

11th European Forum on the rights of the child

6-8 November 2017



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Children deprived of their liberty and alternatives to detention

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General background paper

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1. INTRODUCTION

All children¹ have the fundamental right to liberty and detention may only be used in exceptional cases as a measure of last resort. EU Member States are bound by EU law, including the Charter of Fundamental Rights of the European Union.² Furthermore, European countries are bound by international and European standards, such as the UN Convention on the Rights of the Child³, the European Convention on Human Rights (ECHR)⁴, the UN Convention on the Rights of Persons with Disabilities⁵ and other relevant Council of Europe's legal instruments (such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

The Commission chose to dedicate the 2017 Forum to children deprived of liberty and alternatives to detention both as a means to identify, promote and prioritise the use of alternatives to detention in a number of settings and as a practical contribution to the development and implementation of the UN Global study on children deprived of liberty.

The Forum contributes to follow up to the [12 April 2017 Communication on the protection of children in migration](#), with regard to the promotion of alternatives to detention.⁶ It also helps to pave the way for the implementation of Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused in criminal proceedings, in particular with regard to pre-trial detention and sentencing, as well as on Article 7 on individual assessments.

More generally, the Forum builds on the work done at EU level on child-friendly justice, as well as on integrated child protection systems and on de-institutionalisation (EU Structural Funds).

The Forum is organised by the European Commission in cooperation with international organisations, civil society, Member State authorities, academia and other experts, as well as other EU institutions and agencies.

The Forum will be preceded by a [side event](#)⁷ focusing on the pathways and vulnerabilities of children who are at higher risk of or affected by deprivation of liberty (their own or that of their parents), prior to deprivation of liberty, during and also resulting from deprivation of liberty, for 150 participants on 6-7 November 2017.

On the [Forum website](#)⁸, you can find a [compilation of background reading](#)⁹, with links to a range of material, a [list of international standards on deprivation of liberty on children](#)¹⁰, and a small [compilation of data](#)¹¹, an [updated list of EU acquis and policy documents related to rights of the child](#) and an [updated compilation of EU-funded projects](#). See also a [compilation of drawings and quotes by children](#) on the Forum topics. Should you wish to add to these, please write to EC-CHILD-RIGHTS@ec.europa.eu.

¹ This document uses the term 'child' or 'children' to denote human beings below the age of 18, in line with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child.

² <http://ec.europa.eu/justice/fundamental-rights/charter/>

³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁴ http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

⁶ The [European Council Conclusions of 8 June 2017](#) welcomed the Commission Communication.

⁷ http://ec.europa.eu/newsroom/document.cfm?doc_id=47826

⁸ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=128349

⁹ http://ec.europa.eu/newsroom/document.cfm?doc_id=47643

¹⁰ http://ec.europa.eu/newsroom/document.cfm?doc_id=47679

¹¹ http://ec.europa.eu/newsroom/document.cfm?doc_id=47644

1.1. Geographical scope for Forum discussions

In broad terms, the geographical scope of Forum discussions is European, with representatives invited from the 28 Member States of the European Union, Norway, Iceland, Liechtenstein and Switzerland, and the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, and the former Yugoslav Republic of Macedonia). Furthermore, all of these countries are members of the Council of Europe and bound by the ECHR.

1.2. UN Global study on children deprived of liberty

The [Conclusions of the Council of the EU on the promotion and protection of the rights of the child, dated 17 December 2014](#)¹², called on the Member States, the High Representative and the Commission to support the civil society initiative 'Call for a Global Study on Children Deprived of Liberty' in order to comprehensively collect data and statistics from across regions on the number and situation of children in detention; share good practices; and formulate recommendations for effective measures.

The United Nations (UN) General Assembly, by Resolution 69/157, invited the UN Secretary-General to commission an in-depth global study on children deprived of liberty.

The core objectives of the [UN global study on children deprived of liberty](#) are to:

1. assess the magnitude of this phenomenon, including the number of children deprived of liberty (broken down by age, gender, ethnic, social and national origin, disability and other grounds), as well as the reasons invoked, the root-causes, type and length of deprivation of liberty and places of detention;
2. document good practices and capture the views and experiences of children to inform the Global Study's recommendations;
3. promote a change in stigmatising attitudes and behaviour towards children at risk or who are deprived of liberty; and
4. provide recommendations for law, policy and practice to safeguard the rights of children concerned, and prevent and significantly reduce the number of children deprived of liberty through effective non-custodial alternatives, guided by the best interests of the child.

The key focus areas of the Global Study will be the deprivation of liberty of

- I. Children in conflict with the law
- II. Children detained because of migration and refugee status
- III. Children in institutions
- IV. Children living in prison with their parents
- V. Children associated with armed conflict
- VI. Children associated with terrorism or similar grounds related to national security.

¹² <http://data.consilium.europa.eu/doc/document/ST-17016-2014-INIT/en/pdf>

1.3. Definition of deprivation of liberty

Article 4(2) of the Optional Protocol to the UN Convention against Torture¹³ defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. A child is defined in the UN Convention on the rights of the child as any human being below the age of 18 years.

Deprivation of liberty of a child means any form of detention or imprisonment or the placement of a person under the age of 18 in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority - *UN Rules for the Protection of Juveniles Deprived of their Liberty 1990* ([Havana Rules](#)).

In order to determine whether someone has been “deprived of his/her liberty” within the meaning of Article 5 ECHR, the starting point must be his/her concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question.

