychiatry Centres, the Croatian Polyclinic for the Protection of Children in Zagreb and Spanish children’s houses or sheltered homes (see promising practices on [multidisciplinary cooperation](#) in [Section 7.1](#)). FRA has conducted a detailed analysis of the situation of victim support services in the EU<sup>51</sup> (see [FRA activity](#) in [Section 7.1](#)).

A fine balance must be struck between the two support models. One should avoid having too many professionals in direct contact with a child, since it could confuse and intimidate him or her. But a sole professional contact person exerting undue influence should also be avoided. The focus should be on a coordinated and consistent approach to ensure the protective support of children throughout the proceedings including the after-trial phase via specified support persons ([Figure 8](#)).

## 3.3. Outcome indicators (making rights a reality)

There are several areas in which patterns of failure to protect appear. One area concerns the nebulous age limits of ‘childhood’ (see [Table 6](#) in [Section 1.1.2](#)). In some countries, child protection restrictions do not extend to the age of 18. Courts treat older children like adults, and they may not have access to all the support granted younger children. In Finland for instance, children under the age of 15 are only allowed to participate in the pre-investigation phase. Once they turn 15 they must testify before the court even if their testimony has been previously recorded. Furthermore, as younger

<sup>51</sup> FRA (2015).



children are not heard in court, court facilities are often not equipped with child-friendly facilities and resources.

Protection measures often depend on the type of case. Information and counselling support are more often available to children in the criminal than in the civil justice system, and some support is available to child victims but not child witnesses.

*“Reflection and provisions are needed for child witnesses who need to give judicial testimonies, those are the most vulnerable ones, the most exposed. Either because they fear testifying or because they are afraid or don’t know the procedures or don’t benefit from any kind of support. Either because they are testifying and they are risking retaliation and that they are left to themselves. Child witnesses exist for no one.”* (France, judge, female)

The availability of support and protection also varies according to the court’s location and the resources available there (see for example the description of the availability of child waiting rooms in Germany earlier in this chapter). Where professionals face heavy workloads, for example, they often lack the time and resources to ensure child-friendly practices.

The privacy of children appears to be protected in most – but not all – countries of research.

The interviews with children conducted during the second phase of this research will help to assess the extent to which children feel safe and protected during proceedings.



## FRA ACTIVITY

## Mapping child protection systems

FRA examined the scope and key components of national child protection systems across the EU in response to a 2014 European Commission request to help it develop EU guidelines on child protection systems, part of the EU's ongoing effort to develop inclusive, systemic and integrated child protection systems.

The research collected data on the key elements of child protection systems and in particular on legal and policy frameworks, actors and structures, human and financial resources, and accountability and monitoring mechanisms. FRA explored how these systems operate and how they address the specific needs of particular groups of children, also considering national and transnational coordination and interagency cooperation. The research focused on understanding the functioning of the systems and collecting data on both challenges and promising practices.

*See Mapping the situation of victim support services in the EU: An overview and assessment of victims' rights in practice*

## Ways forward

International standards give clear priority to protecting children involved in judicial proceedings, while at the same time encouraging their participation. A protective and safe environment is necessary for children to participate fully and effectively and to avoid any potential harm and re-traumatisation.

### Child protection systems

- EU Member States must ensure that children involved in judicial proceedings are treated as persons in need of special protection, taking into account their age, maturity, level of understanding and any communication difficulties they may have. Child protection systems should be based on an integrated and targeted approach that bears in mind not only children's special needs in general but also any other vulnerabilities, such as for victims or witnesses of sexual abuse or domestic violence, those with disabilities or a migrant status. This would include strengthening a system of professionals in charge of child-related cases, with expertise in child protection and safety and the ability to help identify any specific protection needs. EU policy planning should focus on providing guidance to effective, coordinated child protection systems.

### Establishing procedural safeguards to ensure child protection

- National legal frameworks foresee a variety of protection measures for court hearings that should be considered basic to ensuring child-friendly justice. In practice, however, these measures are often under-used and generally left to the judges' discretion. Some may also be limited by the child's age or role in the proceedings, covering them for instance as victims, but not as witnesses. Member States should establish procedural safeguards and monitor their implementation to ensure that all children involved in all judicial proceedings are protected from harm, potential re-traumatisation and identification before, during and after proceedings.
- Such protective measures include video recordings, the use of which should be standard practice in criminal and optional in civil proceedings. The setting should also be adapted to limit the number of interviews, regulate the presence of professionals, provide access to support services and regular child support persons throughout and following proceedings.
- Police stations, courthouses, and other locations where children are heard should be equipped with functioning recording technology, and professionals should be trained to use it. Human and financial resources need to be appropriately allocated.
- Identity-protection measures should protect the privacy of children involved in judicial proceedings, such as ensuring that recordings are safely stored with due regard of data protection legislation.
- EU Member States should not only establish measures to avoid contact with the defendant during hearings (such as live video links, screens to shield the child from the defendant, or excluding the defendant from the courtroom during child testimony) but also before and after hearings. The Member States and, as appropriate, the EU should ensure a child-friendly environment for all stages of proceedings and that all courts and police stations are equipped with appropriate, child-friendly waiting rooms and separate entrances. Those shall be systematically used to protect the child from meeting the alleged perpetrator or a family member in conflict with the child, and to safeguard the child from a harsh environment while waiting to be heard.





# 4

## Right to non-discrimination



Non-discrimination is a basic principle of international human rights law. The CRC (Article 2) considers non-discrimination a cross-cutting aspect applicable when implementing all articles of the Convention. The protection from discrimination covers not only the child but also his or her parents or legal guardian.

The EU Charter of Fundamental Rights (Article 21) also contains the principle of non-discrimination on the basis of age, ethnic origin and sex, among other grounds.

The *Council of Europe Guidelines on child-friendly justice* state that non-discrimination is a basic standard to be applied when implementing all guidelines, together with best interests, participation, and the rule of law (Section III).

The Council of Europe guidelines identify non-discrimination, best interests of the child, dignity and rule of law as fundamental principles of child-friendly justice. The professionals interviewed stated that non-discrimination is of particular importance for children with disabilities or of different national or ethnic backgrounds.

Despite existing legal provisions regarding equal treatment, respondents highlighted the existence of problems concerning children in vulnerable situations, the nature of which varied depending on the country. In some countries respondents focused on the treatment of Roma children, in others on victims of trafficking. In all cases, respondents stressed the need to adapt to the specific needs of the child and voiced concerns about the lack of expertise of persons in contact with children and the accessibility of the settings.

*"We adapt ourselves. I have a girl with a physical disability, the investigating judge hears her, there is no discrimination."* (France, guardian, female)

The right to non-discrimination is closely linked to the right to dignity,<sup>52</sup> which is addressed in the chapters on the rights to be heard, to information and to protection and privacy. These chapters also address findings related more broadly to the rule of law principle,<sup>53</sup> which is closely linked to issues of access to justice, and consequently to the right to be heard. This chapter focuses specifically on the fundamental principles of non-discrimination.

Table 30 provides an overview of the indicators presented in this chapter.

<sup>52</sup> The principle of dignity of the Council of Europe guidelines stipulates that children must always be treated with care and respect, taking into account their different needs and personal situation. The child's physical and psychological integrity shall also be protected. A fair and sensitive treatment should then apply to all children in whichever way they come into contact with judicial or non-judicial proceedings and regardless of their legal status and capacity. Those issues are particularly linked to the right to be heard, protection and safety as well as non-discriminatory treatment of children.

<sup>53</sup> The principle of the rule of law of the Council of Europe guidelines guarantees that the child is treated fairly in the justice system. The same safeguards which apply to adults should apply to children. These safeguards include the principles of legality and proportionality, the presumption of innocence, the right to legal advice, the right to access to courts and appeal. These should apply to all judicial and non-judicial and administrative proceedings. Access to appropriate independent and effective complaints mechanisms should also be ensured. Those aspects are all relevant elements of access to efficient justice systems and are particularly addressed in the right to be heard, legal representation and legal aid and avoiding undue delay.

**Table 30: Structural, process and outcome indicators on the right to non-discrimination**

Indicators	
<b>Structural indicators</b> Legal, statutory provision or obligation:	4.1. Securing the non-discriminatory treatment of children, granting specific protection and assistance to particularly vulnerable children, and implementing special support measures/services to ensure all children can participate in the proceedings (including, for instance, those who do not speak the official language)
<b>Process indicators</b> Measures and procedures:	4.2. Ensuring the non-discriminatory treatment of children, including through the provision of guidelines and protocols to address and support non-discriminatory treatment and of specialised services and assistance to particularly vulnerable children
<b>Outcome indicators</b> Results:	4.3. Assessing measures in place and their impact
Outcome indicators to be populated through evidence from interviews with children*	
<b>Outcome indicators</b> Results:	Evidence for the extent to which children feel they have been treated fairly during proceedings**
	Use of services and assistance

Notes: \* The second report, based on interviews with children, will be published at a later stage.

\*\* This indicator will only be populated with data from the interviews with children themselves, whereas – for the other outcome indicators – tendencies can already be reported based on the professionals’ assessments.

Source: FRA, 2014

## 4.1. Structural indicators (legal obligations)

In the criminal law field, key child protection measures in the area of non-discrimination are incorporated in:

- the Victims’ Directive, Article 9 (support from victim support services), Article 7 (right to interpretation and translation) and Article 23.2 (d) (right to protection of victims with specific protection needs during criminal proceedings, more specifically the right for interviews to be conducted with a person of the same

**Table 31: Statutory provision on non-discriminatory treatment of children in criminal law**

EU Member State	Provision prohibiting discrimination against children in criminal proceedings on the grounds of age	Victims	Witnesses	Principle of evolving capacity* (legislation)
		Policies to support children who do not speak the local language	Policies to support children who do not speak the local language	
BG	✓	✓	✓	✓
DE	✓			✓
EE				✓
ES	✓			✓
FI	✓	✓		✓
FR				✓
HR	✓	✓	✓	✓
PL				
RO				✓
UK (England and Wales)	✓			✓
UK (Scotland)	✓			

Notes: ✓ = the provision applies; empty cell = the provision does not apply, either because the right does not exist or because it is not applicable.

\* Children should be treated in an individualised manner based on their degree of maturity.

Source: European Commission, 2014



- sex as the victim in cases of sexual violence, gender-based violence or violence in close relationships);
- the Human Trafficking Directive, according to which children are entitled to receive special support such as translation and interpretation services (Article 11), education programmes (Article 18, Recital 6), psycho-social assistance (Article 14 (1), Recital 22) and to appoint a guardian (Article 14 (2), 16 (3), Recital 23).

Aside from the general non-discrimination principle present in constitutions and other generic legislation, provisions on non-discrimination against children in criminal proceedings specifically on the grounds of age exist in Bulgaria, Croatia, Finland, Germany, Spain and the United Kingdom (Table 31). All countries studied except for Poland and the United Kingdom (Scotland) also recognise the importance of the principle of evolving capacity, according to which children should be treated in an individualised manner based not exclusively on their age but on their degree of maturity.

Policies in several states (Bulgaria, Croatia, Estonia, Finland, Spain and the United Kingdom) envisage the use of special measures to prevent and combat the discrimination of children in justice. In particular, support to children with disabilities is a policy requirement in Estonia and in the United Kingdom (England and Wales). In Estonia, an expert social worker, child protection officer or psychologist must be present when investigating authorities interview child victims and witnesses with speech impairments, learning disabilities or other mental health problems. In Bulgaria and Croatia policy provisions foresee giving support to child victims and witnesses who do not speak the official language. This applies in Finland too, but only to child victims.

In family law proceedings, the right of children to interpretation and translation services is guaranteed by law in all countries studied except France and the United Kingdom. Despite the lack of statutory provisions, however, the research found that court services in England and Wales do provide language interpreters in family proceedings. In some Member States, provisions do not cover children in all roles. Germany for instance only ensures the right to translation and interpretation for those bringing a case (plaintiffs), not for witnesses and parties. Poland only ensures this right to child witnesses. Romania guarantees it to all children except those who are parties to the proceedings.

## 4.2. Process indicators (procedures)

Despite the existence of legal and policy frameworks, discrimination remains a major concern for respondents in Bulgaria, Croatia, Estonia, Finland, France, Germany and Poland. Discrimination related to disability and ethnic or national background or migration status

is reported as of more concern than that related to age, gender or socio-economic status.

Several respondents across countries suggested that the following factors contribute to the discriminatory treatment of children with disabilities: inadequate facilities and services to cater for their particular needs, lack of regulations and common practices to guarantee equal treatment, prejudice, poor cooperation among professionals, and a tendency to disregard special needs and to question statements by children with disabilities.

*“[...] There is no system to take care of those children [with disabilities] in the system, everyone passes the problem on to others. [...] I would say as soon as we are confronted with a child with those problems and who needs different stakeholders – social, medical, educational and judicial – all of a sudden we see the failure of the system which was not conceived in order to take care of those children.”* (France, prosecutor, male)

Respondents in Estonia, Finland and Poland suggested that many buildings, such as police stations, are not accessible to persons with physical disabilities. Respondents also gave positive examples, however, of specific measures taken for children with disabilities. The active participation of psychologists in Poland in cases involving children with mental disabilities is an encouraging example. Similarly, a Bulgarian psychotherapist described a positive example of a collaboration with a judge, who allowed her to work with a child with intellectual disabilities in a criminal case.

*“Hearing such a child [with disabilities] is totally possible. If a judge realises that the child has special needs, he/she has the right, and they usually do so, to appoint a professional who could assist with the hearing. [...] The judge had figured out that the testimony of this child is important and it is worth having it in a proper way. He dedicated a whole afternoon to this case by not scheduling any proceedings after it. This was a hearing that involved games, talking about different things [...].”* (Bulgaria, psychotherapist, female)

Children in vulnerable situations also include those belonging to minority ethnic groups, such as Roma, and unaccompanied children from other countries, for instance asylum seekers, victims of human trafficking and youth in cross-border cases. Respondents in Bulgaria, Croatia, Finland and Romania considered Roma children to be particularly vulnerable. Bulgarian and Romanian respondents reported cases where victims of human trafficking were not treated properly. Estonian and Finnish respondents said that cross-border cases were difficult to handle, since the rules and levels of child protection differ by state.

According to respondents in Bulgaria, Croatia, Estonia, Finland, France, Poland, Romania and Spain, children in such situations of vulnerability may be discriminated against due to a lack of training and experience,

as well as inadequate resources and legal provisions. Respondents in Estonia, France and Romania called for the additional training of professionals. Respondents in Croatia expressed particularly serious concern at a lack of resources. A Romanian social professional working in a public child protection directorate remarked that the lack of resources and the overcrowding of protection centres are major challenges, eventually leading to a selection of children who receive support.

In Estonia, Germany, Spain and the United Kingdom, respondents reported that interpretation services are usually available. In other countries, there is a lack of adequate interpretation for Roma children, and a lack of support by other specialists. In Finland, interpreters with the necessary language skills are not always available and they do not necessarily have legal training. Respondents in Romania reported that paid interpreters perform better than those appointed *ex officio*.

A recurring theme from the findings is that expertise in working with immigrant and foreign children is lacking. Although some respondents said that everyone is treated the same, professionals may be unaware of their own biases. Others stressed the need to take into consideration each child's specific background of a child.

*“Well to me in terms of engagement I need to have the culture because if I don't I might walk all over someone's culture and lose them.”* (United Kingdom, social worker, female)

*“What you do is combining what you know about the child's origin, with the things that the child is saying, so you gradually adapt yourself”* (Spain, psychologist, male)

Despite efforts to adapt, respondents in Estonia, Finland, France, Germany and the United Kingdom see the lack of intercultural competence as a problem, not only concerning migrant children but also children with different socio-cultural backgrounds than those who hear or support them.

*“It is always difficult when the environments of these families and children are far different from those of the staff members of the child protection services. I mean, we [...] all have an academic education [...] who are deciding [...] and one is far away from [...] one also does not want [laughs] to know too much about it.”* (Germany, family law lawyer, female)

*“Taking into account culture, origins, this is really under our radar. We tend to turn to reassuring models, we refer situations to the administrative protection services (ASE, e.g. for placements). They are the good guys, ‘they know best for the parents’. I am quite critical of that. At the same time, these are massive institutions, it is not easy to reinvent society every time [...] but it would be worth reflecting on this.”* (France, prosecutor, male)

In the United Kingdom, while acknowledging the importance of intercultural skills, some respondents are concerned about the possible risks of an overly deferential approach to certain cultural differences, for example unacceptable cultural practices such as genital mutilation.

