

EQUALITY



Children's rights and justice

Minimum age requirements in the EU



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Introduction

Promoting children’s participation in all judicial procedures that affect their lives, as well as protecting them from harm, are two sides of the same coin. Finding the right balance, however, remains a challenge. Persons below the age of 18 years are often considered to lack the necessary knowledge, experience and maturity to make responsible decisions. As a result, their rights are often exercised through their parents or other representatives, as well as under a protective framework for their well-being. Children are often allowed to exercise their rights on their own only once they fulfil certain age requirements.

Protection needs and the fact that children’s rights are often exercised by persons of responsibility or authorities should not undermine that children are also rights holders and able to exercise certain rights on their own. The Charter of Fundamental Rights of the European Union (Charter)¹ encompasses, in Article 24, the idea of children as persons in their own right and rights holders. Article 24 (1) specifies in particular “age and maturity” as criteria for balancing protection of children’s rights and child participation. It states: “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.”

This approach draws upon the paradigm that has prevailed internationally, at least at the normative level, over the past decades, especially since the adoption of the United Nations (UN) Convention on the Rights of the Child² (CRC), which all European Union (EU) Member States have ratified. That paradigm seeks to combine the need for child protection with the importance of child participation, focusing on children’s right to be heard and thus participate in important decision-making that affects their lives.

Why this report?

For balancing protection and participation, the concept of “minimum age” is of crucial importance. Legal minimum ages define when a child reaches the age of majority, or whether children may exercise certain rights in their own right and without the authorisation of their parents or other representatives.

Mapping minimum age requirements

The European Union Agency for Fundamental Rights (FRA) has mapped national legislative provisions on age requirements in various legal and policy areas. In the area of justice, FRA addressed a series of questions covering a whole spectrum of issues, ranging from child participation in judicial proceedings and the age as of which children have the capacity to bring a case to court on their own, to the age from and up to which children can stay in prison with their parents who are imprisoned.

The [total dataset](#), including findings on all aforementioned topics in the [area of justice](#), is available on FRA’s website, as an accompanying publication to this report.

FRA aims to contribute to the ongoing debate³ regarding the proper balance between the need to protect children in the area of justice and the importance of appropriate child participation in judicial proceedings that affect their lives to help shape future legal and policy developments at both EU and national levels. Differences in minimum age requirements across Member States may result in a child, or even an adult, being treated differently from one Member State to another based on diverging age criteria. Such differentiated treatment could, in turn, raise concerns that the rights of the child, as provided for and protected under the EU legal order, are not consistently implemented.

MINIMUM AGE REQUIREMENTS: FRA RESEARCH ON CHILDREN’S RIGHTS ACROSS THE EU

This report is one of two FRA reports outlining the agency’s opinions on minimum age requirements in particular fields.

- *Children’s rights and justice* examines minimum age requirements for children in the area of justice.
- *Age assessment and fingerprinting of children in asylum procedures* looks at age assessments for children in asylum procedures and other minimum age requirements in the asylum field.

The full data on which these reports are based can be accessed on [FRA’s website](#).

In addition, information published on [FRA’s website](#) analyses comparative data on age requirements in nine thematic areas across EU Member States: legal capacity; political participation; health; religion; asylum and migration; access to justice; children in the digital world; social and economic rights; and LGBTI issues.

The present report focuses on minimum age requirements regarding children's rights in judicial proceedings (child participation and procedural safeguards) and detention, and outlines relevant evidence-based opinions. It takes into consideration the extent, content and effective exercise of EU competences in this area, as well as forthcoming developments. Concretely, the Directive establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive)⁴ is already being implemented by EU Member States; the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings (Directive on special safeguards for children)⁵ should be transposed into national legal orders by 11 June 2019; and the recast of the Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (Brussels II bis Regulation)⁶ is in process. The Council of Europe, meanwhile, has identified child-friendly justice for all children as a priority area in its Strategy for the Rights of the Child (2016-2021).⁷

By pointing out patterns throughout the EU regarding age requirements for children in the area of justice, this report aims to help EU institutions and Member States address these issues in a consistent and harmonised way, according to the scope of their competencies. The driving approach of the report is how to better implement the right of children to be heard and actively participate on their own right – and not only through their parents or other representatives – in all kinds of judicial procedures according to their age and personal maturity, depending on knowledge and experience, and therefore their evolving capacities, without at the same time undermining their protection. In such an approach, participation and protection are not considered to be in conflict with or excluding one other, but rather as complementary. This is in line with the opinions in FRA's [summary report on child-friendly justice](#), which build upon interviews with professionals and children on their experiences and perspectives of how children are treated when involved in judicial proceedings.

FRA ACTIVITY

Scrutinising children's rights in the justice field

The need for the present report became evident after extensive FRA studies on child-friendly justice (in 2015 and 2017) pointed to arbitrariness and contradictions with respect to age requirements and children's rights, particularly when it comes to their participation and available procedural safeguards.

One key finding of FRA's studies on child-friendly justice is that children wish to be heard when participating in judicial proceedings, but need to feel safe and comfortable. This is in line with the views of interviewed professionals, who noted that children's participation is important when their protection and an age-appropriate approach is ensured. Therefore, everybody involved should contribute to creating appropriate, safe and child-friendly hearing conditions to facilitate children's participation. This includes, for example, hearing children in separate, child-friendly rooms; using video-recordings as evidence; having only one trained professional hearing the child; avoiding having too many people present; having a person of trust accompany the child if the child so wishes; appropriately informing and asking the child about the procedural safeguards that can be put into place; and checking the child's understanding of rights and procedures.

FRA conducted its research in close cooperation with the European Commission, which published its studies on [children's involvement in criminal, civil and administrative judicial proceedings](#) and its [evaluation of legislation, policy and practice on child participation in the European Union](#) in 2015. These studies show that provisions on children's legal capacity to act in various judicial proceedings vary considerably across the EU. The studies point out that, very often, a child's legal capacity to act is subject to age requirements.

In January 2018, FRA published an [easy-to-read version](#) of its reports. It also produced a [checklist](#) with key questions on how to ensure a child-friendly hearing. In addition, four [videos](#) are available; these can be used to raise children's awareness of their rights when involved in judicial proceedings.

For more information, see FRA (2017), [Child-friendly justice: perspectives and experiences of children](#), Publications Office, Luxembourg; FRA (2015), [Child-friendly justice: perspectives and experiences of professionals](#), Publications Office, Luxembourg. Other related FRA publications range from the [Handbook on European law relating to access to justice \(2016\)](#) to its [reports on the rights of suspected and accused persons across the EU and criminal detention and alternatives \(both 2016\)](#).

Key findings and FRA opinions

The FRA opinions presented below build on the following key findings:

- Age thresholds for the right of children to express their views and be heard during judicial proceedings vary remarkably among EU Member States, but also within Member States across different areas of regulation (e.g. in the context of family, criminal, and asylum and immigration law).
- The majority of EU Member States set at 18 the age limit for children in criminal proceedings to be entitled to special support and procedural safeguards, such as audio-visual recording, interviewing by specialist personnel or hearings in absence of the public – irrespective of whether they are victims, witnesses or suspects/offenders.
- A few Member States set the upper age limit for children to be entitled to special support and procedural safeguards at lower than 18. Findings from FRA's studies on [child-friendly justice](#) (2015 and 2017)⁸ show that, in these Member States, children tend to be treated as adults once they are older than the age limit set for being entitled to procedural safeguards.
- In line with the Directive on special safeguards for children, all EU Member States provide for legal aid for child suspects/offenders without setting an explicit minimum age requirement. In the majority of Member States (17), though, legal aid is provided only if income requirements are met.
- In 21 EU Member States, children under 18 involved in criminal proceedings as suspects/offenders are not permitted to waive their right to a lawyer. Child victims under 18 are restricted from waiving their right to a lawyer in 11 Member States.
- Child offenders can be subject to custodial sanctions and measures (detention) in all EU Member States. As a general trend, the minimum age threshold for such sanctions and measures is the same as the minimum age for criminal responsibility. The applicable minimum age ranges from 10 to 16.
- Child detainees cannot be placed in solitary confinement in only four EU Member States.