Article 5(1) ECHR stipulates that:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a. the lawful [detention](#) of a person after [conviction](#) by a competent court;
- b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c. the lawful [arrest](#) or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The notion of deprivation of liberty within the meaning of Article 5(1) 1 contains both an *objective element* of a person’s confinement in a particular restricted space for a non-negligible length of time, and an additional *subjective element* in that the person has not validly consented to the confinement in question.

¹³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

The formal designation of a measure – criminal or administrative – by states is immaterial to deprivation of liberty. This means that children may *de facto* be detained even under measures which national law or practice does not formally consider the measure to constitute deprivation of liberty. Examples from detention of children in the context of migration are particularly illustrative in this regard (transit zones, centres of first arrival or first reception, other reception centres). For children in conflict with the law, this could include “educational” type institutions. A robust best interests assessment (see below) would include the necessary procedural safeguards, checks and balances to prevent unlawful deprivation of liberty and an assessment of the most suitable care and accommodation arrangements for the individual child.

1.4. Child rights approach and the best interests of the child

All participants are expected to embrace and respect a child rights approach.¹⁴ All speakers are expected to reflect what a child rights approach means applied to their remit, role and work.

[General Comment No 13 of the UN Committee on the rights of the child, para 59, definition of a child rights approach](#)

“...A child rights approach is one which furthers the realisation of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children’s evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.”

The best interests of the child are a right, a principle and a rule of procedure. [General Comment No 14 \(2013\) of the UN Committee on the rights of the child to have his or her best interests taken as a primary consideration \(Article 3 paragraph 1\)](#) provides interpretative guidance for states parties on implementation, including with regard to procedural safeguards to guarantee the implementation of the child’s best interests (Section V.B of the General Comment).¹⁵ The concept of the best interests of the child is firmly embedded in European law, including the Charter of Fundamental Rights, and, for example given more prominence in [recast proposals](#)¹⁶ under the Common European Asylum System. As stated in paragraphs 4 and 5 of GC No 14,

4. The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child. The Committee has already 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.

¹⁴ <http://www.refworld.org/docid/4e6da4922.html>

¹⁵ http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

¹⁶ http://ec.europa.eu/justice/fundamental-rights/files/rights_child/ceas_provision_on_children_table_updated.pdf

5. The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

The concept can serve as a useful entry point, especially for non-experts, to consideration of the rights of the child in full, or as shorthand for experts to encompass all the rights in the Convention. It should not be used to mean a rather cursory or superficial assessment that may result in disregard for and violations of the rights of the child.

2. KEY CONSIDERATIONS FOR THIS FORUM

The right to liberty should be clearly enshrined in law and policy. Where there are restrictions to the right to liberty, these must be narrowly defined, justified and subject to judicial oversight. A strong commitment is needed to prioritise alternatives to detention which are community-based and grounded in human rights and models of constructive and respectful engagement with the child concerned.

An ethic of care should guide all interactions with children.

The starting point for this year's Forum was the forthcoming UN Global study on children deprived of liberty: all actors need to improve the quality of data available, including on alternatives, to improve policy development and implementation as well as planning and programming, and to contribute to evidence-based policy making and outcomes for children. When discussing data, the lack of standardised definitions, even within the same country, let alone at a regional or global level, needs to be addressed, e.g. on what constitutes an 'institution' or 'liberty'. It is also vital to ensure that data can be disaggregated by age, sex and disability in order to meet the needs of those who are most vulnerable.

As discussed at previous Fora in [2012](#), [2013](#), [2015](#) and [2016](#), there is still a need to strengthen and integrate child protection systems. The [10 Principles for integrated child protection systems \(2015\)](#) are still relevant to this year's Forum discussions.

Time passes differently for children. A car journey really does feel longer for a child than for an adult [as this interactive digital representation shows](#) (be patient and keep scrolling) and we should be particularly mindful of a child's perception of time during discussions in, and follow-up to this year's Forum, including with regard to the urgency principle^{17, 18}.

3. FORUM OBJECTIVES

The overall objective of the Forum is to foster and ensure **respect of the rights of the child** in the context of deprivation of liberty by

- Promoting in all settings effective, rights-based alternatives to deprivation of liberty/non-custodial measures, guided at all times by an ethic of care, recognising that only a small minority of children in conflict with the law may need to be detained as a measure of last

¹⁷In line with the Council of Europe Guidelines on child-friendly justice:50.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

¹⁸<http://www.maximiliankiener.com/digitalprojects/time/>

resort, taking account also of global political commitments towards ending the detention of children in the context of migration¹⁹

- Fostering shared understanding of EU and international legal frameworks, standards and policies in place²⁰
- Contributing to the advancement of the UN Global study on children deprived of liberty, and encouraging Member States to financially support the study and play an active role in the data collection process to inform the study
- Raising awareness on the pathways and vulnerabilities of children in conflict with the law, at risk of or in detention in the context of migration, in institutions and whose parents are in prison
- Identifying overlaps, crossovers and interconnections in the topics discussed at the Forum, including links to broader issues such as poverty, social inclusion, disability, child protection, marginalisation and discrimination, over-representation of some groups (e.g. Roma/Travellers) in prison and in institutions; children in prison who are parents themselves; children in institutions whose parents are in prison, etc
- Hearing the voices of children affected by the situations under discussion and involving young people with direct experience in Forum discussions
- Exchanging expertise among stakeholders, and listening closely to those working in the field, such as civil society actors, national, regional and local authorities, practitioners, international organisations, EU agencies to identify, gather and disseminate good and promising practices and build on them to address current and future challenges, mobilising actors and galvanising coherent responses aligned with child rights standards
- Promoting interaction among Forum participants and networking after the Forum and reflecting the views of participants throughout the three days
- Identifying how EU funding can support and promote alternatives to deprivation of liberty, for example in the context of Member State action plans to reduce the number of children deprived of their liberty

4. STRUCTURE OF THE FORUM

The first day of the Forum (afternoon of 7 November) includes two high level plenary sessions on EU and international commitments on children deprived of liberty, as well as challenges and latest developments. A plenary session starts Day 2 with an address by the Chair of the UN Committee on the rights of the child, Renate Winter.