Respondents also pointed to some promising practices regarding measures to respect diversity and promote equal treatment. In Romania for example, female immigration officers conduct hearings if an asylum-seeking applicant is an unaccompanied girl. In Croatia, interpreters and sign language experts are provided to children with a language barrier and/or hearing impairment.

### 4.3. Outcome indicators (making rights a reality)

Respondents gave several examples that suggest that levels of protection against discrimination are insufficient. Professionals do not always sufficiently bear in mind the special needs of children with disabilities, and question their statements. Respondents in Finland pointed out that the special needs of children with disabilities specifically concerning their right to be heard are often overlooked.

Discrimination is seen as particularly problematic for children with intellectual disabilities or those living in institutions. Estonian respondents highlighted that the rights of children with psychosocial impairments may not always be considered, and that they may thus face unintended discrimination. Similarly, in Germany and France, children with intellectual disabilities are not seen as credible and their views may be disregarded, by claiming for instance that they ‘misinterpret’ acts when it comes to abuse. Bulgarian interviewees also stressed that children with and without disabilities placed in institutions are as a rule not heard.

#### FRA ACTIVITY

##### Focusing on hostility against children with disabilities

FRA is tackling targeted hostility against children with disabilities by helping to fill the huge data gaps that exist across EU Member States. FRA envisaged this innovative project to address the under-reporting of abuse, lack of support and poor awareness of rights among children with disabilities and to map practices addressing those problems.

Comprehensive comparative information on legislation, policies and services available across the EU will assist EU institutions, EU Member States and civil society to efficiently counteract such hostility. The report will be available in 2015.

For more information, see <http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility>

Aside from the potential discrimination of children with special needs, interviewees from Bulgaria, Croatia, France, Germany, Poland, Romania and the United Kingdom reported that discrimination based on social or ethnic origin is also a serious issue. Professionals from Estonia, Finland and Spain, however, do not see this as particularly problematic. This could either be because they were not confronted with specific cases or because they do not believe that the child's gender, ethnic background or nationality affects the proceedings and their outcome.

*"All of them are minors and all of them are treated alike."*  
(Spain, prosecutor, female)

## Ways forward

The professionals interviewed consider the right to non-discrimination to be of great importance. Children should be treated equally in judicial proceedings regardless of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender identity or gender expression. Member States should pay particular attention to children in especially vulnerable situations, such as those living in extreme poverty or separated migrant children.

### Ensuring that all children involved in judicial proceedings are treated equally

- Member States should ensure that all relevant procedural safeguards and any services provided to children before, during and after their involvement in judicial proceedings treat children equally. Data on children's access to justice should be available for all children, broken down by groups, such as children in particularly vulnerable situations.

- Respondents raised concerns about the lack of expertise on diversity issues, which can make services less accessible. All professionals should be made aware of the different vulnerabilities children may have and either delegate or work with experts on these vulnerabilities. Guidelines and protocols should be put in place to guide professionals through such procedures, and should form part of packages on protection and safety measures.
- Respondents regarded favourably the United Kingdom's initiative to translate child-friendly material into different languages. They pointed to other positive practices, including female police officers interviewing girl victims of sexual abuse and the United Kingdom prosecutors' guidelines on how to interview persons with intellectual disabilities. Member States should ensure that specific guidelines and provisions regulate and specify how to support children involved in judicial proceedings, including through the provision of adequate information in a language and form that they can understand, taking into account interpretation and translation needs or barriers linked to physical or other impairments.
- Member States should pay particular attention to facilitating access to justice and providing the necessary legal aid, legal representation and support for children in especially vulnerable situations.





# 5

## The principle of best interests of the child



The best interests of the child is a basic principle of international child rights law. The CRC (Article 3) stipulates that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

The EU Charter of Fundamental Rights establishes in its Article 24 (2) that “In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration”.

### Case law relating to the best interests of the child

#### European Court of Human Rights

“Article 8 [of the European Convention on Human Rights] requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child’s health and development.”

*ECtHR, Sahin v. Germany [GC], No. 30943/96, 8 July 2003, para. 66*

“Whilst national authorities must do their utmost to facilitate such co-operation [of all concerned in the reunion of the child with the parent], any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them [...]. What is decisive is whether the national authorities have taken all necessary steps to facilitate reunion as can reasonably be demanded in the special circumstances of each case [...]”.

*ECtHR, Hokkanen v. Finland, No. 19823/92, 23 September 1994, para. 58*

The Council of Europe guidelines identify the best interests of the child as one of the four fundamental principles of child-friendly justice.

But although the concept of the child’s best interests is embedded within the normative framework of most of the EU Member States studied, the majority of respondents perceived it as a complex and vague term, subject to interpretation, and suggested that tools to identify,

assess and report on how such best interests may have been met are missing. They criticise the lack of a concrete definition, which they say could lead to manipulation, subjectivity and decisions taken which do not in reality protect children’s rights.

*“Everything is done for the child’s best interests, but it is curious that mistakes are made in order to pursue the child’s best interests.” (Spain, social worker, female)*

**Table 32: Structural, process and outcome indicators on the principle of best interests**

Indicators	
<b>Structural indicators</b> Legal, statutory provision or obligation:	5.1. Ensuring and specifying elements and criteria of the principle of best interests of the child
<b>Process indicators</b> Measures and procedures:	5.2. Ensuring that the best interests of the child are identified and met
<b>Outcome indicators</b> Results:	5.2. Assessing measures in place and their impact
Outcome indicators to be populated through evidence from interviews with children*	
<b>Outcome indicators</b> Results:	Evidence for the extent of children who feel that their best interest was met

Note: \* The second report, based on interviews with children, will be published at a later stage.

Source: FRA, 2014

The Committee on the Rights of the Child<sup>54</sup> has pointed out “that an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention. It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the ‘child’s best interests’ and no right could be compromised by a negative interpretation of the child’s best interests.”

To facilitate the understanding and use of this principle, the Committee has defined seven elements to be taken into account when assessing the child’s best interests: the right of children to express their views in every decision that affects them; the child’s identity; the preservation of the family environment and maintaining relations; care, protection and safety of the child; situation of vulnerability; right to health; and right to education.

Table 32 provides an overview of the indicators presented in this chapter.

## 5.1. Structural indicators (legal obligations)

In criminal law, provisions stipulating that child victims should be provided assistance, support and protection, taking into account their best interests, are found in:

- Article 1 (2) (objectives) and Recital 14 of the Victims’ Directive;

- Article 18 (general provisions on assistance, support and protection measures for child victims) of the Directive on combating sexual abuse, sexual exploitation of children and child pornography;
- Article 13 (general provisions on assistance, support and protection measures for child victims of trafficking in human beings) of the Human Trafficking Directive;
- Regulation Brussels II bis (Regulation 2201/2003).

The way that the principle of best interests is defined varies from country to country. EU Member States have incorporated the principle of best interests within their national legal framework in different ways. Among the 10 Member States studied, Croatia and Spain have included it in their constitutions, and the others in relevant specific criminal, civil or child protection legislation.

Finland and the United Kingdom have developed legislation in the area of civil law to help judges assess the best interests of the child in the proceedings.

In child-custody cases in Finland, the following objectives are needed to achieve ‘the ideal conditions for a child’: (1) ensure the well-being and the balanced development of a child in accordance with his/her individual needs and wishes, as well as close and affectionate relationships in particular with his/her parents; (2) ensure the good care and upbringing of the child (e.g. secure and stimulating environment, where the child is understood and brought up with gentleness and his/her safety is guaranteed; where the child receives education that corresponds with his/her inclinations and wishes, where he/she is not subject to physical punishment or is otherwise humiliated, etc.), as well as

<sup>54</sup> Committee on the Rights of the Child (2013), General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, Art. 3, para. 1.



the appropriate supervision and protection of him/her in accordance with his/her age and level of maturity.

The United Kingdom (England and Wales) has drawn up a list of criteria in a 'welfare checklist'.<sup>55</sup> When dealing with children in certain proceedings, the court is required to bear in mind their wishes, their physical, emotional and educational needs, their age, sex and other characteristics, any harm they have suffered and the ability of their parents to meet their needs.

In Bulgaria, Poland and Spain, there are looser guidelines or parameters, usually developed through the case-law of higher courts. In Bulgaria for instance, the best interests of the child is defined through an assessment of various elements such as the child's wishes and feelings, his/her physical, mental and emotional needs, and the danger or damage caused to him/her.

Despite legally acknowledging the concept, Estonia, France and Croatia have not developed specific criteria to determine the best interests of the child.

In Germany, there is no exact definition of the concept. According to the respondents, the German word '*Kindeswohl*' is used to when referring to the best interests of the child, though its interpretation has varied over time and corresponds more to 'well-being' than 'best interests'. The Civil Code employs four criteria (attachment, care, education and continuity) to determine the '*Kindeswohl*', and distinguishes between the dangers of corporal, spiritual and moral well-being.

## 5.2. Process (procedures) and outcome (making rights a reality) indicators

It is quite striking to note that respondents do not, or only indirectly, report on clear processes and outcomes when it comes to identifying, assessing or reporting on the best interests of the child, possibly because the majority of respondents perceive it as a complex and vaguely defined term. The following findings refer only to the question of the extent to which the concept of best interests is clear to professionals.

Several issues emerge from the results. In some countries, professionals are not aware of statutory provisions. Only a few Bulgarian interviewees, mostly social workers and lawyers, knew that such a legal definition existed, but even they considered the concept unclear. Criminal judges, prosecutors and investigators were not aware of the term. Conversely, Estonian respondents

knew that there is no legal definition within their systems.

Regardless of the existence of a legal definition, respondents noted a lack of clarity regarding the term 'best interests of the child', although they mostly agreed that it relates to the need to avoid causing harm to a child. The majority of German respondents considered it a vague concept most easily defined by negative elements, such as the absence of factors that risk harming children, which include parental drug addiction, domestic violence or neglect. This lack of clarity results in the application of different definitions in various EU member states, with judges often given much discretion to make decisions, depending on the circumstances of the cases.

As stated by a Polish respondent, the best interests of the child is about not deepening the harm already done, and creating comfortable conditions for the hearing. The interviewee should always act according to the best interests of the child, for example by not hearing him/her if there is other evidence available.

*"Ideally, the child won't leave the hearing burdened by any more negative emotions or with a bad impression..."*  
(Estonia, law enforcement official, female)

Finnish respondents stressed that the most important element is that the child is safe and assisted. The understanding of the principle is sometimes relatively restricted, mainly referring to the basic notion of needs or wishes and expectations. Such an understanding struggles to explain what the principle truly means, even referring to the idea of a child's obligations. Moreover, the child's best interests are seen differently in civil and criminal law. In civil law, professionals often relate it to the protection of the physical and psychological well-being of the child. In criminal law, however, it is largely overshadowed by procedural concerns such as punishing the perpetrator and protecting the child from re-victimization.

When considering the best interests of the child in the area of civil law, many respondents in Bulgaria, Estonia, Finland, France and Germany believe that the physical and psychological development of children should be kept in mind. In France, this implies considering children as persons whose development is on-going. According to the Estonian and Polish professionals, other elements besides development, such as the need to grow up in a stable and well-functioning family, should be taken into account. German interviewees also refer to a set of basic physical and psychological needs that have to be fulfilled, e.g. food, sanitation, a certain degree of care and emotional support.

<sup>55</sup> United Kingdom, Children Act 1989, 16 November 1989.

In the criminal field, in contrast, many believe that the child's best interests are served if the interests of justice are met. This is an opinion common to Bulgarian, Croatian, Finnish and Romanian respondents. Bulgarian judges, for instance, believe that punishing the perpetrator of the abuse against the child is in the best interests of the child.

*“Best interest of the child’ in what sense? In criminal law the important thing is the truth, the objective truth. For the child it means that if he/she is a victim of crime the perpetrator should be punished.”* (Bulgaria, judge, female)

Avoiding the secondary victimization of children is also deemed to be in the child's best interests. Some Romanian legal and social professionals from the criminal field reported that even though efforts were made to bring judicial proceedings in line with the child's best interests, this is still a problem as children are often re-victimized.

Finally, in some cases, the child's best interests are not met. Several respondents in Finland, France, Germany and Romania raised the issue of discrepancies between the rights of the child and those of parents. In Germany for instance, both legal and social experts stressed that in family law proceedings parental rights are often prioritized over the child's best interests. Romanian professionals are concerned that the best interests and other rights of child victims or witnesses are often superseded by the interests and rights of the defence or even by the interests of different public institutions.

*“but no... these institutions are not cooperating in the child's interest, these institutions are arguing in their own interest, how to get rid of one more problem.”* (Romania, psychologist, female)

Professionals pointed to several aspects of both civil and criminal proceedings that could be improved to protect the best interests of the child. These aspects are very closely related to the protection of children and the child-friendliness of proceedings, and include the length of proceedings, the training of professionals, the repetition of testimonies and the development of special courts for child-related proceedings.

## Ways forward

While most of the countries studied have embedded the concept of the child's best interests in their legal frameworks, the majority of respondents across countries perceive it as a complex and vague term, subject to interpretation.

### Applying the principle of the best interests of the child

- Implementing the best interests of the child is about implementing children's rights. As the CRC Committee explains, the best interests of the child must be seen as a right, a principle and a rule of procedure. It requires clear legal criteria to avoid any negative interpretation.
- Professionals also address the lack of tools on how to identify, assess and report on how the child's best interests may have been met. Legal provisions should therefore also include the need for decisions to include an “explanation that shows how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations”.<sup>56</sup>

<sup>56</sup> Committee on the Rights of the Child (2013), Art. 3, para. 1.



# 6

## Training of professionals



The Council of Europe 2010 Guidelines<sup>57</sup> make clear that to ensure children’s effective participation, specialised and trained professionals should be in contact with them and inform, hear and protect them.

This does not, however, necessarily occur. The need to train professionals working with children becomes particularly clear when considering the low awareness of the *Council of Europe Guidelines on child-friendly justice* among the professionals interviewed. Professionals should thus receive training on children’s needs and rights, communication techniques, and child-friendly proceedings, taking into account differences in children’s ages and personal circumstances.

*“It’s important to have trainings, it’s highly important, but they should be aimed at the persons who are directly engaged with the issues they are being trained for.”*  
(Bulgaria, psychologist, female)

Among the professionals interviewed, approximately two thirds have participated in training programmes, with social professionals more likely than legal ones to undergo training. Although some countries’ legal regulations stipulate that training is mandatory, it is generally offered and attended on a voluntary basis. While a number of successful training programmes have been running, their availability seems severely limited in some Member States. Many professionals suggested more training on child communication for judges or on legal systems for social professionals. Professionals also said that success in child justice techniques depends on a number of factors including personality, parenthood and cooperation.

This chapter describes the practices and procedures of training professionals, including training:

- needs, hinging on level of awareness of Council of Europe guidelines
- availability
- participation
- satisfaction

As professional roles and training requirements differ between criminal and civil law, respective training processes are presented separately. The chapter also addresses other aspects that help ensure professionals are well suited to work with children.