As noted, detailed data on these findings – presenting specific information about each EU Member State – are available on [FRA's website](#).

Findings regarding the recognition and respect of children's rights in the area of justice, available on FRA's website, show asymmetry in approaches to child participation in judicial proceedings among Member States, but also within Member States across various areas of regulation (i.e. criminal, civil or administrative law proceedings). This results from differing minimum age requirements regarding the right of children to express their views on their own and be heard in proceedings, if they are able and wish to do so. Child participation in the area of justice encompasses the right of children to be informed about proceedings affecting their lives and their right to be heard according to their age and maturity, as enshrined in Article 24 (1) of the EU Charter of Fundamental Rights and Article 12 of the UN Convention on the Rights of the Child (CRC). As acknowledged in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the respect of this right serves the best interests of the child, a principle that is to be a primary consideration for all national authorities, including courts and legislative bodies.

FRA opinion 1

The EU, its Member States and competent national authorities should seek to promote child participation in judicial proceedings, thereby fulfilling the fundamental principle of the best interests of the child, when taking decisions on minimum age requirements in the area of justice or when applying relevant EU and national legislation. Such decisions, and the implementation of relevant legislation, should respect children's right to be informed, express their views on their own, and be heard in every judicial proceeding affecting their lives in a child-friendly manner with the appropriate procedural safeguards in place, whether it is a criminal, civil or administrative law proceeding.

A number of EU Member States do not apply strict minimum age requirements for children to have the opportunity to express their views and to be heard in any kind of criminal, civil or administrative law proceeding. Many Member States, however, do apply such minimum age requirements, without considering that, in light of Article 12 of the CRC and Article 24 (1) of the Charter, not only children's age but also their maturity should be taken into account in view of implementing the right of children to be heard in proceedings. In this respect, several EU legislative measures provide for the need to take into account children's views, needs and concerns in judicial proceedings. These include the Directive on special safeguards for children (Article 16); the Victims' Rights Directive (Article 10); the Directive combating the sexual abuse and sexual exploitation of children and child pornography⁹ (Article 19); the Directive on

preventing and combating trafficking in human beings and protecting its victims (Anti-Trafficking Directive)¹⁰ (Article 14); and Regulation Brussels II bis, as regards, for instance, judgments on parental responsibility (Article 23). To determine whether a child is capable of expressing its views on its own during a judicial proceeding, an individual assessment of the child, taking into account not only the child's age but also other personal characteristics, should be a suitable and useful tool.

FRA opinion 2

EU Member States should consider revising any strict minimum age requirement for children to have the opportunity to express their views on their own and be heard in all judicial proceedings affecting their lives. Instead, whether children can exercise their right to be heard on their own should depend on an individual assessment that takes into account not just the child's age but also the child's personal characteristics. These characteristics include the child's maturity level and gender; legal, psychological, social, emotional, physical and cognitive situation and needs; as well as the nature of the case and proceeding (e.g. cases of sexual abuses). Such assessments should be carried out with the participation of specialised personnel and in child-friendly and gender-sensitive settings. The assessments should identify the appropriate specific protective measures to be applied for a child to be heard in a certain judicial proceeding – allowing, for example, for the child to express its views not during court sessions but through video recordings that can be used as evidence.

Most EU Member States provide, up to the age of 18, special support and procedural safeguards for children in criminal proceedings, regardless of whether they are involved in these as suspects/offenders, victims or witnesses. Such safeguards include audio-visual recording, forensic interviewing by specialist personnel, the closed-door rule, and psychosocial support. Some Member States also provide stronger protective measures for younger children in criminal proceedings (depending on the context, this can mean, for instance, children under 15, 14 or 12). However, a few Member States set the upper age limit for support and minimum procedural safeguards below 18; or set different age limits depending on the child's role in a proceeding. In this respect, the Directive on special safeguards for children, as well as the Victims' Rights Directive, establish minimum standards for all children under 18 who are suspects/offenders or victims as regards their support and procedural safeguards. Age and maturity, though, as well as a child's gender, may call for further appropriate and more targeted protective measures, which can be better defined after an individual assessment of a child's needs.

FRA opinion 3

EU Member States should provide appropriate, targeted and gender-sensitive support and procedural safeguards to children of all ages in criminal proceedings, regardless of whether they are involved in such proceedings as suspects/offenders, victims or witnesses. Such support and procedural safeguards should be provided following an individual assessment of a child's needs, as also laid down in Article 7 of the Directive on special safeguards for children and Article 22 of the Victims' Rights Directive.

FRA opinion 4

Member States should raise to 18 the age limit for benefitting from appropriate support and procedural safeguards. Member States should also consider applying stronger procedural safeguards for younger children in judicial proceedings, as for instance for children under 12.

FRA evidence shows that, in all EU Member States, free legal aid is provided to all child suspects/offenders and is not subject to any age requirements. Similarly, it is also provided to victims, and not subject to any age requirements, in the vast majority of Member States. The majority of EU Member States, however, do not provide legal aid to child witnesses. Moreover, in the majority of Member States, free legal aid is conditioned on income requirements, regardless of whether the child's role in a criminal proceeding is as suspect/offender, victim or witness. As regards children and the relevant EU secondary legislation, their right to legal aid is explicitly laid down in Article 18 of the Directive on special safeguards for children. It obliges EU Member States to ensure that national law guarantees the effective exercise of a child's right to be assisted by a lawyer in criminal proceedings. In the context of this directive, the term 'child' refers to persons under 18; consequently, Member States are not allowed to introduce age limits below the age of 18. Furthermore, the right to legal aid, without distinguishing on the ground of age, is also foreseen in Article 13 of the Victims' Rights Directive regarding all victims, as well as in Article 15 (2) of the Anti-Trafficking Directive and Article 20 (2) of the Directive combating the sexual abuse and sexual exploitation of children and child pornography.

FRA opinion 5

EU Member States should examine the possibility of providing legal aid unconditionally to all children, independent of their age, and of their role as suspects/offenders, victims or witnesses in the judicial proceedings. Legal aid should include free access to advice for child witnesses and legal representation for child victims or suspects/offenders throughout the proceedings. The use of specialised children's lawyers should be promoted.

In most EU Member States, children under 18 involved in criminal proceedings as suspects/offenders cannot waive their right to a lawyer. The Directive on special safeguards for children does not explicitly exclude children from waiving this right. However, Article 6 (2) of the directive provides for Member States to ensure that child suspects/offenders shall be assisted by a lawyer. Article 6 (6) specifies that the Member States shall ensure that “deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court”.