Young people affected by deprivation of liberty will participate in and address the Forum.

Four parallel sessions will drill down and address four broad themes (relating to the first four focus areas of the UN Global Study): children in conflict with the law, detention of children in the context of migration, children in institutions and children of parents in prison (sometimes incarcerated with their parents; in the criminal justice system).

Participants and panellists are encouraged to make connections and bridges between the topics of the different sessions, thus reflecting the importance of a comprehensive and integrated, interagency

¹⁹ See Paragraph 33 - http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1)

²⁰ See Chapter 7. This includes the Commission Communication on the protection of children in migration, Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused in criminal proceedings and other relevant EU acquis.

and multidisciplinary approach. Some children may experience or be concerned by several forms of deprivation of liberty under discussion at the Forum.

Young adults will provide testimony on their experience as children. See also a [compilation of drawings and quotes by children](#) on the topics discussed.

This year, we will increase the scope for interaction by Forum participants who are not speakers or panellists. Participants will be asked short survey questions during each session, the results of which will be collated and shared. The event app will also facilitate networking among participants.

SESSION I – CHILDREN IN CONFLICT WITH THE LAW

(e.g. legal framework, procedural safeguards, child’s effective participation in all actions and decisions concerning him or her, focus on children who are most vulnerable (e.g. learning disabilities, early school leavers, school exclusions, children who are marginalised or discriminated against), individual assessment (including Article 7 of Directive 2016/800/EU), pre-trial detention, alternative measures, diversion, non-custodial sentencing, non-criminalisation of children (e.g. status offences, children in care, minority groups, children in prison who are themselves parents, educational-type measures linked to Session III), outcomes for children, regular and independent monitoring, complaint mechanisms, redress, data collection, funding of ATD)

SESSION II – DETENTION OF CHILDREN IN THE CONTEXT OF MIGRATION

(e.g. EU legal framework, procedural safeguards including with regard to the best interests of the child principle, global context: global political commitment to end the detention of children in the context of migration, awareness of global (UNHCR) and regional (Council of Europe-PACE) campaigns, September 2017 Prague conference²¹, forthcoming UN joint general comment on the detention of children in the context of migration), EU law and policy, lawfulness of detention, availability and accessibility of appropriate alternatives to detention (ATD) and what they consist of, child’s effective participation in all actions and decisions concerning him or her, preservation of and respect for family unity, children in families, unaccompanied children, stateless children, focus on children who are most vulnerable, “protective” detention, regular and independent monitoring, complaint mechanisms, data collection, focus on reducing detention and primary recourse to ATD, funding of ATD)

SESSION III – CHILDREN IN INSTITUTIONS

(e.g. legal and policy framework including state responsibilities for children in all types of institutions (whether public, church or private), [definition of ‘institution’](#)²², estimates of number of children in institutions in Europe, procedural safeguards, alternative care, prevention of institutionalisation of children, transfer to community- and family-based care (de-institutionalisation), deprivation of liberty (DOL) as “protection” or in “best interests of the child”, educational-type DOL linked to Session I, involuntary placements, availability and accessibility of alternatives to deprivation of liberty and what they consist of, child’s effective participation in all actions and decisions concerning him or her, preservation of and respect for family unity, the use of restraints, regular and independent monitoring, complaint mechanisms, data collection, focus on children who are most vulnerable, child’s effective participation in all actions and decisions concerning him or her, funding of alternatives)

²¹ “Immigration Detention of Children: Coming to a Close?” <http://dmcprague2017.justice.cz/#home>

²² <https://deinstitutionalisation.com/terminology/>

Children may be placed in institutions/deprived of liberty for reasons such as access to education, poverty, ethnicity, disability (including that of their parents), marginalisation, drug or alcohol abuse, being separated from their parents, being orphans, living in street situations, being abused, being trafficked, or for a combination of reasons. Children with mental health problems may still be admitted to/detained in adult wards. As will be made clear by speakers, even today in 2017, children in institutions may spend their whole childhood and eventual adulthood deprived of liberty.

SESSION IV – CHILDREN OF PARENTS IN PRISON

(e.g. legal framework, procedural safeguards, children incarcerated with their parent(s), courtesy, stigma and discrimination, child-parent bond, prison staff training, child-sensitive sentencing, preservation of and respect for family unity, for children born to parents in prison importance of their birth registration and avoiding/addressing the risk of statelessness, use of EU framework decisions in respect of family ties and the child's contact with parents, building on good practice including the Italian memorandum of understanding, regular and independent monitoring, complaint mechanisms, data collection, focus on children who are most vulnerable, child's effective participation in all actions and decisions concerning him or her)

5. SIDE EVENT – PATHWAYS – VULNERABILITIES OF CHILDREN CONCERNED BY DEPRIVATION OF LIBERTY

On 6 November afternoon and 7 November morning there will be a smaller side event for a maximum of 150 people. It aims to raise awareness of the circumstances and situation of children leading to deprivation of liberty (pathways), vulnerabilities resulting from deprivation of liberty and also offer ample opportunity to consider the many intersections among the topics covered by the Forum, e.g. the high proportion of children in institutions/care who end up in conflict with the law, etc. While the Forum should focus in a very practical way on alternatives to detention (raising awareness on what they consist of, fostering their use/expansion/looking at good practice/looking at prioritisation including via funding), the side event will allow some time to consider what happens to a child prior to, during and after deprivation of liberty (either theirs or that of their parents) and thus contribute to informed Forum discussions.