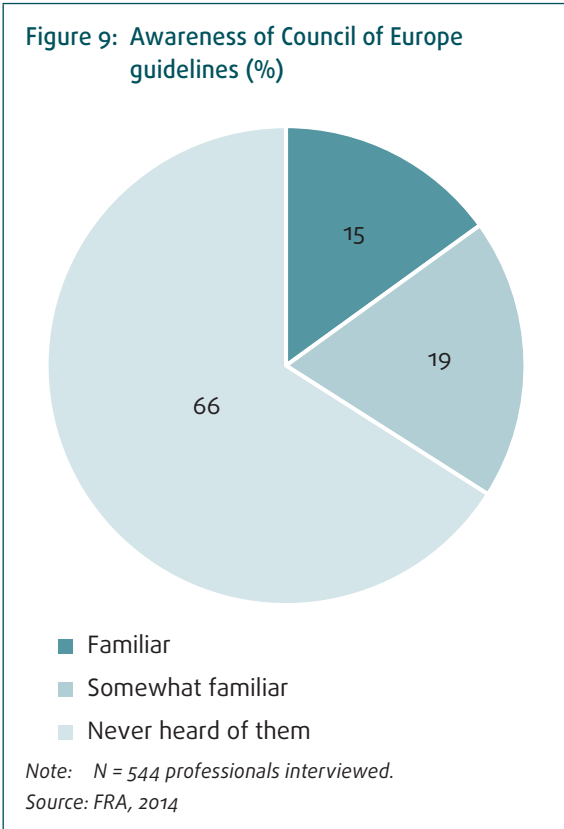
### 6.1. Training needs: awareness of Council of Europe guidelines

Knowledge and awareness of international standards are key to their implementation. Respondents’ awareness was tested by asking them how familiar they were with the Council of Europe guidelines, which specify core requirements on how children should be treated during judicial proceedings.

Over half of the respondents (316 of 544) had never heard of the guidelines prior to this study, and only 72 showed great familiarity with them. Although the sample of professionals is not representative, these results nevertheless indicate that knowledge of the Council of Europe Guidelines needs to increase among child justice specialists in EU Member States (Figure 9, see also the [FRA activity in Annex 1 on methodology](#)).

Legal professionals were slightly more aware of the guidelines than social professionals, with 96 of 271 legal

<sup>57</sup> Council of Europe, Committee of Ministers (2010), Section IV A 4 and 5.

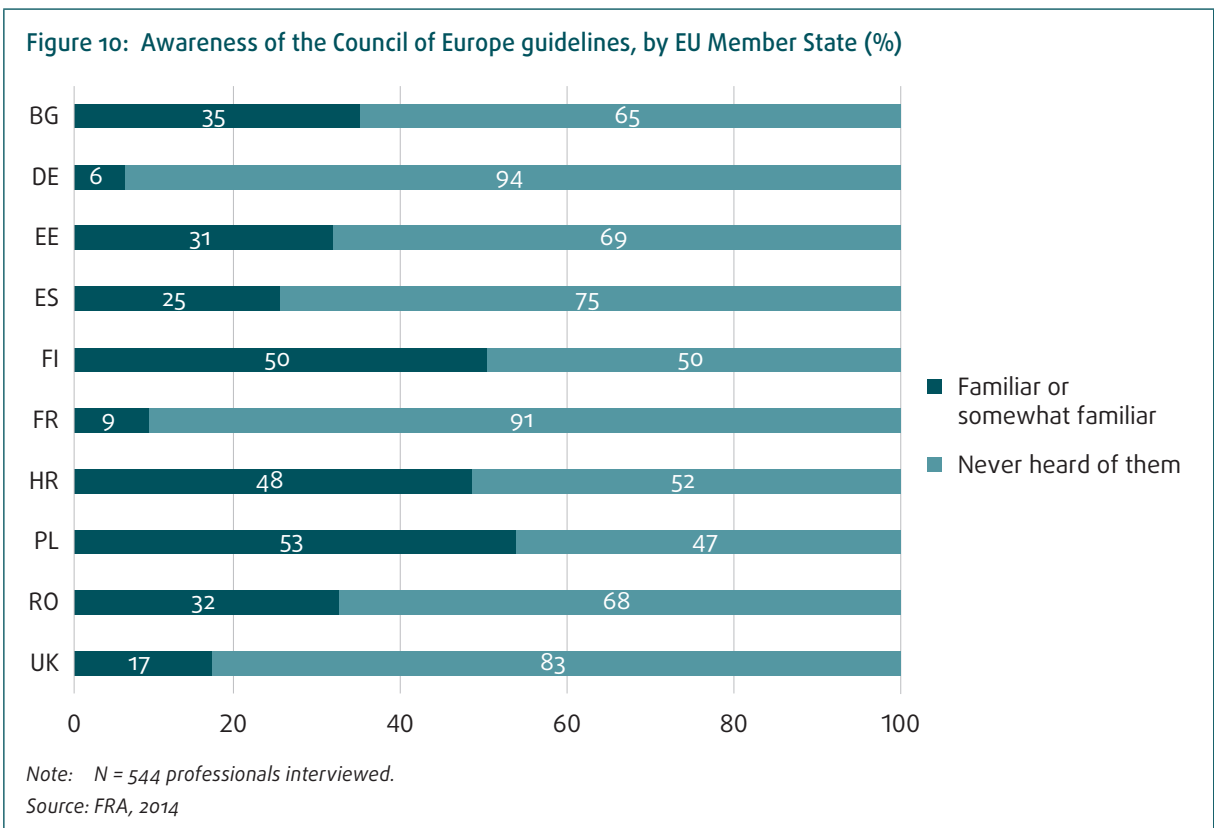


professionals showing some familiarity compared to 69 of 257 social professionals.

As Figure 10 shows, Poland has the highest number of professionals (31 of 58) who are either familiar or somewhat familiar with the Council of Europe Guidelines, followed by Croatia (26 of 54) and Finland (25 of 50). In stark contrast, in Germany, France and the United Kingdom most interviewees had never heard of the guidelines, with, respectively, 46 of 51 interviewees unaware, 60 of 65 and 40 of 50.

Figure 11 breaks down the analysis between legal (judges, prosecutors, lawyers<sup>58</sup>) and social (psychologists, social workers) professionals. Legal professionals in Poland reported the most familiarity with Council of Europe Guidelines, with 15 interviewees either familiar or somewhat familiar with them. In contrast, only one German legal professional had heard of them. For social professionals, interviewees from Poland again led the field at 16, followed closely by 13 from Croatia. In France, none of the social professionals surveyed knew the guidelines.

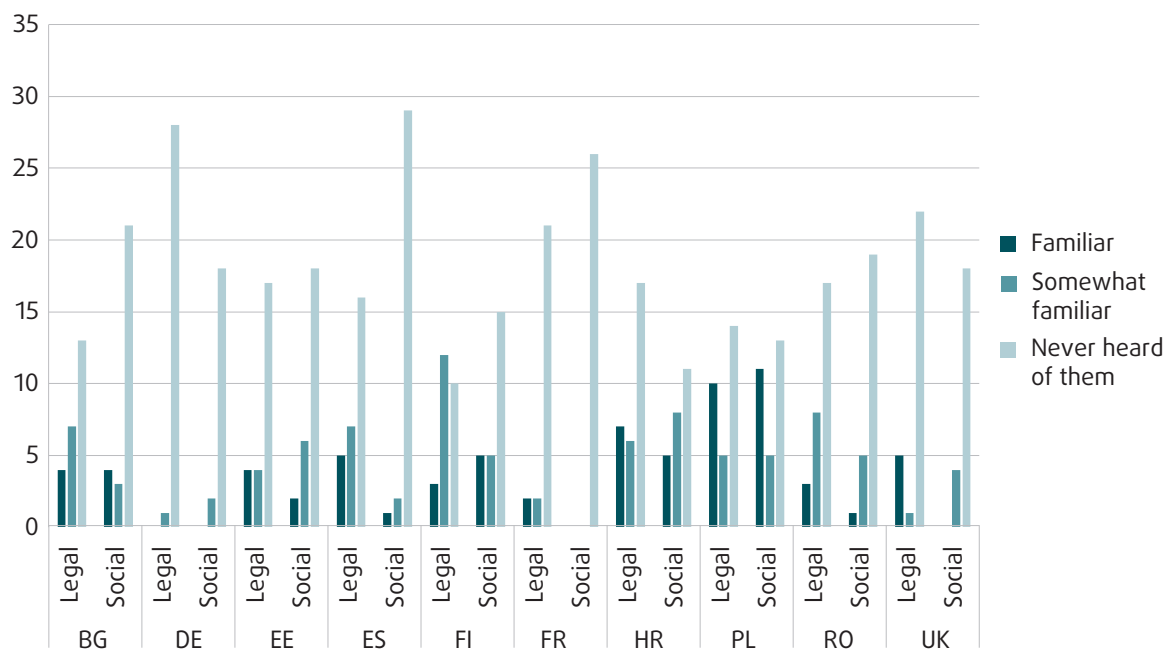
Nevertheless, in general the professionals interviewed showed a very high commitment to and interest in making justice more child-friendly, and were willing to



<sup>58</sup> For analytical purposes, law enforcement officials were counted within this group as their professional background was seen as more closely related to legal professionals than social professionals.



Figure 11: Awareness of Council of Europe guidelines, by type of profession and EU Member State (number of professionals)



Note: N = 544 professionals interviewed.  
Source: FRA, 2014

take the time to share their experiences. Many also said that they refer mainly to their national legal frameworks, and the ones among them who were somewhat familiar with the guidelines were optimistic that their national legislation tried to take them into account. They all agreed, however, that there was a need for more training, including for themselves, and were keen to learn more about the guidelines.

## 6.2. Training availability

### 6.2.1. Training availability – criminal law

In most EU Member States, professionals working with children in criminal law proceedings have a legal obligation to have attended training programmes to be well trained. The findings of this project, however, suggest that in many Member States specialised training is more likely to be available on a voluntary basis than as a formal prerequisite. Indeed, 35 % of professionals interviewed in the field of criminal justice had not completed any specialised training on child issues before entering their profession (see Tables 11 and 32).

#### Training providers

Although interviewees did not always specifically name the providers and locations of their training

programmes, they provided sufficient details to determine that a variety of governmental and non-governmental sources offer training programmes. In some countries, NGOs provide much of the available training. In Bulgaria, the Social Activities and Practices Institute offers some of the most widely attended training courses among both criminal and civil professionals, particularly those involved in child hearing proceedings. Similarly, the Nobody’s Children Foundation in Poland offers courses that are popular among both legal and social professionals, in particular those covering new Polish guidelines for child hearings and the use of blue rooms. Interviewees credit these courses with helping to increase interdisciplinary cooperation in the criminal justice field.

Estonia, Finland and Germany offer regular training through police departments. The Police and Border Control Board (*Politsei- ja Piirivalveamet*) in Estonia provides regular training sessions to both legal and social professionals in the criminal field. Germany also offers regular in-house training courses at the police academy on how to conduct child hearings, which many legal experts attend.

Another common provider of training programmes is the court itself: Croatian, Estonian, Finnish and Polish judicial departments all offer training on child issues. Judicial academies also give courses on children in the

Promising practice

**Training police officers in child interviews**

Finland offers a year-long interdisciplinary interview training programme for police and healthcare professionals who perform child hearings. The National Police Board and the Forensic Psychiatry Centre organise the training. Most police officers and psychologists who work in criminal proceedings have attended the course and generally agree that it has contributed to child-friendliness in the preliminary hearing process.

Similarly, in Croatia, police officers are required to participate in a three-month training programme that the Ministry of Internal Affairs organises. Upon completion, they receive a certification and are authorised to sign police reports in cases involving children.

criminal justice system: the National School for the Judiciary in France offers optional on-going thematic training sessions<sup>59</sup> throughout the year. Bar associations sometimes offer training programmes for lawyers: the Council of Bar Associations in France has developed a training kit for lawyers covering hearings in both civil and criminal procedures.

**Form and content of available training**

Training for both legal and social professionals in the field of criminal justice is currently heavily focused on child hearings, forensic interviews, and methods and techniques for questioning children (Bulgaria, Croatia, Estonia, Finland, Germany, Spain and the United Kingdom). These training programmes are particularly well attended by police officers, judges, and social professionals who perform child hearings. Other commonly reported training topics for both social and legal professionals include child sexual abuse issues, child rights, child development and psychology, communication techniques, and management/protection of vulnerable witnesses. In general, social professionals involved in criminal justice attend more training courses on a broader range of issues with different types of content than those involved in civil justice.

Most of the interviewees failed to specify the exact amount and length of the training programmes they had participated in, or the topics of the courses and whether they were interdisciplinary. The findings suggest that most programmes are offered on an irregular basis and do not have fixed curriculums. Their length varies from half-day sessions to 15-month or two-year multi-faceted training programmes. The majority of

<sup>59</sup> France, École Nationale de la Magistrature.

training reported in Bulgaria, Croatia and Romania consists of short workshops, seminars or lectures. Longer, more comprehensive training programmes are offered regularly in Finland, France, Germany, Spain and the United Kingdom.

**6.2.2. Training availability – civil law**

As in the criminal justice field, while laws in most Member State require that professionals working with children be well trained, respondents reported that attending training programmes is generally not a prerequisite for their careers. Nevertheless, many do choose to attend such programmes: 68 % of the civil justice professionals interviewed in this study had taken part in child justice training courses.

**Training providers**

As in criminal justice, both national and local organisations organise training for legal and social professionals in the civil field. Respondents from Romania, for instance, said that organisations such as the National Institute of Magistracy, the Association of Magistracy, the Romanian Office for Adoption and the NGO Save the Children Romania offered training sessions/activities in which they had taken part.

Promising practice

**Harmonising existing training practices**

In France, professionals from both civil and criminal fields emphasised the value of professional groupings and platforms where professionals can share experiences, access continuous training, seek advice or formulate demands. Such groupings were seen as good practices around France. They can be federations (i.e. of victims support NGOs or of ad hoc administrators), associations (e.g. of judges for family and child issues, or social investigators), commissions (*Commission Mineurs*, National Bar Association), or platforms (National Convention of Children’s protection association). The Council of Bar Associations has developed and approved a training kit for lawyers, with sessions for lawyers active in local Bar Associations.

The design of protocols to set up and run France’s medical/legal units (*Unités d’Accueil Médico-Judiciaires*) enabled direct and regular contacts among many different actors – medical practitioners, law enforcement officials, social workers/psychologist and staff of victim support NGOs – which they said was conducive to their cooperation and coordination.



In some countries, there is a fair amount of overlap between training programmes for civil and criminal justice professionals. French legal and social professionals in both fields pointed to the training offered by the National School for the Judiciary (ENM), which includes seminars for judges and educators on topics such as family therapy or interview methods, and programmes offered by professional federations such as ad hoc administrators (FENAAH) and social investigators (ANDES). In Bulgaria, Social Activities and Practices Institute NGO training courses are not only popular with criminal justice trainees, they are also the most widely attended amongst civil justice trainees. The Ministry of Justice, Forensic Psychiatry Centres, and various universities in Finland also offer training programmes on both types of proceedings.

### Form and content of available training

Training programmes for criminal and for civil justice professionals have much in common. Similar to the criminal justice field, the most popular topics in the civil justice field, particularly among legal professionals, are methods of forensic interviewing and child hearings. Also available is training on child communication, psychology and child development, child rights, family law issues, and mediation techniques. Specific child justice issues include separation and divorce, custody issues, and domestic abuse.

*“I have been working at this position for five years but it was different in the beginning. We used to have fewer cases and somehow we managed. Now I think everything has to be slightly more specialised so that people can become better professionals in a particular area and work primarily in it. The opposite does not benefit the children the way it should. So it is best if there are people who are particularly trained to do this. I am talking about us as social workers.”* (Bulgaria, social worker, female)

The interviewees mostly did not specify the duration of training sessions or other related activities such as expert seminars, workshops or conferences.

## 6.3. Accessibility of training to professionals – criminal and civil law

A number of interviewees pointed out that the lack of funding is a common obstacle to consistent and effective training. Lack of resources and recent austerity measures have affected both public and non-governmental sectors, leading to fewer programmes (Romania), fewer participants (Croatia) and, according to one social worker in Spain, to professionals seeking training opportunities outside the justice system.

The financial recession forced cuts in the Estonian budget for training programmes, even though participation often depends on whether the professional can take part free of charge. Interviewees from smaller towns, or even simply from outside the capital, complained that training workshops tend to take place in urban centres, which increases the time and financial resources required of participants and/or their institutions. Almost all interviewees in the United Kingdom commented on the inevitable breakdown in communication and information sharing when limits on resources and funding result in reduced staffing levels and higher workloads.

Similarly, many professionals remark that time constraints and/or lack of motivation are an obstacle to more in-depth training and better cooperation (Bulgaria, Croatia, France, Poland and Romania). Two social professionals in Bulgaria mentioned that although there is some training available, their heavy workload reduces their motivation. One Bulgarian psychologist said that often those for whom training would be most useful are those whose workload does not allow time for it.