FRA opinion 6

EU Member States should consider adopting a more protective approach for children, limiting their ability to waive their right to a lawyer before they turn 18. For instance, they should ensure that competent authorities provide clear information and guidelines to children of all ages who are suspects/offenders in criminal proceedings regarding their right to be assisted by a lawyer. Particularly for children during court hearings, it should not be possible to waive this right. In any event, children should only be able to waive their right to a lawyer if they have been thoroughly informed and are aware of the procedures, their rights and the consequences of not being represented by a lawyer.

Child offenders can be subject to custodial sanctions and measures, and be deprived of their liberty (i.e., detained) in all EU Member States. The minimum age for being subject to such sanctions and measures corresponds to the minimum age for criminal responsibility. Under Article 10 (2) of the Directive on special safeguards for children, deprivation of liberty is foreseen as a measure of last resort for child offenders. Article 11 of the directive calls on Member States to ensure that, where possible, the competent authorities apply alternatives to detention (alternative measures). In addition, Article 7 of the directive provides that an individual assessment should take place before a sanction is decided, considering, among other factors, the child’s maturity and age. Deprivation of liberty for children as a measure of last resort is also a principle enshrined in Article 37 (b) of the CRC and other UN soft law instruments, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty. The principle is also endorsed by the Council of Europe in its Recommendation on the European Rules for juvenile offenders subject to sanctions or measures and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

FRA opinion 7

To ensure that child offenders are deprived of their liberty only as a measure of last resort, EU Member States should develop alternative measures to detention. These could encompass a prohibition on the child staying in certain places, the obligation to reside in a specific place, restrictions concerning contact with certain persons, reporting obligations to the competent authorities or mandatory participation in educational programmes. Before imposing a sanction on a child offender, national authorities should ensure that specialised personnel conducts an individual assessment of the child’s personal situation and needs.

Child detainees can be subjected to solitary confinement for a limited time period in the vast majority of EU Member States as a disciplinary or preventive measure, or as a protective measure. The minimum age set by Member States in this respect ranges from 10 to 16 years, and usually corresponds to the minimum age for criminal responsibility. At the EU level, the prohibition of torture, inhuman or degrading treatment and punishment is established under Article 4 of the EU Charter of Fundamental Rights. According to Article 24, the treatment of children by any public authority should have as a primary consideration the best interests of the child. In this context, Article 12 (5) of the Directive on special safeguards for children provides that, in cases of child detainees, Member States are bound to ensure and preserve the children’s health and physical and mental development. The European Committee for the Prevention of Torture (CPT) for its part notes that solitary confinement “can have an extremely damaging effect on the mental, somatic and social health of those concerned” and “should only be imposed in exceptional circumstances, as a last resort and for the shortest possible time”. As a principle, solitary confinement of child detainees, in particular as a disciplinary measure, is not justifiable from the perspective of the rights of the child and is contrary to the best interests of children, since it can harm their health and their physical and mental development.

FRA opinion 8

EU Member States should impose solitary confinement on children only under exceptional circumstances, as a last resort and for the shortest possible time; and only if it serves a child protection purpose, which should be adequately defined and standardised by law and monitored by independent authorities.

1

Children's rights and justice



Respect for the rights of children in the area of justice is essential for their enjoyment of all their substantive rights. As in the case of adults, the right to access justice and all other relevant procedural rights are not just rights in themselves. They guarantee, and provide for protection against violations of, every other right; and provide for a lawful way to resolve disputes and seek redress in case of rights violations and wrongdoing. As such, they constitute a fundamental aspect of the rule of law.¹¹

The main rights in the area of justice are the right to an effective remedy and the right to a fair trial. Both are enshrined in binding international human rights instruments, as well as in the EU legal order. Article 19 (1) of the Treaty on European Union¹² (TEU) stipulates that Member States have to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. The EU Charter of Fundamental Rights, in Article 47, expressly entrenches into the EU legal order the right to an effective remedy and the right to a fair trial. In the framework of the Council of Europe, the right to an effective remedy is founded on Article 13 of the European Convention on Human Rights (ECHR),¹³ while the right to a fair trial is mainly founded on Article 6 thereof.

The right to an effective remedy entails the legal possibility for all persons to address a court or other independent and impartial body if their rights have been violated, in view of seeking protection and reparation. The right to a fair trial requires an independent and impartial 'tribunal' (court) established by law. The person involved in the trial has to be heard by the court under procedural arrangements safeguarding fairness, such as public hearing of the trial or access to legal advice, defence and representation, and free legal aid for those who lack sufficient resources.

Children as rights holders profit from all legal provisions regarding justice at both the international and the EU level. All relevant human rights standards do apply for children, since these are set out in an abstract way referring to "everyone", while the principle of non-discrimination enshrined in both the Charter and the ECHR requires the equal treatment of all persons, regardless of their age.¹⁴

Special legal arrangements, however, are set forth to establish a more child-sensitive approach when the authorities implement obligations related to justice in the case of children. Along with the binding general principle of taking into consideration the best interests of the child in all actions concerning children, including actions related to judicial matters,¹⁵ the CRC lays down specific rules for children. It provides for their right to express their views and be heard in any judicial and administrative proceedings affecting them¹⁶ and sets out special standards and safeguards for their treatment in criminal proceedings or when under arrest or in detention.¹⁷ These specific rules reflect and reinforce relevant provisions set out at the national and EU level. They are binding for all EU Member States, given that all of them are parties to the CRC.

Setting age requirements regarding children in the area of justice can serve both the protection of children against violations of their rights and their appropriate and active participation in judicial proceedings related to cases affecting their well-being. Laying down favourable procedural safeguards for child victims, witnesses or children accused of crime, for instance, as well as adopting special provisions regarding the treatment of child offenders and their detention, aim to protect their rights. Respecting the right of children to express their views and be heard in all judicial proceedings, on the other hand, goes beyond the mere protection of

their rights to a participatory approach respectful of children's views and opinions.

As regards the EU level, issues related to justice are part of the shared competences of the EU, as defined in Articles 81–86 of the Treaty on the Functioning of the European Union¹⁸ concerning judicial cooperation in civil and criminal matters. In this respect, the EU may adopt legislative measures to ensure effective access to justice in civil matters as well as to establish minimum rules concerning the rights of individuals in criminal proceedings. The same applies regarding the rights of victims of crime or concerning the definition of criminal offences and sanctions in areas of particularly serious crime, such as trafficking in human beings and sexual exploitation of children.

Exercising these competences, the EU has adopted a number of legislative measures during the past years that are of utmost importance in defining the content and the level of respect and protection of the rights of children facing judicial proceedings, especially criminal proceedings. The most significant ones are:

- a) the Directive on special safeguards for children, adopted on 11 May 2016 and to be transposed by 11 June 2019;
- b) the Victims' Rights Directive, with Article 24 referring in particular to the rights of children; and
- c) the Brussels II bis Council Regulation on matrimonial matters and parental responsibility.

Other examples include the Anti-Trafficking Directive and the Directive combating the sexual abuse and sexual exploitation of children and child pornography. These acts set concrete standards and rules for the treatment of children in judicial proceedings, with which all the Member States have to comply.¹⁹

The present report focuses on issues related to child participation in judicial proceedings (the right to express views and be heard on matters which concern and affect children); procedural safeguards for, and rights of, children involved in criminal proceedings; as well as issues related to depriving children of their liberty. More information on relevant age requirements applicable in each Member State can be found on [FRA's website](#).