As stated in the [Vulnerability Screening Tool developed by UNHCR and the IDC, with the support of the OAK Foundation](#)²³:

“Situations of vulnerability are not fixed and will change over time with changing circumstances. Certain categories of people, such as children, are readily accepted as vulnerable and in need of special care, support and protection, while for other people their individual circumstances and context are the main determinates of vulnerability. Vulnerability is shaped by personal (internal) factors and environmental (external) factors. These factors can be multiple and intersect so as to entrench and exacerbate risks of harm...”

Below you will find a rough list of vulnerability factors and pathways into and out of deprivation of liberty. The focus is on negative pathways and factors so that they may be kept in mind and

²³ (c) UNHCR and IDC, 2016 <http://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html>

addressed during the Forum and the side event. Rights-based community alternatives to detention, broadly speaking, are the positive pathways out.

Factors and common pathways of children being deprived of liberty and common pathways of children being deprived of liberty in multiple ways (e.g. an unaccompanied child or a child in care)

- Violence, abuse and neglect
- Absence of vulnerability screening/individual assessments
- Deprived of parental care
- Poverty and exclusion
- Intergenerational aspects of exclusion and marginalisation
- Discrimination
- Children with disabilities
- Marginalisation
- Substance addiction
- Sex, gender, gender identity, sexual orientation
- Minority groups
- Children in conflict with the law: prevalence of mental health issues
- Children in conflict with the law: neurodevelopmental disorders
- Children in conflict with the law: children with substance/alcohol dependencies
- Children in conflict with the law: children who have previously been in alternative care of the state
- Children with learning disabilities
- Early school leaving
- School exclusions
- Status offences (acts which are not considered offences if by an adult)
- Children who have suffered the death of parents/family members
- Children deprived of their liberty who are themselves parents
- Children who are stateless or at risk of statelessness
- Survivors of torture and trauma
- Children awaiting the processing of a claim for international protection
- Unaccompanied children who have no one to go back to in country of origin
- Victim of trafficking in human beings and children who are trafficked into institutions
- Children with a migrant background detained with their parents
- Absence of effective child friendly justice systems
- Barriers to accessing education, e.g. lack of inclusive education
- Lack of community-based services
- Financial incentives – e.g. financial incentive to keep children in institutions, especially for private sector organisations which make money providing adult care following on from child care systems
- Systems/ data – e.g. lack of joined up systems in state leading to children’s needs not being identified/met
- Lack of state understanding of private/unregistered institutions in country, e.g. absence of registration/accreditation/monitoring systems, etc.
- Unaccompanied children: age assessments

Possible harm, abuse and rights violations during deprivation of liberty

- Discrimination
- Marginalisation
- Lack of means to access justice and to challenge ill-treatment (unlawful and arbitrary treatment)
- Lack of transparency through monitoring and inspection
- Overall lack of child-friendly justice safeguards and mechanisms (including access to information)
- Absence of individual assessments/vulnerability screening
- Stigmatisation (including for children of parents in prison)
- Increased risk of violence
- Increased risk of neglect
- Increased risk of sexual, physical and or emotional abuse
- Deterioration in mental health
- Social development delays
- Physical development delays
- Psychological and emotional development delays
- Negative impact on brain development
- Separation from parents/family and lack of family support
- Being taken into state care (children of parents in prison)
- Difficulties in maintaining direct contacts with family
- Criminalisation of children in care and of runaways from care
- Further trauma to children in migration who have been exploited, abused, trafficked
- Lack of access to other rights, including the right to education
- The use of restraints
- Solitary confinement
- Lack of preparations and supports for leaving care/ageing out/reintegration post detention
- Expectation of poorer outcomes for children in care while in care, including for education

Factors and possible implications of deprivation of liberty in later life, e.g. prison, adult institutions, pathways out, etc

- Exposure to violence, abuse and neglect
- Poverty and exclusion
- Intergenerational aspects of exclusion and marginalisation
- Discrimination
- Marginalisation
- Stigmatisation
- Lack of access to education
- Lack of access to the labour market
- Mental health issues
- Neurodevelopmental disorders
- Substance/alcohol dependencies
- Early school leaving

- School exclusions
- Criminalisation of children in care and of runaways from care
- Further trauma to children in migration who have been exploited, abused, trafficked
- Separation from parents/family
- Difficulties in maintaining direct contacts with parents
- Lack of access to justice and right to an effective remedy
- Children who live/have lived in institutional settings at risk of negative outcomes (homelessness, further institutionalisation as adults, conflict with the law, etc.)

6. EXPECTED OUTCOMES

1. Better prioritisation of alternatives to detention in all settings
2. Prioritisation of an ethic of care and protection and greater awareness of how to assist children deprived of their liberty (or whose parents are deprived of their liberty)
3. Support for and contributions to the UN Global study on children deprived of liberty (input, funds, provision of data and qualitative information, ownership)
4. Increased awareness of the interconnections among different sub-themes
5. Better understanding of legal and policy strengths and gaps and detailed recommendations (addressed to EU actors (Commission, FRA, EASO), Member States, etc., to inform strategies to prioritise alternatives to detention and rights-based care and protection models of community-living in the different settings covered)

7. EU LEGISLATIVE AND POLICY FRAMEWORK²⁴

This section summarises the EU legislative framework related to the four themes, with a focus on deprivation of liberty and alternatives to detention. See the separate [compilation of international standards](#) related to the Forum themes.