Another Bulgarian psychologist involved in both civil and criminal cases repeated that social workers are not trained in child psychology and are not properly supervised, frequently resulting in burnout.

*“But these are good and decent people, they want to be supervised and they pay for supervision out of their pockets, no reimbursement. Supervision means that you discuss a case with a more experienced professional in order to find the way forward and see what can be done. This should be made someone’s responsibility – in terms of provision and payment; or at least a kind of training for these people can be provided. They handle enormous workloads, they have shamefully low salaries, and if they want to do less harm, they have to pay out of their low salaries in order to verify their performance and in that way also prevent themselves from having a burnout.”* (Bulgaria, psychotherapist, female)

A Croatian lawyer echoed these concerns when recounting her experiences with social professional support organisations and the lack of consistency in their employees’ training.

*“I had situations, also involving children, where they would come to, for example CFSW (Centres for Social Welfare), and they would feel accepted, and everything was OK. Then, the next time, they would come and encounter someone else, and they would feel threatened by them, and so on. That is simply the way the system is set up – it is big, employees are overburdened, I don’t think they are trained well enough, and what happens then is that such an impression is created.”* (Croatia, lawyer, female)

Attorneys from Croatia also stressed that the irregular and unpredictable nature of their job was an obstacle to participating in training courses.

*“Look, unfortunately, an attorney’s job is such that it really requires a lot of time and it is also unpredictable in terms of a daily schedule, and so [...] professionally speaking, according to me, every lawyer should go through it. Definitely. But, is it possible to find enough time and will – that is another question.”* (Croatia, attorney at law, male)

Overall, while most participants confirmed that training programmes offer valuable knowledge and can significantly improve practices in the child justice system, workload issues and financial difficulties (both for individuals and for programmes) prevent many from taking part in training opportunities.

## 6.4. Training participation

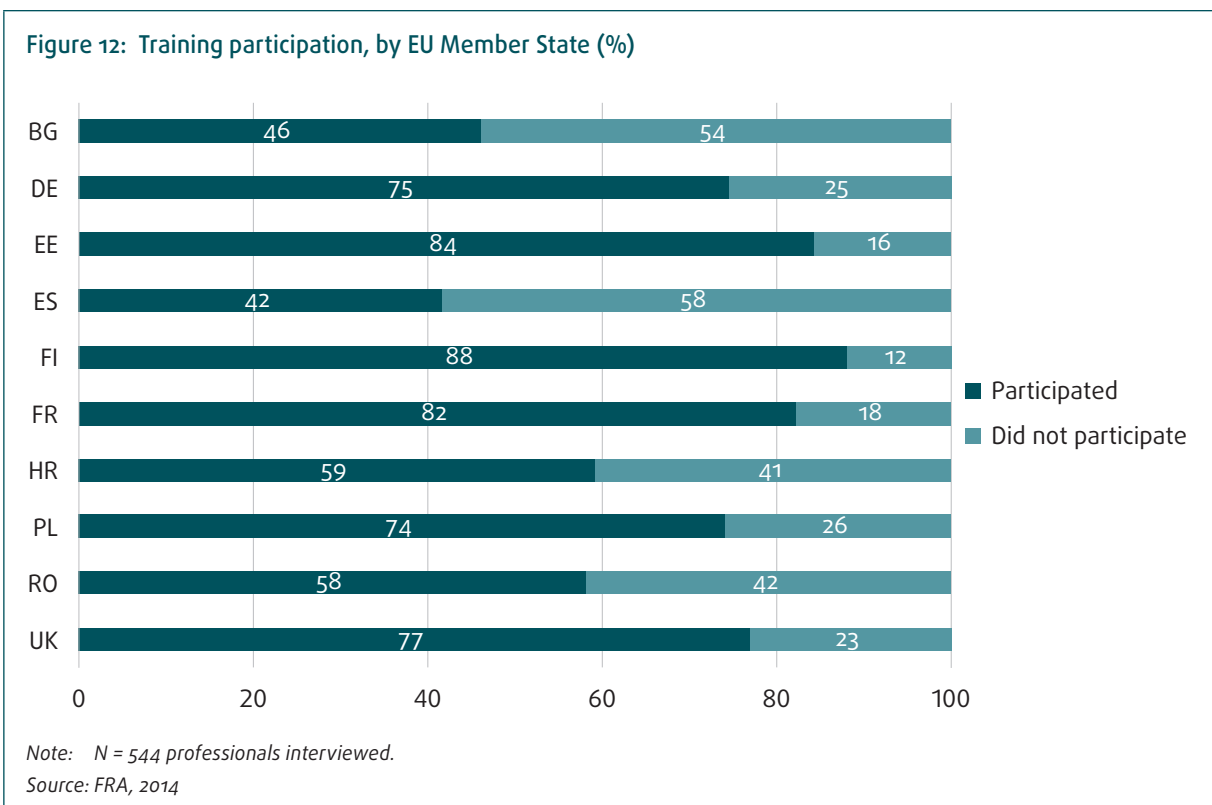
### 6.4.1. Participation of professionals in initial and/or continuous training programmes

More than two thirds of all interviewees working in either the criminal or civil justice field (or both) have

participated in some form of training: 68 % of interviewees (372 of 545) said that they have attended training programmes on child justice issues, as opposed to 32 % (173 of 545) who have not.<sup>60</sup> Participation rates for criminal and civil justice are similar: 65 % (134 of 207) of criminal justice and 68 % (132 of 183) of civil justice professionals<sup>61</sup> have undergone some kind of training.

As Figure 12 shows, Finland has the highest number of training participants (44 of 50) and the highest ratio of participants to non-participants. In France and Estonia, almost all interviewees have also participated in some kind of training, 51 of 62 and 43 of 51, respectively. In comparison, a slight majority of interviewees in Spain, 25 of 60, particularly legal professionals, have not attended any related training. Spain has the highest number of non-participants, and together with Bulgaria, is the only country in which the number of non-participants is higher than that of participants.

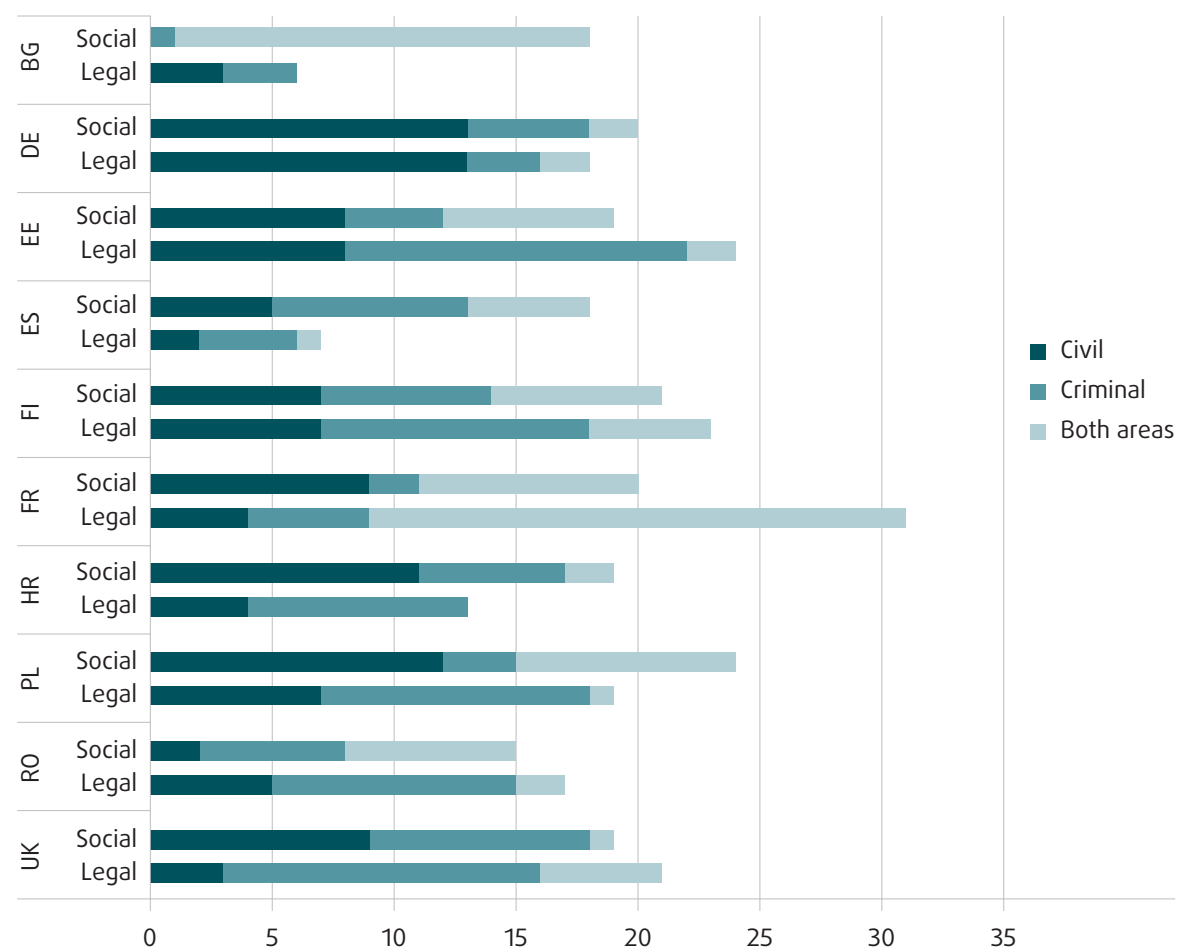
By professional distribution, France has the highest number of training participants in the legal field (31), in line with mandatory training requirements for judges, prosecutors and child lawyers. Estonia (24) and Finland (23) follow. Poland has the highest number of



60 One percent of interviewees did not detail their training background.

61 Calculated rates are limited to those who work in one field or the other and exclude those who work in both civil and criminal fields.

Figure 13: Training participation, by profession and justice field (number of professionals)



Note: N = 544 professionals interviewed.  
Source: FRA, 2014

participants in the social field (24), followed closely by Finland (21) and Croatia (20). Strikingly, only six legal professionals from Bulgaria and seven from Spain have participated in training programmes, which is very few compared to other EU Member States (Figure 13).

By justice fields, nearly two thirds of interviewees active in the criminal justice field reported having voluntarily participated in child justice training courses, some on a regular basis. Two thirds of professionals in criminal justice interviewed in Germany have done so, as have nearly all such participants in Finland and the United Kingdom. The high number of interviewees in the criminal justice field in Poland who have attended such programmes (14 of 19) is in part credited to the creation of Guidelines on Child-Friendly Hearings and the procedure of certifying child hearing rooms. In Bulgaria and Croatia, fewer criminal justice professionals have attended training sessions, and only four of 13 Spanish legal professionals have done so.

Most professionals in the civil justice field interviewed in Estonia, Finland, France, Germany and Poland have participated in some sort of training. Their participation is in most cases voluntary, since in civil law taking part in training programmes is generally not mandatory. In Estonia, the vast majority of legal and social professionals in the civil justice field have taken part in such programmes, and almost half of them have participated in child-related and legal training sessions. In Germany, nearly three quarters of the civil law legal professionals interviewed have received some sort of additional training, and more than half of the social workers interviewed have taken the 12–15-month interdisciplinary occupational course required to become a certified psycho-social legal counsel.

One pattern to emerge from the data from Bulgaria, Croatia, Germany, Poland and Spain is that social professionals are more likely than legal professionals to undergo training on child justice issues (Figure 13). Professionals

report this gap in their interviews and reflect it in their responses: 59 % of legal professionals have participated in training programmes (179 of 285) compared to 72 % of social professionals (193 of 263). In Bulgaria and Spain, only one in four legal experts has taken part in child justice training sessions. Over half of those interviewed in Croatia have participated in training of some sort, but interviewees reported there were no minimum requirements for their jobs as child justice specialists aside from their formal education, which contradicts the legal requirements reported in Table 11. In Romania, while the data on actual training courses on child issues are unclear, numerous interviewees complained about the lack of specialisation among the professionals working with children involved in judicial proceedings. Many judges in Estonia said they would like more knowledge and training on child hearings, but social workers perceive them as reluctant to make use of the social professionals' knowledge and skills during the actual hearings.

One reason behind the disparate legal and social participation rates may be that children rarely attend courtroom trial hearings in several countries (Finland, Germany, Poland and Spain). Instead, most of the hearings are conducted by social professionals, or in their presence. This does not, however, guarantee that a trained social professional will always hear a child. According to Spanish respondents, when children are required to be heard in a courtroom, they encounter professionals who rely only on their experience and presumed sensitivity but not necessarily on any specific child hearing training or child communication techniques. One Spanish prosecutor felt there was a need for more training in the courtroom.

*“Despite you wanting to talk to them in a language that they understand, taking off your robe and sitting down with them, trying to play at something.[...] The prosecutors are not prepared, we are not psychologists, we don't know how our questions could affect that child.”* (Spain, prosecutor, female)

*“I think that they [judges] are not even trained. It cannot be said that the specialisation comes with the experience [...] we are currently calling ‘professionals’ many people who are not. [Skills recycling and information do not exist.]”* (Spain, lawyer, female)

The disproportion in training participation between legal and social professionals within the field of civil justice is much higher than in the criminal justice field, with 54 % (56 of 103) of legal civil justice experts having participated in training courses compared to 83 % (76 of 92) of social civil justice experts (as opposed to 66 % of legal, or 83 of 126; and 78 %, or 63 of 81 social experts trained in the criminal justice field). In Croatia, for example, only four of 13 legal professionals have taken part in training programmes, as opposed to 11 of 12 social professionals. In Spain, two of nine legal professionals

compared to five of seven social professionals have attended such programmes.

**Importance of training:** The interviews made clear that in the majority of criminal and civil cases, the need to have trained people to work with children is crucial, as a lack of training results in bad practices and can cause children emotional and physical harm.

*“We should not allow a case to fail as a result of the incompetence and lack of experience of investigators, prosecutors, investigating policemen and/or judges or law enforcing bodies in general, when it could have been solved by an experienced professional. At some point people get disappointed by the justice system. Where is the problem? The problem is the lack of training of these officials, of us, of the state. This lies in our competence.”* (Bulgaria, judge, male)

#### 6.4.2. Types of training courses that professionals attend

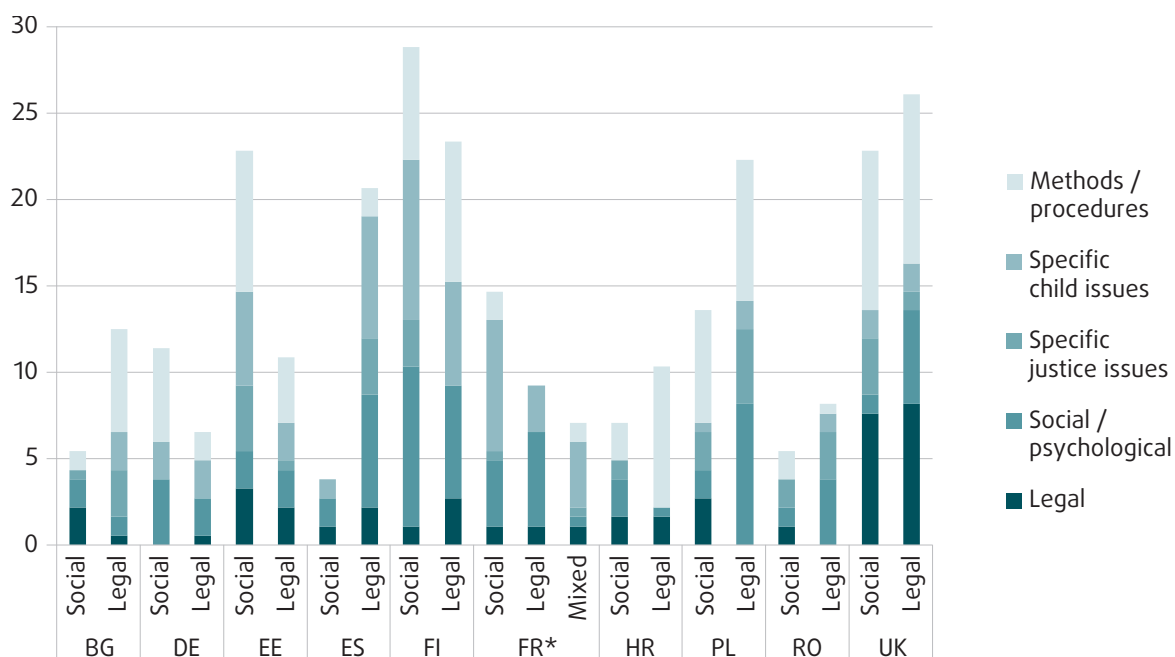
Responses suggest some heterogeneity in both criminal and civil justice in the types of child justice trainings professionals attend. The most common types of training programmes relate to procedures and methods (such as how to conduct children hearings), social/psychological matters, and specific child issues such as child victims' support, child rights, domestic violence, and separation and divorce (Figure 14). Social and legal professionals are fairly evenly matched in terms of legal training courses (40 legal professionals participated in specific legal training courses, as have 45 social professionals). But only 52 legal professionals took part in social/psychological training courses, compared to 77 social professionals.