2

Child participation in judicial proceedings: the right to express views and be heard



KEY FINDINGS

General

- Age thresholds for the right of children to express their views and be heard during judicial proceedings differ remarkably among Member States, but also within Member States across different areas of regulation (e.g. in the context of family, criminal, and asylum and immigration law).
- Without prejudice to rules setting minimum age requirements for the enjoyment of substantive rights (e.g. access to work or asylum and international protection), several Member States do not apply any strict minimum age requirements to the procedural right of children to express their views and be heard across all kinds of judicial proceedings related to them, regardless of their role in these proceedings.
- Setting a minimum age requirement regarding the right to express views and be heard means that children over that age should be always given the opportunity to do so, if they so wish. However, this does not preclude courts from giving children below that age the same opportunity. Nonetheless, as FRA's findings from its studies on [child friendly justice](#) (2015 and 2017)²⁰ show, judicial practices in this respect vary between and within Member States – although the majority of children very much appreciated the opportunity to be heard.
- When it comes specifically to adoption, placement (assigning a child to a suitable place to live), and divorce and custody cases, fewer than half of EU Member States provide that children should have the opportunity to express their views and be heard without any requirements and restrictions related to minimum age (12 Member States concerning adoption cases; 12 Member States concerning placement and divorce and custody cases) – even though all those decisions refer to matters directly concerning the child. Even within countries, there are different age requirements – whether it comes to adoption, placement or divorce and custody cases (see [Figure 1](#)). Furthermore, children's consent to such decisions affecting their lives is not always required. For example, in adoption cases, only 12 Member States ask for a child's own consent; only three of them do not apply minimum age requirements.

Adoption

- In 12 Member States, children subject to judicial proceedings concerning adoption are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age. Courts do take into consideration, however, their maturity and ability to express themselves. Twelve Member States lay down specific age thresholds, ranging from 10 to 14 years, for recognising such an entitlement by children. In a few Member States, where there is no relevant regulation, it is for the courts to decide ad hoc whether or not to hear children. In 12 Member States, the child's consent to an adoption is necessary, but they apply different minimum age thresholds for requiring such consent.

Divorce and custody

- Children subject to judicial proceedings concerning divorce and custody are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age in 12 Member States. Courts do take into consideration the children's maturity and ability to express themselves. Another 12 Member States lay down specific age thresholds, ranging from 10 to 14 years, for recognising such an entitlement by children. In a few Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.

Placement

- Children subject to judicial proceedings concerning placement in appropriate care are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age in 12 Member States. Courts take into consideration children's maturity and ability to express themselves. Ten Member States lay down specific age thresholds, ranging from 10 to 16 years, for recognising such an entitlement by children. In a few Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.

Employment

- Children have the right to express their views, if they so wish, and be heard in employment cases without any requirements and restrictions related to minimum age in eight Member States. Fourteen Member States lay down specific age thresholds, ranging from 10 to 18 years, for recognising such an entitlement by children, without prejudice to the rules setting minimum age requirements regarding access to work. In the rest of the Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.

Asylum and international protection

- Children subject to judicial proceedings concerning asylum and international protection cases are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age in 11 Member States. Courts take into consideration children's maturity and ability to express themselves. Ten Member States lay down specific age thresholds, ranging from 6 to 18 years, for recognising such an entitlement by children. In nine Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.

Immigration

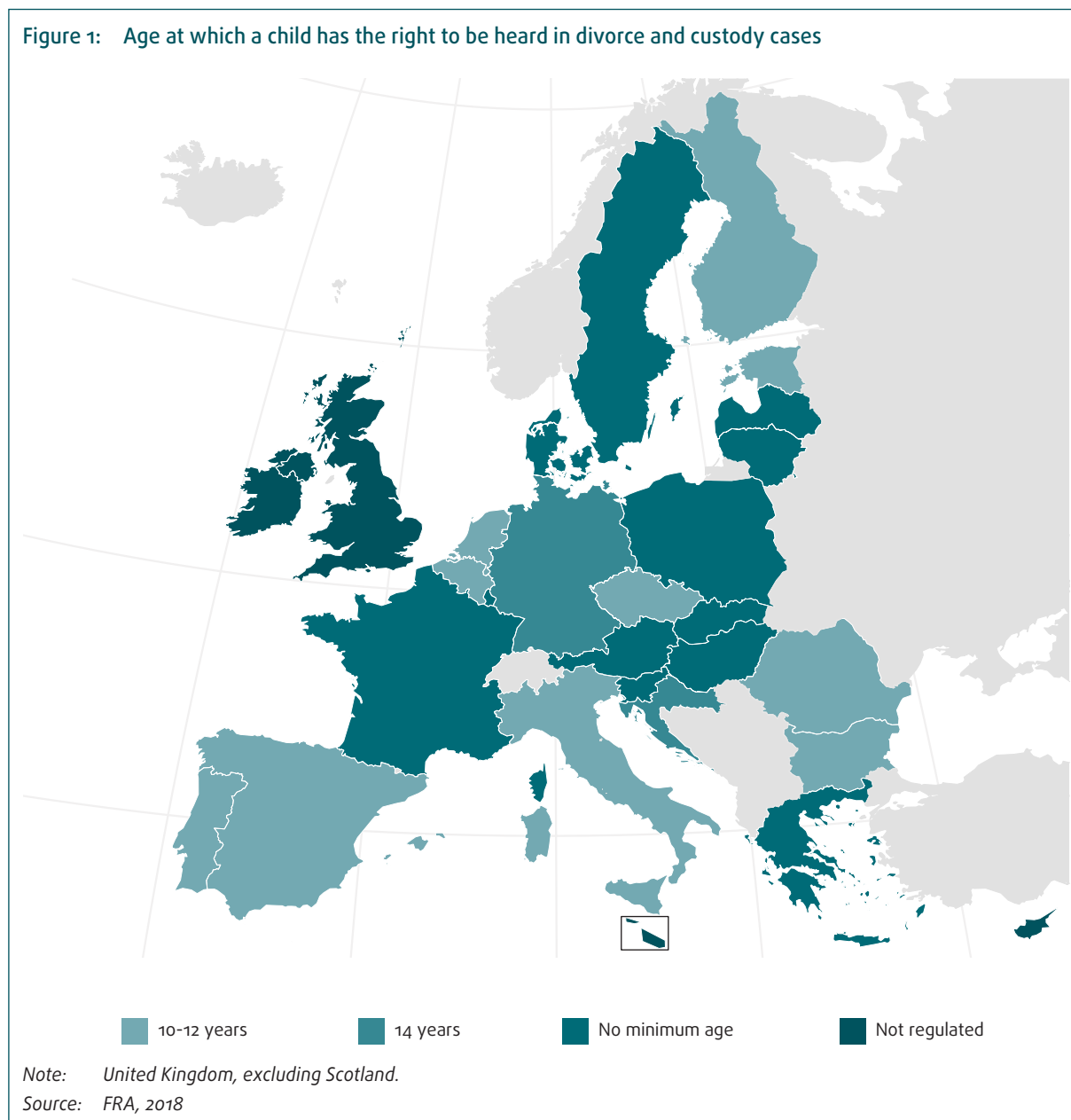
- In 10 Member States, children subject to judicial proceedings concerning immigration cases are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age. Courts take into consideration children's maturity and ability to express themselves. Eight Member States lay down specific age thresholds, ranging from 10 to 18 years, for recognising such an entitlement by children. In 10 Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.