7.1. [Charter of Fundamental Rights of the European Union](#) (Charter) (2000)

The Charter is directly applicable to EU institutions and agencies and to Member States when implementing EU law.

Article 24 The rights of the child

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.

²⁴ See the separate compilation of international standards related to the Forum themes at http://ec.europa.eu/newsroom/document.cfm?doc_id=47679

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

7.2. Children in conflict with the law²⁵

7.2.1. [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#)

The directive applies to children (persons below the age of 18 years) who are suspects or accused in criminal proceedings or subject to a European arrest warrant proceeding. It does not apply to other types of proceedings, in particular proceedings which are specially designed for children and which may lead to corrective or educative measures (see recital 17). This is a horizontal legislative instrument foreseeing procedural safeguards for children who are suspects or accused in criminal proceedings. It applies until the final conviction. It contains notably provisions on (mandatory) assistance by a lawyer in specific circumstances (Article 6), a particular right to information for children (Article 4), a right to have the holder of parental responsibility informed (Article 5) and to be accompanied by the holder of parental responsibility (Article 15), a right to an individual assessment (Article 7), a right to a medical examination (Article 8), rules on audio-visual recording of questioning (Article 9), safeguards in case of deprivation of liberty and detention (Articles 10-12) such as limitation of deprivation of liberty, alternative measures and specific treatment in case of deprivation of liberty, including separate detention of children from adults, a right to protection of privacy (Article 14), a right to appear in person at, and to participate in trial (Article 16), a right to legal aid (Article 18), as well as provisions on training and costs (Articles 20 and 22). UK and IE opted out (see recital 69). DK does not take part either (see recital 70). For all other Member States, the directive is binding. It needs to be transposed by Member States by 11 June 2019.

7.2.2. [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty](#)

The directive applies to all suspects and accused persons in criminal proceedings, including children. Article 5, which deals with the right to have a third person informed of deprivation of liberty, contains specific rules for children defined as persons below the age of 18 years (see Article 5(2) second sentence). The Directive foresees that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed (see Article 5(2) first sentence). With the purpose to avoid that children could be held incommunicado Member States need to make sure that at least an authority responsible for the protection or welfare of children is informed in cases where a possible temporary derogation is applied²⁶ (see Article 5(4)). Recitals 52 and 55 contain additional explanations. UK and IE opted out

²⁵ DCI is drafting a manual for Member States about the right to access to a specialised lawyer for children based on the five EU directives in the framework of their “My lawyer, my rights” project (see <http://www.mylawyermyrights.eu/>)

²⁶ Member States legislation may allow for derogations only where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

(see recital 58). DK does not take part either (see recital 59). For all other Member States the directive, which had to be transposed by 27 November 2016, is binding.

7.2.3. [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#)

Directive 2012/13/EU applies to all suspects and accused persons in criminal proceedings, including children. It provides for the right to information about procedural rights (Article 3). According to Article 3(2) Member States shall ensure that the information provided for under para 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons. Moreover, recital 26 foresees that "competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition." In case of arrest or detention (Article 4) and in European Arrest Warrant proceedings (Article 5), a written Letter of Rights shall be provided. The directive also ensures for suspects and accused persons (including children) the right to information about the accusation and the right of access to the materials of the case. This directive is binding for UK and IE, both opted in (see recital 44). Denmark does not take part in this directive (see recital 45). It had to be transposed by Member States on 2 June 2014.

[Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#)

Directive 2010/64/EU does not contain any specific separate provisions for children but generally applies to child suspects/accused during criminal proceedings and proceedings for execution of a European Arrest Warrant. Article states that 2 Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. Interpretation should also be available for communication with legal counsel. This directive is binding for UK and IE, both opted in (see recital 35). Denmark does not take part in this directive (see recital 36). It had to be transposed by Member States on 27 October 2013.

7.2.4. [Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States](#)

Article 3.3 of the Framework Decision on the European arrest warrant includes, as grounds for mandatory non-execution of the European Arrest Warrant, cases where a child is below the minimum age of criminal responsibility (MACR). It means that if, according to the national law of the executing Member State, a child is below the minimum age of responsibility, the executing judicial authority must refuse the execution of such arrest warrant.

7.2.5. [Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union](#)

Council Framework Decision 2008/909/JHA is relevant for young offenders and children of imprisoned parents. Article 3 specifies the purpose of the framework decision: facilitation of social rehabilitation - Article 4 provides criteria for forwarding a judgment and certificate to another Member State: references to where a person 'lives' incorporating elements of family ties (see

Recitals 9 and 17). Article 7 contains provisions on recognition of judgments and enforcements of sentence, without verification of double criminality, for crimes of sexual exploitation of children and child pornography. Article 9 (g) grounds for refusal provides that the executing State may refuse to recognise the judgment and enforce the sentence if the sentence has been imposed on a person who, under the law of the executing State, could not be held criminally liable for the acts in respect of which the judgment was issued). It should be noted that this is an optional ("may refuse") and not a mandatory ground for refusal.

- 7.2.6. [Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions](#)

Framework Decision 2008/947/JHA is relevant for young offenders and children of sentenced/imprisoned parents - Article 1: states that FD aims at facilitating the social rehabilitation of sentenced persons; Recitals 8 and 14 refer to family, Article 9 covers recognition, without verification of double criminality, for crimes of sexual exploitation of children and child pornography. Article 11(g) allows refusal in case of absence of criminal liability in executing State due to age.