In several countries, participation in some types of training is more or less equally distributed between legal and social professionals. This is the case for training in methods and procedures in Finland and Poland, and for both methodological and legal issues in the United Kingdom (Figure 14). A comparatively high number of legal professionals also underwent training in methods in Estonia and Germany, and in specific child issues in Estonia, Finland and France. Many social professionals have taken part in social/psychological training sessions in Finland, Poland, Spain and the United Kingdom. In some countries, this type of training sees the highest disparities in participation levels between legal and social professionals (Poland, Romania, Spain and the United Kingdom).

Patterns of participation among respondents do not always match their reported impressions of participation. Although more German legal professionals in this study have undergone training in social or psychological issues than German social professionals, for instance, most social workers in Germany complained of insufficient training among legal professionals, particularly



Figure 14: Training course types (number of professionals)



Notes: N = 544 professionals interviewed.

\* France also interviewed 14 additional professionals with both a legal and social background who participated in training courses.

Source: FRA, 2014

concerning easy language and non-verbal communication. Social professionals in several countries pointed out the lack of training available to them on specific justice issues such as legal matters, methods and procedures. A number of legal respondents in Estonia, France and Germany observed that social professionals seem to lack in-depth knowledge of legislation, which can be particularly problematic when preparing children for hearings or explaining legal processes to them. Given that the actual participation of social professionals in training courses on legal issues reported in this study is comparable to that of legal professionals, this could indicate that more specialised legal training is required.

## 6.5. Training satisfaction

Most respondents in Estonia, Finland, Germany, Poland and the United Kingdom said that the amount of training offered to legal and social professionals was satisfactory and of good quality, confirming that they used their new skills in their work. Participants in Estonia considered the most useful training sessions to be those where experienced people combined judicial theory with their practical experiences and expertise. Lawyers in Finland noted that seminars were a useful forum for meeting other professionals, across disciplines. One family judge in Germany described how the training had confirmed and reinforced her existing techniques:

*“A lot of things [...] where I had the feeling that I’ve done it somehow intuitively right before, maybe, but of course it’s good once to hear how to do that right from a psychological view, and then be able to correct mistakes, and see to it that you also keep up with these guidelines a little bit. I wish there were many more training [courses], because there are absolutely none in judicial education.”*  
(Germany, family judge, female)

While training programmes were generally effective and of good quality, respondents still recognised areas where improvements could be made. Social professionals in Estonia complimented the work of police investigators with special training on child issues, but many suggested that the courses available did not sufficiently cover certain specific issues, such as working with children with special needs. Some respondents in Estonia and France also complained that training courses adopt an overly theoretical and general approach that do not allow them to tackle specific issues appropriately. Legal professionals in Germany and the United Kingdom said that while advances had been made in recent years, there was still a need for judges, counsels and lawyers to be given more training on how best to interact with and question children.

In other countries, there is either a general lack of training or noticeable gaps between the number of legal and social experts trained in child judicial proceedings. The majority of interviewees working in the criminal

justice field in Bulgaria and Croatia felt undertrained and wished to rectify this. Bulgarian professionals complained that both training itself and information about it were lacking. Croatian professionals in both justice fields criticised the scarcity of training programmes available from institutions tasked with the development of such programmes, such as the Judicial Academy and the Bar Association.

*“[...] The psychologist, family judges should receive training about how to conduct child hearings, about child psychology, because that’s what he needs to know besides his expertise. We are now left to ourselves, so you alone have to read, to inform yourself, to educate yourself and I hear the same from other judges in Croatia, you alone have to get the literature, immerse yourself in it, because you love it and you are doing it and it’s important to you, you do it for yourself and your work, but it should be systematically organised as both the judge’s right and the judge’s obligation. The judge who wants to deal with cases under the Family Act should have this obligation. So you have to go through it to know what to do. As doctors go to trainings until the end of their lives.”* (Croatia, judge, female)

In Romania too, many respondents complained of insufficient training and the lack of specialisation among the professionals working with children involved in judicial proceedings. Only a quarter of the professionals interviewed in Romania have participated in training courses or similar activities (and not all training courses were necessarily focused on children). Respondents reported instances of problematic interactions with police officers, and noted that numerous social professionals lack training in legal issues. Moreover, several participants highlighted the difference between professionals ‘specialising’ in cases with children and professionals ‘designated’ to handle such cases. Although specialised panels or sections might exist, the magistrates designated to work in such panels/sections might or might not have received special training on working on cases involving children.

*“No, although that I worked many, many years [...] and I still work in specialised panels. Unfortunately, training wasn’t given to judges specialised in [...] working with children.”* (Romania, judge, female)

Some participants from the United Kingdom criticised the lack of training available to professionals in the civil justice field, compared to the opportunities given to those in criminal justice. Civil legal professionals in the United Kingdom who found it difficult to access any training relating to children felt that access to some of the training available to legal professionals in the criminal justice field would be very valuable:

*“There has been a substantial emphasis on criminal training in the region and I don’t think it has been as sufficient on family training [...] I think regional training should be expanded to include training in civil law and also family law.”* (United Kingdom, judge, male)

Respondents from all countries expressed a desire for more specialised training in general, with a particular emphasis on the need for more systematic training for judges, given their often decisive role in determining how a child will be heard, as stressed by respondents from Bulgaria, France, Germany, Poland and Spain.

While there are many training opportunities available to judges in France, they are not organised systematically; some judges for family affairs reportedly consider themselves unequipped to conduct hearings and are more likely to delegate interviews to social professionals. All of the Bulgarian civil judges who were interviewed expressed an interest in child hearing training, but none of them have ever participated in training programmes. A civil lawyer in Bulgaria who has received a lot of psychological training said there was a need for more widespread training, so that professionals can work within a similar frame of understanding. She said she feels very lonely when she tries to explain child psychology to judges, prosecutors, social workers, etc. in her practice.

*“The more trainings I get, the worse I feel in the courtroom as the others do not understand me.”* (Bulgaria, attorney at law, female)

More training is also needed for social workers, especially in small cities with less access to training courses. A social worker from Finland said that the municipalities constantly organise courses for social workers but how much and what kind of training depends on the municipality and its resources. Finnish social workers interviewed from outside the metropolitan area wish for more training. A number of social workers in different countries also stressed the limited legal component of their training.

## 6.6. Other factors influencing a professional’s capacity

While respondents agreed on the need for training, they also highlighted several other factors that influence a professional’s suitability to work with children involved in judicial proceedings. These factors concern: personality; personal experience, such as having children, and multidisciplinary cooperation.



## Personality and natural aptitude

While most respondents agreed that training is useful for learning how to work with children in the justice system, a number of them also emphasised the importance of personality and natural aptitude, presenting these as critical factors in determining those who will succeed in the field of child justice. Both legal and social professionals in Estonia stressed that having a natural aptitude for communicating with children is essential and even sufficient to successfully engage with them, and that training is not always the most suitable way of acquiring relevant skills – some professionals even believe it is not necessary at all.

*“You can’t teach tolerance and empathy. A person either has or does not have it.”* (Estonia, civil focus group)

While judges and legal professionals in Spain are reported to have undergone the least amount of training in Spain, they generally said that applying common sense and sensitivity is enough to guide them through child hearings.

*“One just has to try to explain that appropriately to the age but this is not predetermined, [it occurs] somehow intuitively. And one looks whether they understood it. I do it in such a way that I let them explain it to me again, in [their] own words, [checking] whether they can actually repeat it or not.”* (Germany, police officer, female)

## Parenthood

A number of professionals also believe that the role of parenthood gives professionals who are parents some instinctive abilities that training cannot provide. While respondents in Poland regarded training as important and worthwhile, most believed that the ability to talk to and deal with children comes more ‘naturally’ to women and to those who have children themselves. The large number of female professionals, social and especially legal, assigned the task of hearing children, testifies to this point. Similarly, two judges from Bulgaria pointed out that judges who are also parents do not need any training, as they can rely on their parental instinct.

*“Maybe some training is really needed here. Because – well I have three children, I lean on my experience with them, but if a young man, who has just entered this work, goes and conducts the same hearings, I don’t think he has anything to lean on, whether he will make it and if he understands at all what he must do, because there are no guidelines.”* (Estonia, lawyer, female)

Some social professionals, however, pointed out that experience with one’s own children does not necessarily confer the skills to deal with children in the justice system. One social worker in Germany observed that judges tend to believe themselves well prepared for child hearings if they have children themselves, ignoring the significant difference between their own children and the traumatised children they face in hearings. A social worker in Spain commented that judges’ lack of training on children’s hearings may mean they do not take into account important variables such as the child’s sexual identity, which may deeply affect children’s declarations.

*“The judge can adjudicate, the judge can talk with the child, but not with every child and not without the psychologist present and all the judges could use additional training so as to learn how to conduct the hearings with the child and to learn how to assess certain situations. Private experience is the danger zone. What does it mean, ‘I have kids’? I don’t have to be the perfect parent because of it. If I’m good for my daughters, am I good for someone else’s daughter? How much do I actually know this child who comes here for half an hour? And he/she is under stress.”* (Croatia, judge, female)

## Peer-to-peer and multi-agency cooperation

Many also highlighted that professional skills may be developed in other ways besides training, such as through multidisciplinary cooperation. Professionals from the United Kingdom considered that sharing best practices with colleagues and attending conferences or workshops were valuable ways to learn about and adopt legal or procedural changes. French respondents pointed out the importance of work experience, and that exchanging practices was the best way to learn, and more experienced interviewees in Croatia emphasised that obtaining some on-the-job experience was the best form of training. The Polish interviewees include a group of respondents who have not been trained, but who have many years of experience and a profound knowledge in the area of child-friendly justice, forensic psychology, etc. They act as experts in the field, and have conducted multiple training courses themselves.

*“It’s true, I’ve been a family judge for many years and I have extensive experience. And in my view directing a newly appointed judge to a family court is a mistake.”* (Poland, judge, female)

## Ways forward

Many perceive there to be a lack of specialisation and of adequate training on working with children across all professional areas in the child justice system. Respondents believe that legal professionals would benefit from training on how to interact with children, while social professionals would gain from training on child-related legislation.

### General and in-service training for all professionals in contact with children

- EU Member States should ensure that professionals dealing with children have appropriate mandatory

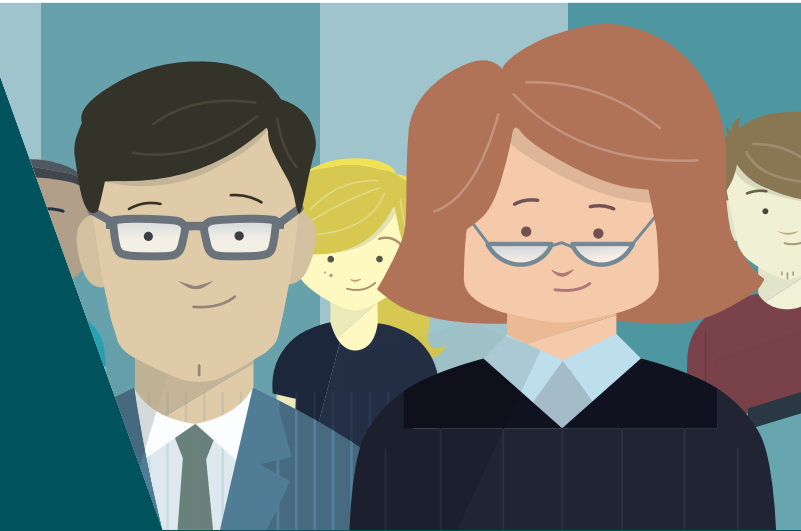
training on child rights, communication with children and child-related legislation. This includes not only judges and prosecutors but also front-line practitioners such as police officers and court staff.

- Training courses should be organised at a national level, with harmonised curricula, to provide equal opportunities for professionals to receive instruction and to avoid unequal treatment of children depending on where they live.
- Training should also be complemented by supervision and multidisciplinary exchange of practices among professionals.



# 7

## Multidisciplinary cooperation



### Multidisciplinary cooperation

The *Council of Europe Guidelines on child-friendly justice* (paragraphs 70 to 72 of the General comments) ask member states to ensure close cooperation between different professionals. The various aspects of the child's situation, such as legal, psychological and cognitive issues, should be assessed by different professionals (lawyers, psychologists, police, immigration officials, social workers and mediators) working in close cooperation with each other, and thus based on a common framework.

Multi- and interdisciplinary cooperation helps facilitate proceedings and decision making. It can take many forms. It can refer to general forms of cooperation that are part of a fundamental approach to proceedings or that relate to specific cases. It can also exist across many axes: within one professional group or between different professions (such as teamwork between social and legal professionals), within or across different justice fields (such as civil/criminal procedural harmonisation), or a combination of both (such as judges and social workers exchanging good practices or working on cases with children that are involved in both criminal and civil proceedings).

*"You are in an adversarial system but at the same time it is a collaborative process and I don't know of any legal practitioner around here who doesn't work in that sort of framework. It is collaborative."* (United Kingdom, social worker, male)

Several countries have formalised agreements or protocols to encourage professional cooperation. Most multidisciplinary cooperation, however, exists on an informal basis, centred on personal networks and connections. Respondents reported examples of successes and failures among both formal and informal systems of cooperation, and it

is unclear whether one system has the advantage over the other. Despite the successful examples, however, such systems are widely lacking across EU Member States.

This chapter presents practices and procedures of both formal and informal multidisciplinary cooperation and their relationship to training, addressing:

- formal cooperation;
- informal cooperation;
- effects of multidisciplinary cooperation:
  - How successful are formalised methods of cooperation?
  - How successful are informal cooperation networks?
  - What is the effect of training on multidisciplinary cooperation?

## 7.1. Formal cooperation

### Criminal proceedings

While not necessarily mandated by law, several countries have adopted agreements or protocols to foster multidisciplinary cooperation. In Croatia, Finland, France, Poland and the United Kingdom (England and Wales), formal procedures exist to facilitate cooperation between professionals working with children in criminal proceedings (see also [Section 1.1.4.](#)). Finland and the United Kingdom (England, Wales and Scotland) additionally prescribe a joint approach by police officers and social professionals. In Croatia, judges are often dependent on social professionals from Centres for Social Welfare to inform their decisions: children are mostly interviewed by their psychologists, and judges base their decisions on their written reports and sometimes on in-person testimony. Social professionals' roles and responsibilities in such structures not only demonstrate their effective

collaboration with legal professionals, but also the importance for them to have legal training and guidelines.

Other professionals reported that successful models of cooperation exist in practice, but outside of official protocol. Several interviewees in Finland referred to models of cooperation in adult and child abuse cases between health services, social services and the police, known as the MARAK method. A Finnish police officer mentioned the sexual crime group (SERI), which occasionally holds meetings of police officers, social welfare and healthcare officials in the municipality of Vantaa.

Similarly, professionals from both civil and criminal fields emphasised the value of various French professional groupings and platforms (see Chapter 6 on training). A three-pronged judiciary platform (*trinôme judiciaire*), for example, groups the prosecutor's office, judges for children and services for the Judicial Protection of the Young. At this platform, experts discuss general coordination and policy issues, as well as occasional individual situations. The design of protocols to set up and run France's medical/legal units (*Unités d'Accueil Médico-Judiciaires*) was also seen as conducive to the cooperation and coordination of all actors.