Violence, abuse and neglect

- Children subject to judicial proceedings concerning cases of violence, abuse or neglect are entitled to express their views, if they so wish, and be heard without any requirements and restrictions related to minimum age in 13 Member States. Courts take into consideration their maturity and ability to express themselves. Another 10 Member States lay down specific age thresholds, ranging from 10 to 16 years, for recognising such an entitlement by children. In five Member States, where there is no relevant regulation, courts decide ad hoc whether or not to hear the child.



Figure 1: Age at which a child has the right to be heard in divorce and custody cases



Child participation in the field of justice first and foremost entails the right of children to be informed about proceedings that affect their lives and their right to express their views freely during such proceedings.²¹ Child participation is closely linked to the right of children to express their views and be heard in all matters which concern and affect them,²² which is crucial for the protection of all their substantive rights. As a consequence, it serves the principle of the child’s best interests, which is required to be a primary consideration for all national authorities, including courts and legislative bodies.²³

In the context of the present research, the right of children to be heard, in line also with the relevant interpretation of the CRC Committee on Article 12 of the CRC, is

addressed in terms of their opportunity to express their views on their own and be heard. This is understood as the possibility for children to express opinions on their own and be heard in a judicial proceeding in a manner appropriate to their age and maturity. This may require avoiding a regular court setting and using child-friendly facilities and methods, such as video-recordings as evidence, hearings in separate child-friendly rooms, trained professionals to assist child hearings, and other procedural safeguards, as outlined in the agency’s studies on *child friendly justice* (2015 and 2017).²⁴

Children’s right to be heard in judicial proceedings is enshrined in both the Charter and the CRC. Article 24 of the Charter provides that the freely expressed views of children “shall be taken into consideration on matters

which concern them in accordance with their age and maturity". The CRC sets out, in Article 12 (1), the right of children to express their views freely in all matters affecting them in accordance with their "age and maturity"; paragraph 2 stipulates that "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".

Regarding the provision on how the right to be heard is exercised, the CRC Committee, in its General Comment No. 12, notes that, "[a]fter the child has decided to be heard, he or she will have to decide how to be heard: either directly, or through a representative or appropriate body". For the CRC Committee, the child's will is thus decisive; at the same time, it "recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings".²⁵

The Council of Europe's Guidelines on child-friendly justice recognise child participation as a fundamental principle.²⁶ Meanwhile, FRA underlined in its 2017 publication on child-friendly justice that the effective participation of children in judicial proceedings is not only necessary from a rights-of-the-child perspective, but also "vital for improving the operation of justice".²⁷

At the EU level, the Directive on special safeguards for children in Article 16 calls upon Member States to ensure that children suspected of crime have the right to be present at the trial they are involved in, participate effectively in it, and have the opportunity to express their views and be heard. A similar rule applies for child victims of crime, according to Article 10 of the Victims' Rights Directive, taking in "due account" the child's age and maturity. Recital 42 of the directive, however, underlines that child victims' age cannot be the sole basis for precluding their right to express their views and be heard. The need to take into account the views, needs and concerns of the child is also mentioned in relevant provisions of other sectoral directives, such as in Article 19 of the Directive combating the sexual abuse and sexual exploitation of children and child pornography or in Article 14 of the Anti-Trafficking Directive.

In civil matters, Article 23 of Regulation Brussels II bis includes violations of a child's right to be heard among the grounds for non-recognition of judgments relating

to parental responsibility. Respect of the same right is also a condition for the recognition and enforceability of other family law related judgments, such as judgments concerning the rights of access and the return of a child, as foreseen in Articles 41 and 42 of the regulation.

Regarding setting minimum age requirements for child participation, the CRC Committee in its General Comment No. 12 points out that Article 12 of the CRC does not foresee a minimum age for the right of children to express their views. The CRC Committee, as a consequence, discourages states parties from introducing such requirements in all matters affecting children's lives.²⁸ The Council of Europe's guidelines similarly provide that "states are discouraged from introducing standardised age limits". They also refer to the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, which state that "age should not be a barrier to a child's right to participate fully in the justice process".²⁹ In respect to child participation, neither the CRC Committee nor the Committee of the Ministers of the Council of Europe distinguish between the different roles that a child may have in a judicial proceeding (i.e. victim, witness, suspect, plaintiff) or between the different types of proceedings (i.e. criminal, civil, administrative).

EU legislation does not set explicit age thresholds regarding the right of children to express their views and be heard directly in judicial proceedings. It thus lies within the competences of the Member States to lay down the relevant rules. When exercising their powers in this area, however, Member States are bound to respect the essence of children's right to express their views and be heard. Therefore, children should have the chance to exercise this right directly, if they so wish, taking into account not only their age but also their maturity.

FRA examined the minimum age requirements applied by Member States regarding child participation in judicial proceedings and the right of children to express their views and be heard directly, especially in proceedings related to adoption, divorce and custody, placement (the assignment of a child to a suitable place), employment, asylum and international protection, immigration, and cases where the children were victims of violence/abuse or neglect. (For all relevant data, see FRA's [website](#).)



3

Rights and safeguards in criminal proceedings



KEY FINDINGS

- The majority of the EU Member States set at 18 the age limit for children in criminal proceedings to be entitled to special support and procedural safeguards, such as audio-visual recording or interviewing by specialist personnel, regardless of whether they are victims, witnesses or suspects/offenders.
- A few Member States set the upper age limit for children to be entitled to special support and procedural safeguards at an age lower than 18. In these Member States, findings from FRA's studies on [child-friendly justice](#) (2015 and 2017)³⁰ show that children tend to be treated as adults once they are older than the age limit set for procedural safeguards. In some other Member States, this issue is not regulated; however, courts may decide to adopt such measures depending on the circumstances of the case.
- In some Member States, enhanced procedural safeguards apply especially for younger children in judicial proceedings (defined, depending on the context, as children under 15, 14 or 12).