- 7.2.7. [Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention](#)

Council Framework Decision 2009/829/JHA is relevant for young offenders and children of sentenced parents. FD has threefold objective: (a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial; (b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place; (c) to improve the protection of victims and of the general public.

- 7.2.8. [Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States](#)

Provides for the exchange of criminal records of EU citizens among Member States, with some limitations, for the purposes of criminal proceedings, but also for other purposes (such as employment relating to the supervision of children) to prevent concealment of child-related offences. See Recitals 12 and 15, Articles 6, 7, 9. Note that most limitations have been removed by the adoption of Directive 2011/93/EU above on combating the sexual abuse and sexual exploitation of children.

- 7.2.9. [Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System \(ECRIS\) in application of Article 11 of Framework Decision 2009/315/JHA](#)

7.3. Detention of children in the context of migration

Note: the focus of this extract is detention in the context of migration-related provisions. We have not referenced all the procedural safeguards in EU asylum and migration law that are relevant to these discussions, such as early appointment of a guardian, right to information, to be heard, to legal

assistance, etc. These were discussed at length at the 2016 Forum – see [Forum Report](#) and the [summary of child-specific proposals for the Common European Asylum System](#) and are addressed in the 12.4.2017 Communication on the protection of children in migration.

The EU acquis in the area of migration is based on the presumption of non-recourse to detention. **The child's best interests must be a primary consideration.** However, it allows the detention of **children** in the context of migration: only in exceptional circumstances and under strict conditions, **, only as a matter of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively.** Such detention shall be for the shortest period of time. When a child is detained all efforts shall be made to release the child and place him or her in accommodation suitable for children. For unaccompanied children, detention can only take place in exceptional circumstances, and every effort has to be made to release the detained unaccompanied child as soon as possible. Unaccompanied children may not be detained in prison accommodation and must be accommodated separately from adults. The best interests of the child must be a primary consideration for Member States. Member States must ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

The 12 April 2017 Communication on the protection of children in migration underlined that, where there are grounds for detention, everything possible must be done to ensure that a viable range of alternatives to the administrative detention of children in migration is available and accessible, including via support of EU funds. This is also referred to in Recital 24 of the Recommendation of the Commission on making returns more effective of 7 March 2017.

7.3.1. [Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in the Member States for returning illegally staying third-country nationals \(the Return Directive\)](#)

The use of detention for the purpose of removal is subject to the principles of necessity and proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process when there is a concrete risk of absconding or a person concerned avoids or hampers the preparation of return or the removal process, and if the application of less coercive measures would not be sufficient. This means that in general detention can only be used as a means of last resort and if there is a reasonable prospect of removal. Persons in detention must be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. They should be accommodated as a rule in specialised detention facilities. With regard to children, the **best interests of the child shall be a primary consideration** in the context of detention of children pending removal. Given the exceptionality of detention measures, which are a last resort and to be applied for the shortest appropriate period of time, the Directive sets several additional safeguards for children in detention with the aim of ensuring their best interests pending the removal procedure. These safeguards are:

- Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy
- Access to leisure activities which are appropriate to the age of the child
- Access to education, depending on the duration of stay before return
- In particular with regard to unaccompanied children, Article 17 provides that they have to be, as far as possible, provided with accommodation in institutions with personnel and facilities which take into account the needs of persons of their age.

- 7.3.2. [Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\) \(the Reception Conditions Directive\)](#)
- 7.3.3. [Regulation \(EU\) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person \(recast\) \(the Dublin Regulation\)](#)

The Reception Conditions Directive and the Dublin Regulation contain provisions on the detention of children. The EU asylum acquis is based on the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection or that he or she is subject to the transfer procedure to another Member State responsible for examining his or her application. Applicants may be detained only under very clearly defined and exceptional circumstances that must be laid down in law, and subject to the principle of necessity and proportionality with regard to both the manner and the purpose of such detention. An applicant for international protection may be detained only:

- a. in order to determine or verify his or her identity or nationality;
- b. in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- c. in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- d. when he or she is detained subject to a return procedure under Directive 2008/115/EC in order to prepare the return and/or carry out the removal process, and it can be substantiated on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- e. when protection of national security or public order so requires;
- f. in order to secure his or her transfer procedure to a Member State responsible for examining his or her application for international protection where there is a significant risk of absconding.

The conditions, safeguards and guarantees applicable to persons detained are laid down in detail in the Reception Conditions Directive and cross referenced in the Dublin Regulation.

Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority. Furthermore, the Directive prescribes clearly conditions for detention which shall guarantee full respect for human dignity. Article 11 of Reception Conditions Directive, applicable also to detention cases based on the Dublin Regulation, additionally sets **specific additional safeguards for children**, those with families and also unaccompanied children (with extra restrictions), who can be detained only in exceptional circumstances.

First of all, the **child's best interests shall be a primary consideration**. For the purpose of the Directive, this means that the following factors need to be taken into account:

- a. family reunification possibilities;

- b. the child's well-being and social development, taking into particular consideration the child's background;
- c. safety and security considerations, in particular where there is a risk of the child being a victim of human trafficking;
- d. the views of the child in accordance with his or her age and maturity.