#### Promising practice

##### Devising models of multidisciplinary cooperation

Most interviewees in Germany mentioned some kind of cooperation with other professionals involved in court proceedings. They referred to a wide variety of formats of cooperation, such as consultations, joint case reviews, working groups and roundtables, annual or biannual conferences and formal cooperation models. Several regions of Germany have also established formal models of interdisciplinary cooperation. The Göttingen Model (*Göttinger Modell*), for example, formalised the interdisciplinary cooperation of professionals involved in criminal proceedings, mainly in cases of sexual abuse. The Association for Juvenile Support and Justice Court Assistance (*Vereinigung für Jugendhilfe und Jugendgerichtshilfe e.V.*) links legal experts, social workers, probation officers and other actors in the field of child victim protection.

#### Promising practice

##### Establishing specialised multidisciplinary units for child victims

France has established some 50 specialised multidisciplinary medical and legal units in hospitals (*Unités d'Accueil Médico-Judiciaires*) across the country to help with criminal proceedings. These units often connect families and children with victim support NGOs on site right after the examinations. They also gather together child hearings, medical and psychological examinations. These centralised programmes ensure that interviews and examinations take place in a child-friendly setting. They also streamline the process – avoiding unnecessary delays and multiple examinations.

#### Promising practices

##### Establishing inter-disciplinary departments to support victims

The NGO Save the Children Romania has an inter-disciplinary department that assists child victims before, during and after judicial proceedings. It is composed of a lawyer specialising in child rights, a psychologist, a social worker and an educational psychologist.

In Spain, several autonomous communities also have victims' support offices, such as Andalusia's victim support services (*Servicio de Atención a las Víctimas*) and Catalonia's office of victim support (*Oficinas de Atención a las Víctimas*). These offices have multidisciplinary teams (lawyers, psychologists and social workers) who support children involved in criminal or civil proceedings. The teams prepare and accompany victims throughout the process. Some have standardised protocols for informing children and often include pre-trial visits to court facilities; child hearings also sometimes take place at the offices themselves. They also offer the valuable service of educating the parents as well, explaining the judicial process and advising them how to discuss these issues with their child.

##### Learning from children's safe houses in Norway

As of May 2014, Norway has established 10 children's houses across the country. These houses are not only physical shelters but also a cooperative cross-sector measure that coordinates professionals working with child victims of sexual violence. The houses are run by teams with diverse professional backgrounds and expertise on sexual and physical abuse. Interviews, medical examinations and treatments are carried out at the same location to ensure that the child does not have to be moved from one place to another and is not forced to repeat his or her story.

For more information see <http://brage.bibsys.no/xmlui/handle/11250/175090>



## FRA ACTIVITY

## Mapping the situation of victim support services in the EU: An overview and assessment of victims' rights in practice

The FRA started the first independent overview of victim support services in the EU in November 2011, at the request of the European Commission. The project will provide EU Member States with concrete examples of different practices in the area of victim support, based on an analysis of what currently exists at Member State level. It will review current practices and gaps at national and regional levels and provide an overview of different models of victim support, from which 'promising practices' can be highlighted as a basis for further development and enhancement of victim support. Another central objective of the project is to give an overview of how current victim support service provision in practice, across the 28 EU Member States, compares with the objectives and goals for victim support set out under the Victims' Directive. The findings will be made available in 2015.

Plans are also underway to publish a specialized report on victim support structures in relation to hate crime. As well as looking at what victim support structures exist to specifically assist victims of hate crime, the report will examine the legal and organisational framework of measures addressing hate crime in all EU Member States. It will also assess how professionals working in the field view the gravity and development of various forms of hate crimes, including where they see deficiencies in policies, institutions and measures responding to hate crimes and where they believe that improvements would be particularly important.

For more information, see <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services>.

### Civil proceedings

Interviewees gave fewer examples of multidisciplinary cooperation in civil proceedings. Civil law has fewer requirements for such formal cooperation, even though civil proceedings can be very long, for instance in high-conflict custody cases, and multidisciplinary cooperation is seen as one important tactic to reduce their length. The 'tandem models' in the United Kingdom and Finland are positive developments in this respect (see the [promising practice in Section 1.5.3](#).)

German respondents also reported positively on several examples of cooperation in civil proceedings, such as the Cochem Model (*Cochemer Modell*), which established regional cooperation between professionals involved in family law proceedings in part of the

Rhineland Palatine in 1992, and has since been adopted and modified in other regions.

#### Promising practice

### Coordinating criminal and civil investigations

The Munich Model (*Münchner Modell*) in Germany establishes guidelines for coordinating criminal and civil investigations to avoid multiple child hearings, particularly in cases of domestic violence and sexual abuse. It mandates that child hearings be video recorded, after which the recording is passed to children's services and shared with the investigators. It intends, through close cooperation and the providing of immediate information to all parties to the proceedings (lawyers, child protection services, experts, legal counsels for the child), to aid parents in finding a solution for custody or access-rights issues.

## 7.2. Informal cooperation

Although FRA gathered a number of examples of structured interdisciplinary exchange, the most common forms of collaboration are informal relationships or groupings that have developed independently of institutional structures. Many EU Member States reported personal networks as key to multi-sector cooperation. Respondents focused on the importance of effective communication channels and information sharing, as well as the benefits of a good relationship within multidisciplinary teams.

While not necessarily mandated by policy, respondents in Finland and the United Kingdom described various established cooperation practices between legal and social professionals. Interviewees in the criminal justice field in the United Kingdom saw interaction and cooperation among legal and social professionals as essential to creating positive perceptions of the justice system amongst children. They identified interactions between police officers, registered intermediaries and the Child Protection System during the investigative stage as pivotal moments for the delivery of quality support to children. They also pointed to pre-trial interactions between Witness Services and court staff. Many respondents in the United Kingdom also emphasised the importance of sharing best practices amongst colleagues and with other professionals in the same area through conferences, workshops, seminars and even more informal regular emails or telephone contacts. Similarly, respondents from Finland reported that regular multi-professional meetings allow experts to familiarise themselves with the procedures other

professionals use, agree on practices and compare experiences.

Promising practice

**Benefitting from informal victim support programmes**

Victim Support Finland is staffed by volunteers rather than justice professionals, and is relatively informal. However, like professionals, the volunteers accompany children throughout court proceedings and offer them consistent support and guidance. Support persons have a prominent role in informing children and their parents, and they provide emotional support throughout proceedings. They have an understanding of criminal proceedings from a victim’s point of view, and as they do not have an official role in the proceedings, they are neutral and unbiased when providing information. They also help refer the family to aftercare services.

Promising practice

**Enhancing cooperation through internet forums**

A Finnish police respondent said the police have an internet forum where officers share information about issues related to sex crimes, such as guidelines, High Court decisions and authorities’ contact information. This communication channel helps align practices nationwide.

A judge in France pointed out the website ‘Jafnet’, where judges for children and family affairs can discuss practices together.

A focus group in the United Kingdom described an internet-based project to provide training material for lawyers. The project, a collaboration between academics and registered intermediaries, will provide advice on how best to cross-examine vulnerable witnesses through an ‘advocates gateway’.

In Estonia, respondents explained that non-governmental organisations set up networking gatherings of different professionals. Most of the interviewees in Romania described various forms of cooperation in cases involving children, and presented a long list of institutions that might cooperate in the context of criminal proceedings – police units, prosecutors’ offices, courts, lawyers, child protection authorities, probation services, anti-trafficking authorities, guardianship authority services, migration authorities, gendarmerie and NGOs. These informal networks are particularly prevalent and useful in smaller, rural areas, where most professionals know

each other. While the previously mentioned models of cooperation in Germany are well-regarded and considered good practices, personal relationships seem to be the basis for cooperation in smaller areas that may not have the resources to independently establish more formalised models.

**FRA ACTIVITY**

**Conducting focus groups**

As part of this research, FRA conducted multidisciplinary focus groups in both criminal and civil justice. In these moderated forums, legal and social professionals shared their views and experiences. Participants could first reflect on their country’s existing practices, and then build upon each other’s experiences to identify good practices and develop ideas to improve and enhance child-friendly judicial proceedings.

**7.3. Impact of cooperation**

**7.3.1. Formal cooperation structures**

Formalised procedural cooperation has in general resulted in positive multidisciplinary exchanges, according to interviewees. Polish professionals said that the Polish Code for Criminal Conduct, which requires multidisciplinary cooperation, has led to the establishment of a very successful system, and the cooperation between judges and/or prosecutors and psychologists is the closest such cooperation in the criminal field. German professionals speak very highly of Germany’s various cooperation models, and many think that these models should be replicated country wide. In Croatia, the vast majority of professionals in the civil justice field believe that child participation in custody proceedings only exists thanks to inter-disciplinary and inter-institutional collaboration. Apart from a few comments on the inability of professionals from Centres for Social Welfare to meet court deadlines due to a heavy workload, both sides seem to assess this collaboration positively.

One interesting research finding, however, is that in-built collaboration or formal models do not always ensure successful cooperation. Judges in Spain, for instance, as in the civil justice field in Croatia, often rely on social professionals to gather child testimony. But while the majority of Spanish respondents deemed cooperation to be satisfactory, a number of social professionals would like to improve cooperation with legal professionals and stressed that social professionals are not given enough information about how proceedings develop and court decisions are issued. Under Romanian protocol, social professionals are sometimes present

as support persons during hearings, as in many other EU Member States. However, several Romanian social professionals complained that even if they are present, they are not allowed to have an active role in the proceedings. They are usually prohibited from intervening even when they see that a child is confused and doesn't understand the legal terminology being used. A few legal professionals expressed a similar concern, emphasising that in most cases, the law does not stipulate that social experts should take an active part. Both of these cases are examples of child hearing protocols that should theoretically boost multidisciplinary cooperation, but which, interviewees said, actually highlight the lack of communication between professionals.

In Bulgaria, many professionals in both the criminal and civil justice fields spoke of the *Coordination mechanism for work with abused children* as a good example of a structure of cooperation, as it organises a multidisciplinary team in the Child Protection Department to respond to reports of child abuse. Some of the social professionals interviewed are satisfied with the team's work under the coordination mechanism. Many others, however, seem disappointed. A number of the shortcomings relate to the lack of cooperation between institutions. Interviewees mentioned prosecutors missing meetings, police officers failing to inform the protection department of complaints filed or giving contradictory information about what exactly their powers are. They also said social services may fail to follow up on cases or work primarily with documents, not with people. The overall impression is that despite a concrete format of cooperation, the multidisciplinary mechanism still depends on stakeholders' personal relationships and on the team members' personalities. An NGO psychologist warned of the particular danger of individuals affecting procedures in smaller towns.

*"We again get to the point of who knows whom in the respective institutions, even to the personal partnerships between the people representing the institutions. I could not say that these good practices would take place if we follow the regular procedure. You cannot be sure whether the abuser will know the social workers or will be friends with one of the police officers in town. It is then that we face the most difficult cases. We have come into serious confrontations with the institutions because of this."*  
(Bulgaria, psychologist, male)

### 7.3.2. Informal cooperation structures

While often praised across all Member States researched, more informal networks come with a host of related difficulties, many of which derive from the need to further clarify the roles and responsibilities of the cooperating parties.

Problems in collaboration sometimes stem from misunderstandings or the mistrust of different professionals.

Several interviewees in Croatia insinuated that there were conflicts or 'turf wars' between individuals and/or professional groups involved in child participation in justice. As an example, while a large city's medical institution has child-friendly facilities for child hearings, only two judges have opted to use them. A number of professionals in France said that judges and lawyers have a rather individualistic approach, and that there is particularly little contact with judges, aside from the communication of assessment-related documents. As a result, they have observed some evidence of mistrust among professionals, although they reported that it could be easily dissipated. A Polish psychologist also reported that she sometimes struggles to cooperate with young prosecutors, as they may put too much pressure on the children being interviewed. These examples all indicate occasions where an improved understanding of the role and perspectives of other professionals could improve and speed up legal proceedings.

Some interviewees stressed that when too much is left to the discretion of those involved and there are not enough protocols of collaboration, personalities can get in the way of cooperation. While many individual examples of collaboration exist in Romania, for instance, there are no national and clear methodologies to guide the cooperation of professionals to ensure that a child receives support before, during and after the hearing. As some interviewees said, the quality of collaboration depends on the level of specialisation and training of each specialist, the financial, material (including equipment) and human resources of each institution, the extent to which each actor understands the role and limitations of other actors and personal relationships developed over time. Most of the time the interaction is poor and sporadic, and cooperation is inefficient.

Communication in Estonia was generally judged to be good, but respondents often stressed the need for a cooperation plan and a formal institutional cooperation network. Approximately a quarter of the interviewees in the civil justice field criticised multi-sector cooperation, pointing out that when this cooperation is based on personal relationships rather than institutional partnerships, individual personalities can hugely influence its success. This can be an especially big problem for newcomers, who have not yet established relationships with other specialists working in the field.

Interviewees in France and the United Kingdom also raised the issue of newcomers facing problems. Interviewees in the United Kingdom whose role within the criminal justice system had been introduced relatively recently, such as registered intermediaries and specialist young witness services, found some initial resistance to their professional involvement. They reported needing to make significant efforts to establish their credibility with other professionals.

*“A huge number of [our] cases are with someone who perhaps has never used an intermediary before, so you are having to start [over again] with all the information and all the building up of relations.”* (United Kingdom, registered intermediary, female)

A similar problem was raised by ad hoc administrators in France, whose status in court proceedings has not been clearly defined. Some ad hoc administrators reported making efforts to negotiate their role in the courtroom, finding themselves in *“relationships of bargaining”* (France, Social worker) with judges.

### 7.3.3. Impact of training on multidisciplinary cooperation

A number of interviewees offered interesting examples of connections between training and cooperation, crediting training opportunities with improving interdisciplinary dialogue and building personal relationships. A staff member of a French child rights NGO described how training programmes can help participants to see beyond their own specific duties.

*“We work in separate chapels. It’s complicated and it’s not innate to work in a multidisciplinary way. The more we do multidisciplinary training, the more we will be able to work in a multidisciplinary way.”* (France, NGO, female)

Some professionals emphasised that receiving more training in specific aspects of child hearings would not only help to solve the problem of a frequent lack of communication between the children and those who are conducting the hearings, but would also encourage communication between all of the parties engaged in judicial proceedings by establishing a shared understanding of each other’s roles and expertise.

In the civil field in Estonia, training courses are sometimes organised to bring together different groups of experts, both legal and social, and networking is considered an important element. Many respondents in Poland credit the popularity of new training courses in child hearing practices with an increase in interdisciplinary cooperation. One French professional reported that a region-wide and year-long multidisciplinary training programme on child victims of sexual violence (*Éspace d’accueil de la Drôme pour les mineurs victimes de violences sexuelles*) not only increased the competence of all actors, but also built bridges between professionals.

In the United Kingdom, colleagues considered that sharing best practices and attending conferences or workshops were valuable ways to learn about and adopt legal or procedural changes:

*“Jointly attended conferences and seminars are really good. [...] There might be some good formal presentations then there’s opportunity for workshops and people can get together. It’s a lot easier to learn from small groups of people.”* (United Kingdom, registered intermediary, female)

They also highlighted the benefits of collaborating with more experienced colleagues:

*“If juniors in chambers came across a situation where a child was going to come and give evidence, they would automatically come and find somebody senior in chambers.”* (United Kingdom, family lawyer, female)

## Ways forward

Respondents believe it is crucial that the various professionals involved coordinate and co-operate throughout proceedings to ensure that justice is child-friendly, and that children are better prepared, informed, protected and supported.

### Cooperating to achieve best practices and results

- EU Member States and professional associations should promote institutional cooperation and a multidisciplinary approach, providing funding for related training courses.
- The respondents believe that the professional coordination mechanisms needed to promote a multidisciplinary approach are lacking, which means that practices are not harmonised and proceedings are delayed. Member States should ensure that such mechanisms are put in place. Standard operational procedures among professionals should also be promoted to foster cooperation.