Closed-door rule

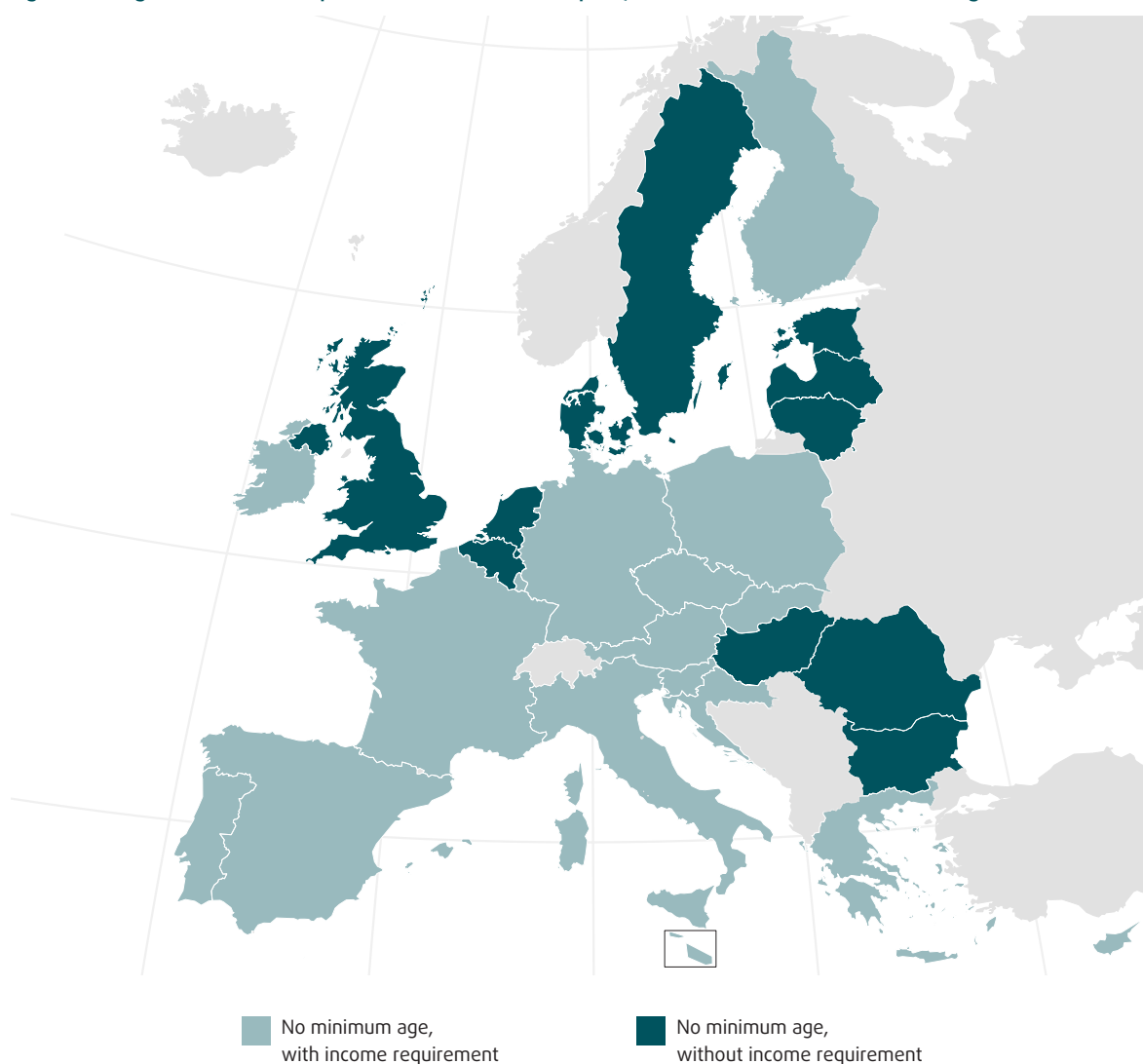
- The majority of EU Member States (16) do not set specific age limits regarding children's right to privacy in court hearings related to criminal justice. In these Member States, whether or not to apply the closed-door rule (i.e., hold hearings in absence of the public) lies within courts' discretion. Findings from FRA's studies on [child friendly justice](#) (2015 and 2017)³¹ show that children feel very unsafe and uncomfortable when too many persons are present during hearings, even more so when their roles are unclear; and that the most threatening presence is that of defendants or their friends and family members.
- In 10 Member States, the closed-door rule applies to all criminal justice hearings concerning children under 18. In two Member States, the closed-door rule only applies to hearings involving children younger than 18 – specifically to those under 15 or 16.

Legal aid and waiving the right to a lawyer

- In line with the Directive on special safeguards for children, all EU Member States provide for free legal aid for child suspects/offenders without setting an explicit minimum age requirement. In the majority of Member States (17), though, the provision of legal aid depends on meeting income requirements. In three of these, those accused of serious crimes are exempted from income requirements. In 11 Members States, legal aid is provided at no cost to child suspects/offenders in all cases without any income requirements or other conditions (see [Figure 2](#)).

- In line with the Victims' Rights Directive, the majority of EU Member States (23) do not require child victims of crime to have reached a minimum age to access free legal aid; three other states apply no minimum age requirements for child victims of serious crimes to access free legal aid. Among those 26 Member States, six apply no income requirements for receiving free legal aid and two more foresee no income requirements in cases of serious crime. Only two Member States do not provide free legal aid for child victims of crime (see Figure 3).
- Free legal aid for child witnesses, in the form of legal advice, is provided without any age requirements in 11 Member States; in three of these, no income requirements apply, either. In two other Member States, free legal aid is provided with no income requirements for child witnesses who are either relatives of the victim or under other special circumstances. In one Member State, free legal aid without age requirements, but depending on income, will be provided to child witnesses as of 1 July 2018. The rest of the Member States do not provide legal aid for child witnesses (see Figure 4).
- In 21 EU Member States, children under 18 involved in criminal proceedings as suspects/offenders are not permitted to waive their right to a lawyer. Meanwhile, 11 Member States restrict the ability of child victims under 18 to waive their right to a lawyer.

Figure 2: Age and income requirements for a child suspect/offender to be entitled to free legal aid



Note: United Kingdom, excluding Scotland.

Source: FRA, 2018

Special procedural safeguards for children in criminal proceedings call for the special treatment of, and rights for, children involved in a trial, either as suspects/offenders or as victims or witnesses. This treatment should take into consideration their specific needs in relation to their age, maturity and level of understanding. The objective is to create a child-friendly justice environment to enable children to exercise their rights in the area of justice, and more specifically their right to a fair trial. Such measures also aim to preserve children’s potential for development and reintegration into society, as noted in the recitals of the Directive on special safeguards for children.³²

The special treatment due children involved in criminal proceedings as suspects is enshrined in Article 40 of the

CRC, which recognises the right of children accused of a crime “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”. Regarding child victims, a general clause in Article 39, also applicable with respect to judicial proceedings, provides that all appropriate measures must be taken to promote their physical and psychological reintegration in an environment respectful of their health, self-respect and dignity.

At EU level, the Directive on special safeguards for children, also taking into account the Council of Europe’s Guidelines on child-friendly justice,³³ sets out a comprehensive legal framework establishing common minimum rules for Member States regarding the implementation of procedural rights of children who