As a general rule, children can be detained only as a measure of last resort and if other less coercive alternative measures cannot be applied effectively. Health including mental health of applicants in detention who are vulnerable persons shall be of primary concern. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained children and place them in accommodation suitable for children. The child's best interests shall be a primary consideration for Member States. Unaccompanied children shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied child as soon as possible. Unaccompanied children shall never be detained in prison accommodation. Where unaccompanied children are detained, Member States shall ensure that they are accommodated separately from adults. If detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age. Families shall be provided with separate accommodation guaranteeing adequate privacy. As far as possible, unaccompanied children should be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

7.3.4. [Commission Communication of 12.4.2017 on the Protection of children in migration](#)

Chapter 4. Providing adequate reception in the European Union - In some instances, children have been accommodated in closed facilities due to a shortage of suitable alternative reception facilities. Given the **negative impact of detention** on children, administrative detention should be used, in line with EU law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation. Moreover, where there are grounds for detention, everything possible must be done to ensure that a viable range of alternatives to the administrative detention of children in migration is available and accessible,²⁷ including through support provided by the EU funds. The promotion of alternatives to detention will be the main topic of the 11th forum on the rights of the child (November 2017).

Key actions:

As of 2017, with the support of the Commission and the EU agencies, the Member States are encouraged to:

- ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided;
- integrate child protection policies in all reception facilities hosting children, including by appointing a person responsible for child protection;
- ensure and monitor the availability and accessibility of a viable range of alternatives to the administrative detention of children in migration;
- ensure that an appropriate and effective monitoring system is in place with regard to reception of children in migration;

²⁷ See Article 11 of Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116, and background reading, UNHCR standards on detention, and Items 84-88 under “Alternatives to detention”. http://ec.europa.eu/newsroom/document.cfm?doc_id=42359.

7.3.5. [Commission Recommendation \(EU\) 2017/432 of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council](#)

In its Recommendation of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council²⁸, the Commission encouraged Member States not to preclude the possibility to place children in detention in full compliance with the safeguards set by the Directive, where this is strictly necessary to ensure the execution of a final return decision insofar as Member States are not able to ensure less coercive measures than detention that can be applied effectively in view of ensuring effective return. Measures should also be taken to ensure that a viable range of effective alternatives to detention are available and used in the Member States.

7.3.6. [The Return Handbook - Annex to the Commission Recommendation of 27.9.2017 establishing a common "Return Handbook" to be used by Member States competent authorities when carrying out return related tasks](#)

This is a revised version of the 2015 [Return Handbook](#). Revised Chapter 16 on detention of children and families provides that the best interests of the child must always be a primary consideration in the context of detention of children and families; Member States are encouraged to involve child protection bodies in all matters related to detention and, where there are grounds for detention, **everything possible must be done to ensure that a viable range of effective alternatives to detention for children** (both unaccompanied and with their families) **is available and accessible**. Chapter 16 refers to [UNHCR](#) and [FRA](#)'s examples of good practices on alternatives to detention for unaccompanied children and families with children. The Commission recommends that national legislation should not preclude the possibility to place minors in detention, where this is strictly necessary to ensure the execution of a final return decision, and insofar as less coercive measures cannot be applied effectively in the individual case. Revised Chapter 14 in the part on the **obligation to provide for effective alternatives for detention** (14.1), indicates that **Member States must provide in national law for alternatives to detention that can achieve the same objectives of detention** (i.e. prevent absconding, avoid that the third-country national avoids or hampers return) **while using means that are less intrusive of the right to liberty of the individual**. National authorities responsible for taking decisions related to detention and alternatives to detention need to assess whether such less coercive measures would be sufficient and effective in each individual case. Revised Chapter 14.1 indicates also that examples of alternatives to detention include residence restrictions, open houses for families, (...), and refers to [UNHCR's practical examples of good practices](#) on alternatives to detention. The 2017 version of the Handbook contains also **child-specific guidance on the right to be heard** in Chapter 12 on procedural safeguards (in particular Section 12.1 on right to good administration and right to be heard).

7.4. Children in institutions

7.4.1. [UN Convention on the rights of persons with disabilities \(CRPD\)](#)

The European Union (EU) concluded the CRPD on 22 January 2011 in its capacity as a regional integration organisation within the meaning of Article 44 of the CRPD. Among the key articles of the Convention relevant for deinstitutionalisation, Article 19 lays down the right to independent

²⁸ C(2017)1600 final.

living. Furthermore, Article 23 requires that “*States Parties shall ensure the children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.*”

- 7.4.2. [Regulation \(EU\) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to the model for operational programmes under the Investment for growth and jobs goal and pursuant to Regulation \(EU\) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal with regard to the model for cooperation programmes under the European territorial cooperation goal](#)

See Article 7 Promotion of equality between men and women and non-discrimination: The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.

See Annex XI - General ex-ante conditionality

- Anti-discrimination – The existence of administrative capacity for the implementation and application of Union anti-discrimination law and policy in the field of ESI Funds (including Article 21 and 26 Charter of Fundamental Rights of the European Union)
- Disability - Existence of administrative capacity for the implementation and application of the UN Convention on the rights of persons with disabilities (UNCPRD) in the field of ESIF Article 19 "Living independently and being included in the community".

Thematic ex ante conditionalities, Point 9.)

- 7.4.3. [Regulation \(EU\) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation \(EC\) No 1081/2006](#)

See Article 8 Promotion of equal opportunities and non-discrimination: (...) Through the ESF, the Member States and the Commission shall also support specific actions (...) (that) shall aim to combat all forms of discrimination as well as to improve accessibility for persons with disabilities, with a view to improving integration into employment, education and training, thereby enhancing social inclusion, reducing inequalities in terms of educational attainment and health status, and facilitating the transition from institutional to community-based care, in particular for those who face multiple discrimination.