# Conclusions

*“While the law is super, we’re still working on embedding it in practice.”* (United Kingdom, lawyer, female)

The findings point to different practices among and within EU Member States, depending on the severity and types of cases, as well as the approach individual judges or other professionals involved adopt.

The 2014 European Commission study identifies the most and least common safeguards for children involved in judicial proceedings. FRA research shows that some of the most common ones face concrete implementation barriers. Professionals do not describe them, for example adapting the settings to children’s needs, as standard practices. Professionals also repeatedly emphasised the importance of some less common ones, such as adapting information to the child’s level of understanding or using a multidisciplinary approach. The issues, areas of improvement and promising practices identified in this research should help move child-friendly justice forward in EU Member States and enhance compliance with international standards.

## Diverse professional viewpoints

Professionals often have different or even opposing viewpoints, requiring that a delicate balance be struck when protecting children’s best interests. Disagreement centres principally on whether or not a child is heard and if so how many times, the amount and form of parental involvement and the number of people/professionals who should be involved and in which roles and functions.

Professionals dispute the importance of being heard, particularly in civil proceedings. There is more consensus in criminal proceedings, where the child’s testimony is regarded as very important and necessary evidence. In civil proceedings, though, many professionals say that children should not necessarily be heard, to avoid, for example, drawing the child further into the family conflict. Others, however, see this as better fulfilled if the child is heard more than once. He or she then has another chance to give additional relevant statements and viewpoints. This debate reflects the need to balance children’s right to participation with their need for protection, the latter a requirement for effective and child-friendly participation. All respondents agree that the number and length of hearings are to be kept to a minimum, by implementing safeguards such as video recording or video conferencing of hearings.

Whereas parents are frequently seen as having a primary role and responsibility in supporting and informing

the child throughout the proceedings, many respondents point to the risks of parental bias and undue influence, particularly in civil cases. They also emphasise that parents themselves may find it difficult to understand the intricacies of the legal process and to cope with the stress of being involved and/or having their children involved in judicial proceedings.

Most professionals support the idea of having one specifically trained professional acting as the child’s main contact person and accompanying him or her throughout the proceedings. Such a person can ensure a consistent provision of information and continuous support and protection, while also reducing the risk that the child is confused by too many contacts at different stages of the proceedings. Quite a few interviewees signalled, however, that professional quality may be an issue, since it is not automatically ensured and often not properly monitored. There could also be issues of potential bias of and/or dependence on one particular person. This suggests that an additional person, preferably from a different professional field, should also be made responsible for ensuring that the child is adequately informed, supported and protected.

## Harmful practices

Professionals interviewed agreed almost unanimously on avoiding certain very bad practices that inflict harm upon children, scaring, intimidating and even re-traumatising them. Procedural safeguards are not always granted to children regardless of their role in the proceedings. In criminal proceedings, witnesses generally have fewer safeguards than victims, and in civil proceedings witnesses and parties have fewer procedural safeguards than plaintiffs.

Of most concern is the missing protection in criminal proceedings that some countries report. Children are reported to be in contact with the defendant before, during or after the proceedings. Sometimes, for example, the defendant is present during the hearing itself, and the defendant’s lawyer is allowed to cross-examine the child directly. Countries with safeguards for the hearings themselves but not for before or after them also have this problem. Encounters occur between a child and the defendant and/or the defendant’s family while they await the pre-trial or trial hearing. Some disturbing examples are also given concerning the hearing of children, for example when professionals repeatedly question their credibility.

Another major concern in both criminal and civil proceedings is the contact between children and parents when



the parents themselves are parties to the proceedings. This could occur, for example, when a parent is one of the accused parties or when children are drawn into parental conflict during custody disputes. Common procedural safeguards are not necessarily standard practice and barriers to their implementation should be decreased, so that they are used more consistently and address all children independent of their age and role in the proceedings. This applies in particular to the systematic use of child-friendly hearing facilities (including waiting areas), video links, screens and video-recordings.

Overall, interviewees are concerned that proceedings are frequently very long and hearings repeated unnecessarily. Avoiding undue delay and prioritising cases involving children should be common safeguards.

Respondents across EU Member States reported a lack of support and information throughout the proceedings. This applies in particular to preparing children for hearings or following up on their well-being after hearings have ended. Provision of information should be much more targeted. Adapting information to children's age, maturity and level of understanding and taking into account any communication difficulties they may have should become more common, including through the (shared) development, production and use of child-friendly information material and services. The child's understanding of this information should be checked.

Interviewees repeatedly explained that time and resource constraints meant some measures were not implemented, and that professionals could not receive sufficient training.

Though most professionals interviewed appear to be very committed to making judicial proceedings as child-friendly as possible, personal practices are not necessarily reflected upon and questioned. Practices and procedures are often based on individual judgments and experiences rather than standardised procedures, training or input from multidisciplinary cooperation. When promising practices are in place, professionals assess the procedures as much more child-friendly.

When FRA completes its interviews with children on their experiences, the findings will help clarify the potential impact of current practices in judicial proceedings on children and which ones are beneficial or particularly harmful.

Respondents also said that the human and financial resources allocated are insufficient. Judges and social professionals are generally perceived to face heavy workloads and are understaffed. The resources allocated do not correspond to the case load and the needs of children involved in legal proceedings. Even in countries judged to have a robust national legislative

framework, austerity measures are seen as potentially jeopardising its implementation or the existing good practices measures.

## Guidelines and training

Professionals made it very clear that there are several, not necessarily resource-intensive, solutions for tackling the issues raised. Findings show that if these are implemented properly, the treatment of children improves significantly.

In general, guidelines on how to inform, hear, support and protect children when they are involved in judicial proceedings are regarded as extremely important in safeguarding the child's well-being. Guidelines need to outline the techniques used to interview children, the facilities hearings take place in, the material used to inform children and to guide parents and professionals, the people responsible for informing, supporting and protecting the child, and how these practices should be monitored. These guidelines, together with clear, specific legal requirements on child rights, lead to the standardisation of procedures and facilitate the implementation of consistent, monitored practices. Standardised procedures should not only apply to a specific professional group, such as police officers or legal representatives, but to all those who are part of judicial proceedings involving children. Furthermore, they should not apply only to certain case types, such as sexual abuse cases, or to certain types of proceedings, such as criminal, but should instead address all groups of children regardless of their role in the proceedings. The development and use of such guidelines need to be seen in connection with the training and multidisciplinary cooperation of professionals.

Training and multidisciplinary cooperation of professionals involved in proceedings are key to ensuring child-friendly justice. Interviewees considered professional behaviour at all stages of the proceedings to be much better when professionals had received training. They emphasised the importance of training on child rights, child hearing techniques and child development. According to the professionals, children should only be in contact with specialised and trained professionals throughout the proceedings, with those professionals informing, preparing, hearing, accompanying and looking after children. Training should be tailored to different professional groups, to accommodate their specific roles, which also implies the need for multidisciplinary cooperation, exchange and harmonised curriculums. Formal multidisciplinary cooperation should become a more common safeguard. A step towards the more systematic use of multidisciplinary cooperation would be an exchange of the promising practices the professionals have identified within and across countries.





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# Annex 1: Methodology and interview questions and schedule

## Methodology

The fieldwork research was based on interviews and focus groups with professionals who work with children before, during, and after juridical proceedings. FRA designed the research and national-level experts, contracted by Franet, carried it out.<sup>62</sup> The experts asked professionals about practices, experiences, assessments and suggestions for improvements regarding how children actually participate in judicial proceedings, inquiring, for example, about minimum participation ages and types of support. To prepare the questions, FRA took into account both academic and desk research, which identified the most pertinent issues by collecting information on national legal provisions on the participation of children in court proceedings.

The key thematic areas were selected after consulting with experts and stakeholders, based on the guidance provided by the Council of Europe Guidelines on Child Friendly Justice concerning the right to be heard, the right to information, the right to protection and privacy, the right to non-discrimination, as well as the principle of best interests of the child and other key issues such as training and the multidisciplinary cooperation of professionals. Throughout the research, national fieldwork teams distributed the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*<sup>63</sup> to all the participants and key contact points, such as judges, prosecutors, lawyers, law enforcement officials, legal counsellors, social workers and psychologists, who were also asked to distribute them further.

FRA provided detailed instructions and interview schedules to national fieldwork teams. It also organised meetings prior to the beginning of the fieldwork to ensure a common approach regarding sampling criteria, the selection of respondents, interview and focus group questions and data gathering. To facilitate comparative analysis and guide the collection and write-up of results, FRA developed a 'reporting template' for all interviews and focus group discussions. To ensure quality, FRA closely followed up the work of the national fieldwork teams through bi-weekly progress reports and feedback loops on fieldwork development, reporting material and the interviews themselves.

<sup>62</sup> For an overview of Franet contractors in each EU Member State, see: <http://fra.europa.eu/en/research/franet>.

<sup>63</sup> Language versions, including almost all EU languages, of the Council of Europe guidelines are available for download and in print at: [www.coe.int/t/dghl/standardsetting/childjustice/publicationsavailable\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/publicationsavailable_en.asp).

All questions for interviews and focus groups, as well as informed consent forms, were first translated from English into the respective national languages of the countries included in the research, then translated back into English to check for equivalence, and finally revised accordingly ('back and forth translation'). FRA checked for quality and consistency between the original English language version and the translation, to ensure the comparability of results between countries. The translated consent forms were filled in, signed and returned to FRA after the finalisation of the research. All interviews and focus group discussions were recorded in audio format and forwarded to FRA with the written, informed consent of interviewees, and with appropriate data protection measures in place. National fieldwork teams destroyed any copies they held after executing the contract's services. For the purpose of quality control, FRA reviewed at different project stages the recordings, alongside a number of their transcriptions.

## Interview schedules

Individual interviews lasting 45 to 90 minutes were conducted face-to-face, and in a few cases over the phone. They were based on a pre-tested semi-structured interview schedule, mainly containing open questions following a set agenda. Depending on the answers, interviewers were free to change the question order. This flexible approach made it possible to accommodate all respondents, regardless of professional background, role, function and whether they were involved in criminal, civil or both types of proceedings. There were no questions on experiences with children suspected or accused in criminal proceedings.

## Focus groups

Focus groups were conducted as a moderated form of group discussion with a prepared set of questions, the order and emphasis of which could be adapted to the discussion flow. They aimed to enable exchanges between and among different participants and to gather their viewpoints, to identify commonalities and differences in their experiences and perceptions. Participants could thus first reflect on existing practices and then build on each other's experiences to identify good practices and develop ideas to render justice proceedings more child-friendly. The national fieldwork team in each EU Member State covered by the research conducted at least one focus group on criminal proceedings and one on civil proceedings, which lasted between 1.5 and 2.5 hours. Five professionals of a social work or humanities and legal background generally participated in each group.



## Respondents

Before, during and after judicial proceedings involving children, different professionals, such as police officers, judges, prosecutors, psychologists and social workers, engage with them. Based on the contextual legal information on national justice systems and regulations, the research selected a mix of respondents with different professional backgrounds, to examine their different perspectives and develop a comprehensive analysis. For the analysis, these professionals were grouped into two broad categories:

- legal professionals: judges, lawyers, legal counselors, prosecutors, other court staff, as well as guardians or other legal representatives, mediators and law enforcement officials (although this variety of professional backgrounds, roles and specialisations was represented in the sample, there was a focus on judges, prosecutors and lawyers);
- social professionals: social workers, psychologists, and other professional staff of victim support services and relevant NGOs.

Professionals belonging to these groups engage with children in different ways during proceedings. Social professionals may conduct child hearings themselves or be part of the proceedings as observers or supporters of the child. In some countries, trained psychologists are most likely to conduct child hearings, whereas in others law enforcement officers or judges with varying degrees of training in child hearings conduct them.

Prior to the fieldwork, the national fieldwork teams proposed a list of respondents to FRA for approval (convenience sample). The list included descriptions of the potential respondents’ responsibilities and the reasons for selecting them. FRA sought to achieve a balanced sample of respondents, taking into account:

- those involved in both **criminal** and in **civil** justice proceedings;
- those involved in different types of cases;<sup>64</sup>
- those dealing with different age groups;
- their professional background, their type of involvement in the proceedings, as actors or observers, their

**Table A1: Number of professionals selected and interviewed, by EU Member State**

EU Member State	Legal				Social						Total
	Criminal	Civil	Both areas	Total	Criminal	Civil	Both areas	Total	Additional focus group participants	Mixed	
BG	11	9	4	24	2	3	23	28	1	n/a	53
DE	7	19	3	29	14	5	3	22	1	n/a	52
EE	15	9	1	25	6	9	11	26	1	n/a	52
ES	13	8	6	27	14	7	12	33	0	n/a	60
FI	11	6	8	25	6	11	8	25	0	n/a	50
FR	7	5	13	25	2	12	12	26	0	14	65
HR	17	13	0	30	10	12	2	24	2	n/a	56
PL	14	8	7	29	5	13	11	29	1	n/a	59
RO	13	9	8	30	10	8	7	25	2	n/a	57
UK	18	17	6	41	12	12	1	25	0	n/a	66
<b>Total</b>				<b>285</b>				<b>263</b>			<b>570</b>

<sup>64</sup> As an illustration: in civil justice cases, respondents chosen could be dealing with cases relating to parental responsibility, including custody and access rights. Although a focus was laid on family law, the sample should also include respondents dealing with cases particularly frequent in the respective country, such as cases relating to asylum and migration or placement in care. For criminal justice cases, respondents may be involved in cases where children are victims of violence, sexual abuse, or where they are witnesses of sexual abuse and domestic violence. Although a focus was laid on cases of domestic violence and sexual abuse, the sample should also include respondents who were dealing with cases particularly frequent in the respective country, such as cases on child trafficking.





- specialisation regarding children and their specific training regarding child hearings;
- those involved in different courts/tribunals, including specialised courts, and different instances, jurisdictions or regions.

## Data analysis

FRA chose a team-based approach to analyse the data systematically, following an iterative-inductive process aimed at exploring the responses comprehensively. At least two FRA team members, acting as country experts, independently read and analysed country-level results, cross-checked with each other and then held several rounds of team meetings to cross-validate the country-specific notes for all countries. FRA used these country notes to assess the reports submitted by the national fieldwork teams, checking for potential gaps, differences and similarities in priorities and conclusions, and for potential bias. The guiding principle of the data analysis was to identify patterns regarding repetitions, agreements, contradictions and particularly striking statements. The comparative analysis was based on the reporting templates filled in during the fieldwork research with information from the interview transcripts, and was followed by several rounds of team meetings to identify similarities and differences across and between countries. Any patterns identified were cross-checked with the reporting templates, interview transcripts and country reports. FRA complemented the analysis by compiling good practice examples, areas of improvement and illustrative elements such as quotes, pictures and any other material interviewees provided.

To provide an overview of the findings by country, FRA created tables showing the structural and process indicators used in the analysis of the evidence collected through research. Data populating the structural indicators stem from the study of the European Commission on national legislation. Data populating the process indicators stem from FRA's own fieldwork research, are based on professionals' statements about existing measures in their countries (see [Annex 2 'Overview of structural and process indicators', available online](#)). The information contained in the overview tables relates to FRA's analysis of the outcome of the European Commission's study on national legislation for the structural indicators, and FRA's analysis of the professionals' interviews and focus group discussions for the process indicators.

Where indicators are populated using results from qualitative research they should be read as indicative of a situation. In this respect, the table identifies as 'usually implemented' legal provisions (structural indicators) or practices (process indicators) for which most respondents indicated that they were implemented. When respondents considered that these were only partly

implemented, e.g. only existing on a local or regional level, the table identifies them as 'partly implemented'. When respondents considered that provisions were only rarely or not at all implemented and no systematic practices could be identified, the table identifies them as 'not implemented'.

Based on these indicator tables in [Annex 2](#), FRA compiled overview tables, which are inserted at the beginning of Chapters 1 'Right to be heard', 2 'Right to information' and 3 'Right to protection and privacy'. These overview tables reflect the population of indicators according to a point system, in which 1 point is attributed to an indicator that is 'usually implemented', 0.5 to one that is 'partly implemented', and 0 to one that is 'not implemented'. Country scores were then compared using scales of diverse ranges, all starting at 0, and with the highest score corresponding to the total number of indicators within a given table. Each scale was divided into three separate sections, reflecting the three different levels: 'usually implemented'; 'partly implemented'; and 'not implemented'. Different colour shades show this in the tables.