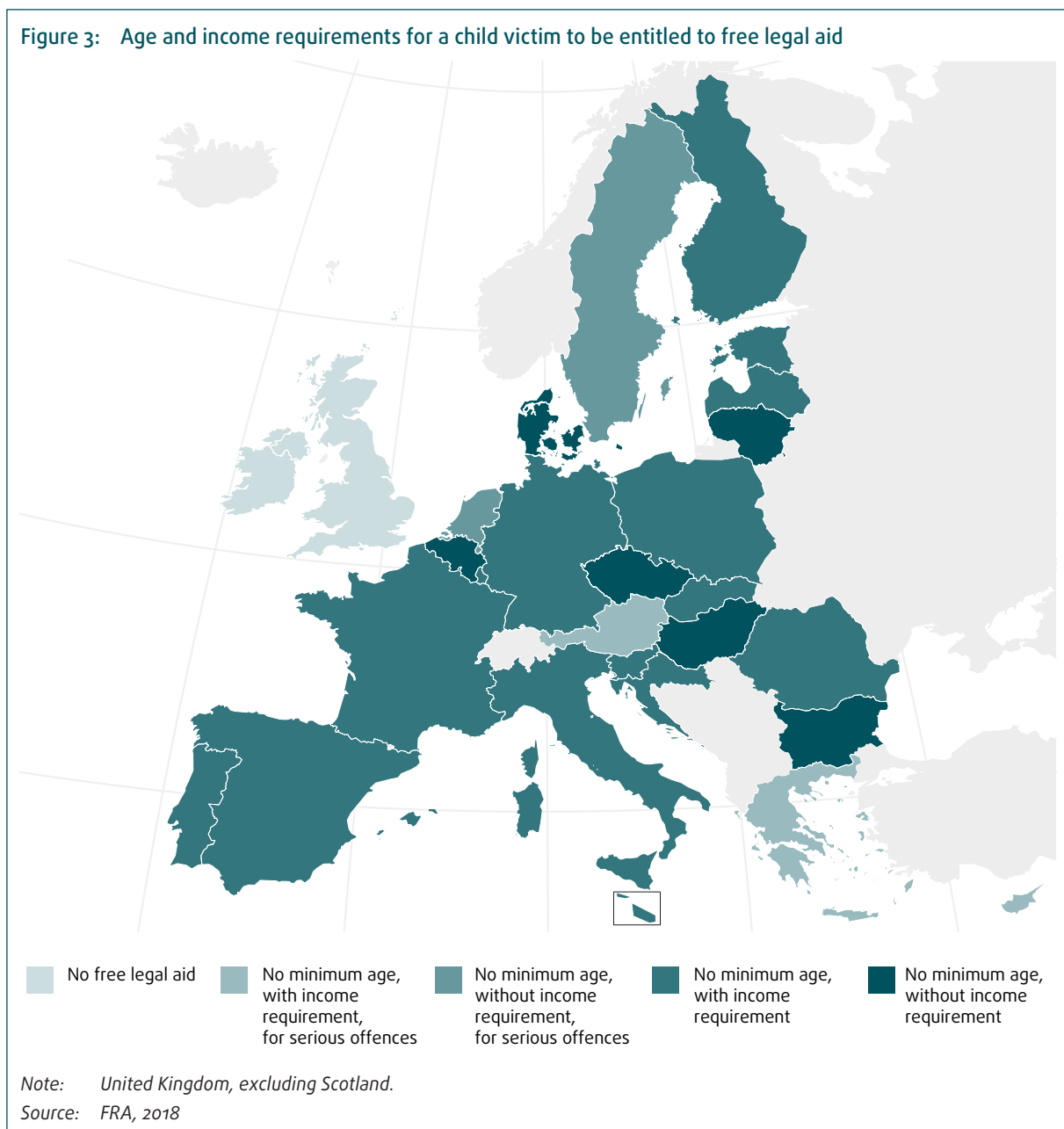
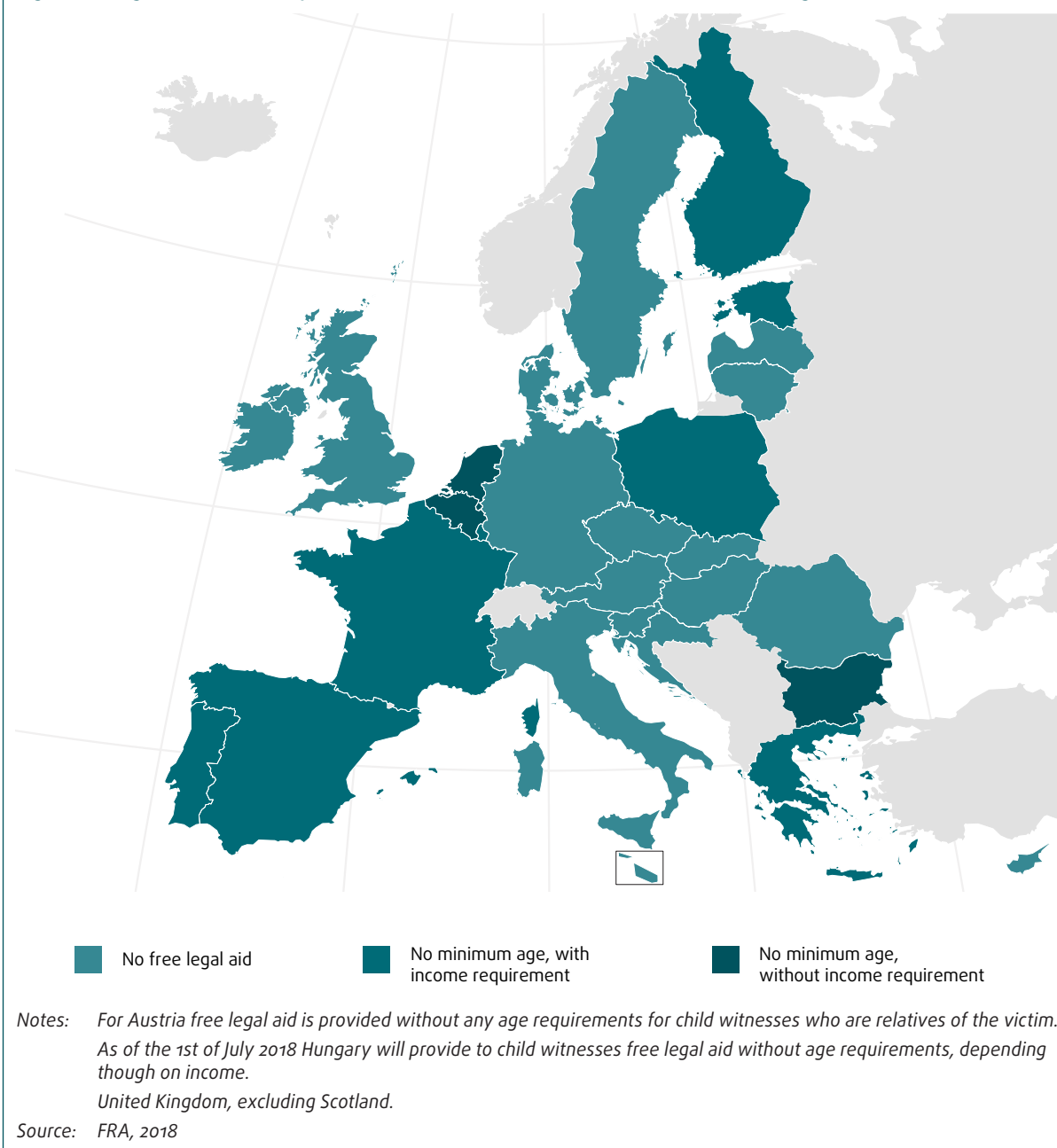


Figure 4: Age and income requirements for a child witness to be entitled to free legal aid



are suspected or accused of crime. Its scope does not include minor offences (e.g. minor road traffic offences), where, for instance, deprivation of liberty cannot be imposed as a sanction. The procedural rules encompass, for example, the right to be informed in simple and accessible language;³⁴ the right to be assisted by a lawyer and have access to legal aid, and the authorities' obligation to ensure that children are effectively using their right to a lawyer, thus framing in a restrictive way their possibility to waive it;³⁵ the right to protection of their privacy, entailing the 'closed-door rule' for criminal proceedings (i.e. court hearings in absence of the public);³⁶ the right to an individual assessment carried out by qualified personnel

to define their specific needs in terms of protection, education, training and social integration;³⁷ the right to an audio-visual recording of questioning;³⁸ and the right to a medical examination.³⁹

Most interestingly, in the context of the directive, entitlement to special procedural safeguards is provided for all children under 18 who are suspects or defendants in a criminal trial, without any differentiation based on their age. Member States must transpose the Directive on special safeguards for children into their national legal orders by 11 June 2019. By that date, Member States are obliged to adopt all appropriate legislative and administrative arrangements to comply with the directive.