- 7.4.4. [Regulation \(EU\) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation \(EC\) No 1080/2006](#)

See Article 5: Investment priorities

(9) promoting social inclusion and combating poverty

(a) investing in **health and social infrastructure** which contribute to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and **the transition from institutional to community-based services**

- 7.4.5. [Thematic guidance on the use of European Structural and Investment funds to support transition from institutional to community-based care \(2014\)](#)

The Guidance specifies that states are unable to use European Structural and Investment Funds for the maintenance or renovation of existing and the construction of new large residential institutional settings, and must prioritise support measures that enable the shift from institutional to community-based care services.

- 7.4.6. [Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 15 November 2010 \(COM\(2010\)636 final\) on the European disability strategy 2010-2020: a renewed commitment to a barrier-free Europe](#)

(It provides the framework for empowering people with disabilities to fully participate in society and ensure that they can enjoy their fundamental rights. This strategy aims also to facilitate the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). While actions contained in this Strategy are designed to benefit all persons with disabilities, some measures more specifically address the situation of children with disabilities. The strategy reiterates that the EU committed to promote the participation of disabled people in leisure activities, employment, education and health and social services and to achieve the transition from institutional to community based care.)

- 7.4.7. [Commission Staff Working Document of 5 June 2014 SWD\(2014\) 182 final on the implementation of the UN Convention on the Rights of Persons with Disabilities \(CRPD\) by the European Union](#)

(Addresses the promotion and protection of the rights of the child under Article 7 (p.41))

- 7.4.8. [Council Conclusion of 6 June 2011 on The European pact of mental health and well-being: results and future action](#)

(The Council invites Member States and the Commission to promote, where possible and relevant, community-based and socially inclusive care models for mental health.)

- 7.4.9. [Commission Recommendation C\(2013\)778 final of 20 February 2013 Investing in children: breaking the cycle of disadvantage](#)

(Children in alternative care were recognised as a particularly vulnerable group by the European Commission in its Recommendation "Investing in children: breaking the cycle of disadvantage".

The Recommendation encourages EU Member States “to stop the expansion of institutional care settings for children without parental care and promote quality, community-based care and foster care within family settings instead where children’s voice is given due consideration”.)

7.4.10. [The European Pillar of Social Rights in 20 Principles \(2017\)](#)

(See in particular Principle 11b Children have the right to protection from poverty. Children from disadvantaged backgrounds have to right to specific measures to enhance equal opportunities. Note recital 15: https://ec.europa.eu/commission/publications/commission-recommendation-establishing-european-pillar-social-rights_en The principles enshrined in the European Pillar of Social Rights concern Union citizens and third country nationals with legal residence.)

7.4.11. [4.2.3. EU Guidelines for the Promotion and Protection of the Rights of the Child \(in external policy\), 2017](#)

The “EU Guidelines for the Promotion and Protection of the Rights of the Child (2017) Leave no child behind” reaffirms the EU’s commitment to comprehensively protect and promote the rights of the child in its external policy, in line with the provisions of the UN Convention on the Rights of the Child and its Optional Protocols and other relevant international standards and treaties. The Guidelines have included institutionalisation among the risks facing children in vulnerable situations. The document highlights the importance of appropriate alternative care for children that allows them to participate in community life, preventing family and child separation (section 5.A) and states that the primary consideration when considering any spending should be identification of the best interests of the child (see section 5.D). It further recommends improving coherence in the EU’s external action on children, including that carried out by Member States.

7.5. Children of parents in prison

7.5.1. [Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union](#)

Council Framework Decision 2008/909/JHA is relevant for young offenders and children of imprisoned parents. Article 3 specifies the purpose of the framework decision: facilitation of social rehabilitation - Article 4 provides criteria for forwarding a judgment and certificate to another Member State: references to where a person 'lives' incorporating elements of family ties (see Recitals 9 and 17). Article 7 contains provisions on recognition of judgments and enforcements of sentence, without verification of double criminality, for crimes of sexual exploitation of children and child pornography. Article 9 (g) grounds for refusal provides that the executing State may refuse to recognise the judgment and enforce the sentence if the sentence has been imposed on a person who, under the law of the executing State, could not be held criminally liable for the acts in respect of which the judgment was issued). It should be noted that this is an optional ("may refuse") and not a mandatory ground for refusal.

7.5.2. [Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions](#)

Framework Decision 2008/947/JHA is relevant for young offenders and children of sentenced/imprisoned parents - Article 1: states that FD aims at facilitating the social rehabilitation of sentenced persons; Recitals 8 and 14 refer to family, Article 9 covers recognition, without verification of double criminality, for crimes of sexual exploitation of children and child pornography. Article 11(g) allows refusal in case of absence of criminal liability in executing State due to age.

7.5.3. [Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention](#)

Council Framework Decision 2009/829/JHA is relevant for young offenders and children of sentenced parents. FD has threefold objective: (a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial; (b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place; (c) to improve the protection of victims and of the general public.

7.5.4. [Commission Recommendation C\(2013\)778 final of 20 February 2013 Investing in children: breaking the cycle of disadvantage](#)

Children of parents in prison were recognised as a particularly vulnerable group by the European Commission in its Recommendation "Investing in children: breaking the cycle of disadvantage". The Recommendation provides policy guidance and related indicators to help the EU and Member States focus on successful social investment towards children in the fields of access to adequate income, quality services and child participation. The recommendation invites Member States to address child poverty and children's wellbeing through an integrated approach which would involve ensuring access to adequate income and living standards and empowering children through access to quality services. In so doing the recommendation emphasises the importance of family support (including preventive services).

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