## Next steps in the research

FRA completed its interviews with child-justice professionals in 2012 and is now focusing on interviewing children who are directly involved in judicial proceedings either as parties to the proceedings, such as in the context of divorce cases or regarding decisions to place children in care in civil law proceedings, or as witnesses or victims of crimes in criminal law proceedings. In this way FRA also promotes the right of the child to participation, a guiding principles of the Convention on the Rights of the Child, as well as one of its basic challenges.

## Conducting interviews with children

The second phase of this research includes a preparatory component undertaken in 2013 to examine the requirements for conducting interviews with children, identify the appropriate channels to reach and contact children, and develop the protection mechanisms, methodologies to be applied and instruments to be used when interviewing children (through desk research, consultations with children and adults, and pilot interviews). Based on the conclusions resulting from this preparatory phase, FRA began in 2014 to conduct interviews with children from the EU Member States included in the research (for more information, see <http://fra.europa.eu/en/project/2012/children-and-justice>).

These interviews will or will not mirror the effects of promising practices described by adult professionals, and will indicate which practices are particularly helpful. Initial results from child interviews are already clarifying some of the perspectives and themes of child involvement:

- children want to be heard;
- professional behaviour is more important than a hearing’s setting;
- social professionals’ support is always much appreciated and in most cases assessed positively;
- unfortunately, children have not always felt sufficiently protected – it seems that in many countries, children have been unlucky enough to encounter inappropriate behaviour by professionals, such as defence lawyers or police officers, and too many have met the accused, if not during the hearing, then while waiting for the hearing;
- information is welcomed, particularly pre-trial visits to familiarise children with court settings.

- Non-discrimination
  - Protection
  - Effects of changes in legislation
  - Link to research
  - Feasibility of research with children
  - Awareness of Council of Europe guidelines
  - Recommendations
4. Closure: Short questionnaire on socio-demographic data of interviewee and interview setting

## Interview questions and schedule

### A) Basic outline of interview schedule (Master document)

1. Part 1 – Basic information on the interviewee and contextual aspects
  - o Interviewee profession, background, work area, institution
  - o Type of cases (e.g. civil or criminal proceedings) or issues interviewee works on
  - o Special qualifications
  - o Interviewee’s organisation
2. Part 2 – Vertical issues relating to proceedings and how children are heard/informed
  - Area 1. Right to be heard
    - a. Practices in organisation/institution
    - b. Personal experiences
    - c. Assessment of children’s understanding
    - d. Assessment of impact/consequences
    - e. Good practices/improvements
    - f. Importance of child hearings
  - Area 2. Right to information
  - Area 3. Training of professionals and multi-disciplinary approaches
3. Part 3 – Horizontal issues on overall assessment of child-friendliness of justice proceedings
  - Overall assessment of weight given to children’s views and best interests of the child

### Meaning of symbols used in master document of interview schedule

**Please note: in the fieldwork phase separate documents need to be printed out for the different professional groups and justice fields.**

Symbol	Meaning
<i>Text in italics</i>	<i>Instructions for the interviewer</i>
<b>Text in green</b>	<b>Refers to the physical settings and material used during the proceedings: if possible, please ask to see the settings and materials of child hearings and always ask for consent to take pictures. No pictures shall be taken of any persons; the pictures shall only serve to visualize and demonstrate particularly child-friendly material and physical settings for later reports.</b>
-	Optional question as a backup for clarification, if not yet answered with the first general question
[ ]	Aspects for the interviewer to check, if the interviewee is not sure how to answer the question or just gives a very brief statement
→	Filter questions with regard to the previous answer

When applicable, different colours are used for different professional groups and justice fields:

- Question specifically for legal professionals
- Question specifically for social professionals
- Questions specifically in the field of criminal justice
- Questions specifically in the field of civil justice



## B) Interview Schedule (Master document)

*Introduction (communicate orally as close as possible to the text)* "Thank you very much for the opportunity to interview you on your experiences with child participation in criminal and civil justice proceedings, particularly with regard to child hearings when children are witnesses, victims or part of the proceedings."

*Check:*

- Introduce yourself and FRA (hand out information sheet about FRA)
- Hand out and read information for informed consent
- Ask for approval to audio record the interview and/or take pictures of material and settings (if applicable)
- Signature of respondent consent form
- Start audio recording

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### Part 1: Questions concerning context (profession, background, work areas, institution)

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*Instruction (read aloud):* "First of all, I have some general questions about your professional background, your work and the organisation you are working for:"

#### 1. Could you please tell me briefly about your current job and the judicial proceedings and cases/ what issues you are mainly working on?

*Please check that the interviewee provides information on:*

- professional background
- job title
- main tasks and responsibilities
- specific area of expertise
- justice field: criminal justice, civil justice, or both?

#### 2. In which way and to which extent does your work involve children?

*Please check that the interviewee provides information on:*

- length of experience
- role of children: children as witnesses, children as victims, children as part of judicial proceedings?
- generally working with children or more on specific issues: domestic violence, sexual abuse and/or custody and visiting rights within divorce proceedings?
- specific training and courses relating to children and justice (CHILD DEVELOPMENT/ SOCIAL WORK/PSYCHOLOGY/LAW)

#### 3. Could you please tell me more about the organisation or institution you are working for? Please check that the interviewee provides information on:

- departments (# of judges, # of cases)
- type of organisation: public, private, NGO etc.
- type of funding (state, EU, donors)
- role in the organisation/institution
- extent to which organisation/institution works with children

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### Part 2: Questions concerning elements of child-friendly justice (Vertical issues)

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*Instruction as introduction into Area 1 (to be communicated orally as close as possible to the following text):*

*"In the following sections, we would like to ask you about your personal experience regarding specific aspects of child participation during judicial proceedings. Those aspects cover areas such as child hearings, information given, protection and safety as well as training of professionals. We are interested in learning about the practices in your organisation and how you apply them, as well as your assessment of those practices in relation to the role children play."*

#### Area 1: Right to be heard

#### 4. In judicial proceedings and cases where you are working, what are the rules and procedures for child hearings? Please describe them in detail.

*If unclear, please check whether the interviewee talks about:*

- civil or criminal justice
- children as witnesses, victims or part of or involved in the proceedings
- issues of domestic violence, sexual abuse, custody and divorce, or others

→ *If there are rules and procedures, please check that the interviewee provides information (those questions are more likely to be answered by professionals from the legal side):*

- length, frequency and time of hearing
- type of professional hearing the child
- other professionals involved
- other people present
- material used (e.g. booklets, pictures shown)
- age of children involved
- physical settings (rooms for child hearings, environment, etc.)
- measures taken to ensure a child-friendly and protective environment
- differences in rules and procedures with regard to role of the child: witness, victim or a part of the proceedings



- **consideration of personal situation and background of the child, such as: age, ethnic or national background, gender, potential language or learning difficulties, disabilities, etc.**

**5. Are you personally involved in child hearings?**

- *If yes: How do you conduct child hearings?* Please describe them in more detail.
- *If no: What is your opinion on the way that child hearings are conducted?* Please describe them in more detail.

*Please use the following questions to get the most concrete picture as possible, making clear distinctions between whether an action is that of the interviewee or if it is a rule/procedure in place (some of them may not be necessary if they have already been covered by the interviewee):*

- How old are the children in the hearings? In which way are they different with regard to age or role of the child (**victim, witness, party of proceedings or involved in any other way**)?
- Is there a mandatory age for hearing children? If yes, what is it?
- What criteria are used to decide whether or not to hear children?
- Who is conducting the child hearings? Who else is involved in the child hearings and how? What is their background?
- Who is present during child hearings? [**e.g. presence of parents, legal guardians, legal representatives, media and public, the accused person in criminal proceedings**] What is their role? What criteria are used to decide to allow parents or other people to attend (or not)?
- How are different parties informed and prepared on how to interact with the children?
- How are children informed about the child hearings? Is there an opt-out option if a child does not want to be heard?
- At what stage of the proceedings are child hearings conducted? How frequent? [**e.g. pre-trial process**]
- How long do they last?
- Where are the child hearings conducted? [**e.g. location, room; arrangement when waiting to be heard**]
- What techniques are used? [**e.g. video-recording, videoconference, use of testimonial aids**]
- What considerations are taken into account to ensure the appropriateness according to the child's age and maturity? Are there criteria

- to assess a child's maturity? If yes, what are they? Who decides on the child's maturity?
- Who is responsible for monitoring that the child is being heard? At what stage of the proceedings? [**e.g. pre-trial proceedings, post-trial follow-up; police, judge; monitoring arrangements**]

- 6. How do you think children perceive/feel about child hearings?** Based on your experience, what may make them feel uncomfortable? What may make them feel positive about them?
- 7. How do you think child hearings influence the outcome of the case?** How much weight would you say is given to the child's viewpoint?
- 8. Can you think of some positive initiatives of child hearings?** What else could be done to improve child hearings?
- 9. How important do you think child hearings are?** What specific aspects of child hearings do you regard as important? Why?

Area 2: Right to information

- 10. In the settings where you work, what are the rules and procedures for informing children about the proceedings?** Please describe them in detail.  
*If unclear, please check whether the interviewee talks about:*

- **civil or criminal justice**
- **age of children**
- **children as witnesses, victims or part of the proceedings**
- **issues of domestic violence, sexual abuse, custody and divorce or others**

- 11. Are you personally involved in informing children about the proceedings?**

- *If yes: How do you inform them in practice?*
- *If no: What is your opinion about the way information is given to the children?*

*Please check that the interviewee provides information on:*

- **type, format, content and amount of information**
- **material used and produced by whom**
- **access to information**
- **age of children**



- people providing information
- other people involved
- when and where information is given [pre-trial proceedings, post-trial follow-up; police, judge; monitoring arrangements]
- measures to ensure a child-friendly and protective environment [With regard to material, setting, language used, forms of communication, profile of the communicator]
- differences in information provided with regard to role of the child: witness, victim or a part of the proceedings
- consideration of personal situation and background of the child (such as age, ethnic or national background, gender; potential learning, language or learning difficulties; disabilities)

**12. To what extent do you think children understand the proceedings and the information they get?**

- What aspects would you say influence their understanding? What helps, what doesn't?
- How is the child's understanding assessed?
- What happens if children do not seem to understand the information given?

**13. What effect do you think the information given (or not) have on the children? In which way? [child's best interests]**

**14. Can you think of some good practices of children being informed or things done to ensure children's understanding? What else could be done to improve children's understanding?**

**15. How important do you think is the information given to children? What specifically do you regard as important? Why?**

Area 3: Training of professionals and multidisciplinary approaches

**16. Are there any courses/training provided for professionals involved in child hearings (short courses, professional development courses, etc.)?**

→ *If no:* Why not? Would you like to receive training?

→ *If yes:* Please describe them in more detail. [minimum standards for involvement required when dealing with children]

- What types of training exist? Are there any obligatory training courses? [on questioning, forensic interview, child communication]
- Who gets training?

- How are training courses developed and conducted?
- How do you assess the quality and impact of such training?

**17. Have you personally received any specific training on working with children and child participation?**

→ *If yes:* Please describe the training in more detail. [content, format]

- How would you assess the impact of that training on your work?
- Have you applied in practice some of the things you learned in the training? Has it changed the way you work or the way you interact with children?

**18. How important do you think it is to be trained with regard to child hearings?**

**19. How do different professionals work together when children are involved in justice proceedings? How do you assess their co-operation and relationships? How would you describe your interactions with other professionals?**

[with whom, how frequent, what is the quality of the interactions, possible improvements?]

[between judges, lawyers, psychologists, police, prosecutors, social workers or peer professionals; in particular with regard to the criminal field: examples of multi-disciplinary teams for the investigation and the assistance provided]

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**Part 3: Questions concerning overarching issues relating to the best interests of the child – horizontal issues**

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*Instruction (read aloud):* "In our last section, I would like you to think of the wider justice context where child hearings take place. I would like you to personally assess the proceedings with regard to the weight given to children's views, their rights awareness, and recommendations on how a child's interest can best be met."

Overall assessment of child-friendliness

**20. In the context of your work, how would you assess the overall child-friendliness of the justice proceedings? Please explain why.**

- What do you regard as positive?
- Where do you see possible improvements? Please give some suggestions.



### Weight given to children's views

#### **21. How much weight would you say is given to children's views?**

- How much attention is given to the personal background of the child?
- How does this differ with regard to children being witnesses, victims or participating in any other form in the proceedings?
- How is this affected by the proceedings?

### Best interests of child

#### **22. How would you define the best interests of a child? Overall, how would you say the child's best interests are met in justice proceedings?**

- What are the criteria to define 'the best interests of the child'? [determination procedures]
- How are the outcomes of the proceedings meeting the child's best interests? How often/ to what extent?

### Non-discrimination

#### **23. What role does the background of the child play?**

**[age, gender, ethnic or national origin, socio-economic situation, language or learning difficulties, disability]**

- What special measures are in place for foreign children?
- **What special measures are in place for children with special needs (e.g. children with physical, intellectual or mental disabilities)? How much are they used and what is their impact in practice?**
- **[special material for children with intellectual disabilities, interpretation and materials in different languages for migrant children, accessibility of the room where the hearing takes place, etc.]**
- What special measures are in place for children in institutional care?
- What are some examples of good practice? What else could be done to ensure equal treatment of children?

### Protection and safety

#### **24. What other measures not yet mentioned are taken to ensure the protection of the children?**

Please describe them in detail.

**[e.g. appointment of legal guardian, legal representative/assistance of a support person; potential negative effects of undue delays]**

### For criminal field:

- **What other measures are in place to prevent secondary victimisation?**
- How often are these measures taken?
- How is it decided that such measures should be taken?
- What impact do protection and safety measures have on child participation in court proceedings, particularly child hearings? How do you assess their impact?
- What are some examples of good practices? What else could be done to improve the protection and safety of children

### Final questions

#### **25. How would you assess the role of other parties (like parents, other family members or other professionals) involved in the proceedings and their impact on the children?**

#### **26. Is there any legal or policy reform which will affect the way in which children are informed or take part in civil and criminal proceedings? (please specify according to the specific changes in the country)**

→ *If yes:* Can you elaborate on the major changes and their impact?

#### **27. Are you familiar with any research in the area of child participation in justice proceedings?**

→ *If yes:* Can you tell us about some of the findings?

#### **28. How feasible do you think it is that children participate in further research on child-friendly justice?**

*Try to obtain concrete answers and specific suggestions*

- What aspects would you say need to be considered?
- What suggestions do you have for gaining access to children as potential research participants?
- What would be good channels and ways to approach them?

#### **29. How aware are you of the Council of Europe guidelines on child-friendly justice?**

→ *If yes:* How much do you work with the Council of Europe guidelines on child-friendly justice?

- In what regard/to what extent?
- How applicable do you think they are?

### Recommendations

#### **30. To conclude, what other recommendations would you give to ensure child-friendly justice?**





## Annex 2: Indicator overview tables and national legislation and policies

Annex 2 provides an overview of the findings by country, showing the structural and process indicators used in the analysis of the evidence collected through its research on child-friendly justice. It also gives an overview of national legislation and policies in the 10 EU Member States studied.

Annex 2 is available online at: <http://fra.europa.eu/en/publication/2015/child-friendly-justice-professionals>.

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## HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Each year thousands of children take part in criminal and civil judicial proceedings, affected by parental divorce or as victims or witnesses to crime. Such proceedings can be stressful for anyone. The European Union Agency for Fundamental Rights (FRA) investigated whether children's rights are respected in these proceedings. FRA's fieldwork findings, based on interviews with professionals and children, show that there is a long way to go to make justice more child-friendly across the European Union (EU). Although all EU Member States have committed themselves to ensuring that children's best interests are the primary consideration in any action that affects them, their rights to be heard, to be informed, to be protected and to non-discrimination are not always fulfilled in practice. That is why the EU is promoting the Council of Europe's 2010 *Guidelines on child-friendly justice*. It aims to help its Member States improve the protection of children in their judicial systems and enhance their meaningful participation, thereby improving the workings of justice.

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