

DRAFT BACKGROUND PAPER

6TH EUROPEAN FORUM ON THE RIGHTS OF THE CHILD: DEVELOPING EVIDENCE-BASED POLICIES FOR CHILD-FRIENDLY JUSTICE

1. OBJECTIVE

The Commission Communication of 15 February 2011 “**An EU Agenda for the Rights of the Child**”¹ identifies a significant **lack of reliable, comparable, and official data** about the situation of children as a serious obstacle to the development and implementation of evidence-based policies. This is particularly evident in the context of **child-friendly justice** and the protection of children when they are vulnerable. Despite important work already carried out, a comprehensive overview of the situation of children in all types of court proceedings across all EU Member States is still lacking.

In order to address this obstacle, the European Commission will launch a **data gathering process** in view of developing child-friendly policies. This will be carried out in the context of the Pilot Project supported by the European Parliament². Among key objectives will be to gather reliable data on **children involved in legal proceedings** in the 27 EU Member States and on **missing children**.

The aim of the **6th European Forum on the Rights of the Child** is to contribute to the preparation of this Pilot Project by exchanging views in particular on:

- the key information and data needed regarding the situation of children when they are involved with the justice systems;
- the existing best practices on collecting data in this area;
- the best way to improve collection of data in this area.

2. CONTEXT

2.1. Child-friendly Justice

International standards have created a platform to adapt justice systems to the needs of children. Along with its principles³, the **UN Convention on the Rights of the Child (UNCRC)** provides concrete safeguards for children when they are involved with the justice systems, for example, rights under juvenile justice, detention and punishment, and the rehabilitation of child victims.

The **Council of Europe's Guidelines on child-friendly justice**⁴ lay down key factors that render justice systems child-friendly, taking into account the relevant international standards as well as the **European Court on Human Rights'** case law.

¹ An EU Agenda for the Rights of the Child [COM (2011) 60 final]

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

² General budget of the EU 2011, Section III: Article 18 04 11 — Europe-wide methodology for developing evidence based policies for children's rights <http://eur-lex.europa.eu/budget/data/D2011/EN/SEC03.pdf>

³ Non-discrimination, best interests of the child, child's right to life, survival and development and respect for the views of the child.

⁴ Adopted by the Council of Europe on 17 November 2010.

As highlighted in the general comment nr. 5⁵ of the **Committee on the Rights of the Child**, collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of the implementation of the UNCRRC.

2.2. Current data collection

Collecting data on children involved in legal proceedings across the EU presents a **range of obstacles and challenges**. A basic issue is a divergence of data, due to the existence of 27 **different legal systems, definitions and indicators** used by the EU Member States. Regional and national authorities, but also international organisations collect data on children in legal proceedings to different degrees and with emphasis on different areas in accordance with their policy interests. Some Member States publish national data collections on children in their annual reporting in particular with regards to juvenile delinquency and criminal justice, while children's involvement in civil and administrative proceedings is rarely covered.

International organisations, such as UNICEF through its **TransMONEE**⁶ database, have published partial data with a focus on criminal proceedings. The **Council of Europe (CoE)** has also addressed the issue of children and justice in various publications. In addition, the **Fundamental Rights Agency** has carried out extensive work on indicators on the Rights of the Child in the EU⁷, and has further elaborated them in the light of the CoE's Guidelines on child-friendly justice.

3. WHAT DATA IS NEEDED?

There is a need for different types of data regardless of the nature of proceedings in which children are involved. This would include the collection of data such as: the number of children involved in a particular proceeding, their gender, age, the duration of legal proceedings involving children, whether they are adequately represented, if so by whom and at what stage of the proceedings, whether they receive information in a child-friendly language, and whether they are given the opportunity to exercise their right to be heard. As highlighted by the **EU Agenda for the Rights of the Child** this key data is crucial in further developing justice policies adapted to the needs of children.

Beyond general types of information, there is a need for specific data relating to concrete situations in which children may be involved with the justice systems and linked to the current development of EU policies (e.g. the European Commission's Victims' Package, judicial cooperation in civil matters, asylum policy, **missing children** etc.). The data should give a real insight into the situation of children when they are involved in the justice systems and enable the development of evidence-based EU policies.

http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf

⁵ General Comment nr. 5 on the implementation of the General measures of implementation of the Convention on the Rights of the Child, Committee on the Rights of the Child, 27 November 2003

⁶ TransMONEE Data on children in Central and Eastern Europe and the Commonwealth of Independent States: <http://www.unicef-irc.org/databases/transmonee/>

⁷ Developing indicators for the protection, respect and promotion of the Rights of the Child in the European Union, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-rightsofchild-summary_en.htm
See further: http://fra.europa.eu/fraWebsite/child_rights/child_rights_en.htm

The examples below are a non-exhaustive illustration of the potential scope of data that could be collected, which should be regarded as examples of a vast array of potentially relevant data.

Criminal justice

In the context of criminal justice indicative examples of such data could be:

- The number of children heard (as perpetrators/victims/witnesses) in criminal proceedings;
- The number and age of girls/boys involved in criminal proceedings as victims of violent crimes (e.g. sexual, physical abuse);
- The number and age of girls/boys involved as perpetrators in criminal acts of violence;
- The type of sentencing of perpetrators over the criminal age of responsibility.

Civil justice

In the context of civil justice proceedings, there is less data readily available. This does not mean that children are less involved or affected. Examples of relevant data could be:

- The number and age group of children heard by the courts in cases of parental responsibility disputes;
- The number of children subjected to trans-national litigation as a result of parental responsibility disputes;
- The number of custody disputes that have been resolved through mediation or other forms of alternative dispute resolution.

Administrative justice

In the context of administrative proceedings, the focus could be on data related to areas of migration. Examples of relevant data could be:

- The number of children who are involved in court proceedings relating to asylum application;
- The number of children who are involved in court proceedings relating to irregular stay;
- The number of unaccompanied children who are involved in court proceedings relating to their legal status.

4. HOW TO PROCEED?

The EU should bring an added value through the collection and analysis of data, identification of indicators and promotion of best practices to make a concrete difference when children are involved with the justice systems, **without duplicating** the work already carried out. The Commission seeks to address these issues in **co-operation with the relevant organisations and institutions**.

- As a point of departure there should be a **mapping exercise** of the existing work in this area by focusing on existing methodologies and best practices. The process must take on board the key existing tools, and build on experience and knowledge.
- Following this process all relevant **data** should be collected and **analysed comparatively** on the basis of concrete and commonly agreed indicators. **Data gaps** should be **identified** and efforts should be made to fill these gaps, among others by identifying key data which could be collected across the 27 EU Member States. In areas where this is not possible, could we envisage **test cases**, for example through case studies or other sources of information, in order to provide an indication of the situation?
- How to address the question of **comparability of data**? In order to achieve a feasible outcome we need to focus on areas where there is already a minimum set of common standards or where it is feasible to develop new ones. There are some areas of criminal justice for example, where common denominators have been identified and equivalences in data have been established already.

The participants of the Forum are asked to exchange views on these questions.