Regarding child victims, all procedural safeguards provided under the Victims' Rights Directive apply. For example, child victims have the right to legal aid and to the protection of their privacy.⁴⁰ The right to an individual assessment is of critical importance to identify their specific protection needs and to determine whether they should benefit from special protective measures in the course of criminal proceedings, as provided in Article 22. These measures could entail interviews carried out in specific premises, conducted by the same person and in a gender-sensitive manner, as well as measures to avoid visual contact between victims and offenders, or rules allowing a hearing to take place without the presence of the public.⁴¹

Article 24 of the directive obliges Member States to ensure that, in cases of child victims, all interviews with a child may be audio-visually recorded. Moreover, there has to be the possibility to use these recorded interviews as evidence in criminal proceedings. As regards age requirements, all child victims under 18 are entitled to the protective measures and procedural safeguards

enshrined in the Victims' Rights Directive. In cases of doubt about a victim's age, Article 24 (2) prescribes that the victim will be presumed to be a child. Similar provisions are also provided for child victims in the context of the Anti-Trafficking Directive and the Directive combating the sexual abuse and sexual exploitation of children and child pornography.

FRA addressed a number of questions related to procedural safeguards provided at Member State level for children involved in criminal proceedings, as well as their rights. These questions explore the existence of age limits or minimum age requirements for children in areas such as benefitting from special support and procedural safeguards during proceedings (e.g. audio-visual recording and forensic interviewing by specialist personnel); the right to privacy in court hearings (closed-door rule); and the right to legal aid or to waive the right to a lawyer. (For all relevant data on special support and procedural safeguards; the closed-door rule; and legal aid/waiving the right to a lawyer, see [FRA's website](#).)

4

Detention of children



KEY FINDINGS

Juvenile offenders subject to custodial sanctions and measures

- Child offenders can be subject to custodial sanctions and measures (detention) in all EU Member States. As a general trend, the minimum age for being subject to such sanctions and measures is the same as the minimum age for criminal responsibility. Minimum ages range from 10 to 16 years. In 13 Member States, child offenders can be subject to custodial sanctions and measures (detention) from the age of 14 onwards. In 10 Member States, the threshold is set at a higher age. In four Member States, it is set at a lower age. In one Member State, no minimum age is set in the legislation (see Figure 5).
- The patterns regarding pre-trial detention are similar to those regarding child offenders.

Children in solitary confinement

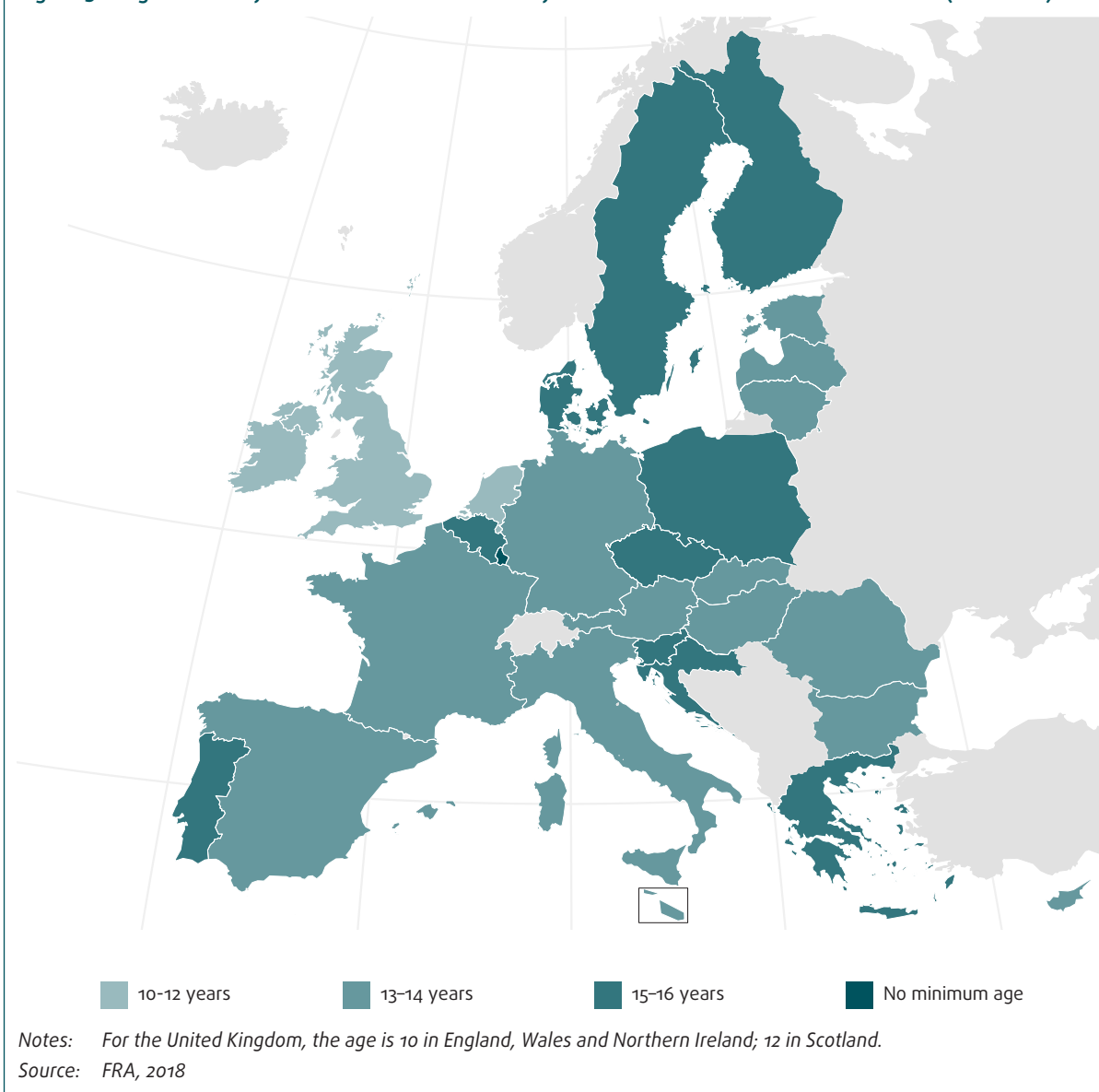
- Only four Member States do not impose solitary confinement on children under 18.
- Among the remaining 24 Member States, the minimum age at which child detainees can be subjected to solitary confinement ranges from 10 to 16 years. The most common minimum age is 14 years, applied in 12 Member States. Five Member States establish a higher minimum age. In four Member States, the minimum age is lower, at 10 years. Three Member States do not specify a minimum age for solitary confinement (see Figure 6).

Restricting or depriving children of their liberty

International human rights law instruments underline that child detention should take place only under very exceptional circumstances. However, children involved in criminal proceedings do face pre-trial detention; placement in special educational or correctional institutions, where restrictions of liberty or movement apply; and even penal sentences imposing on child offenders custodial sanctions (imprisonment/detention). All of these measures restrict or deprive children of their liberty.

According to Article 6 of the EU Charter of Fundamental Rights and Article 5 of the ECHR, individuals cannot be deprived of their fundamental right to liberty and security without a procedure prescribed by law and under very specific conditions.⁴² Every person in detention has the right not to be subjected to torture or inhuman treatment or punishment.⁴³ In the case of criminal proceedings, everyone charged with a criminal offence must be presumed innocent until proven guilty according to law (presumption of innocence).⁴⁴ Finally, in addition to the principle of legality of criminal offences and sentences,⁴⁵ Article 49 (3) of the Charter establishes the principle of proportionality. This is a general principle

Figure 5: Age at which juvenile offenders can be subject to custodial sanctions and measures (detention)



enshrined in the common constitutional traditions of the Member States, as well as in the case law of the Court of Justice of the EU.⁴⁶

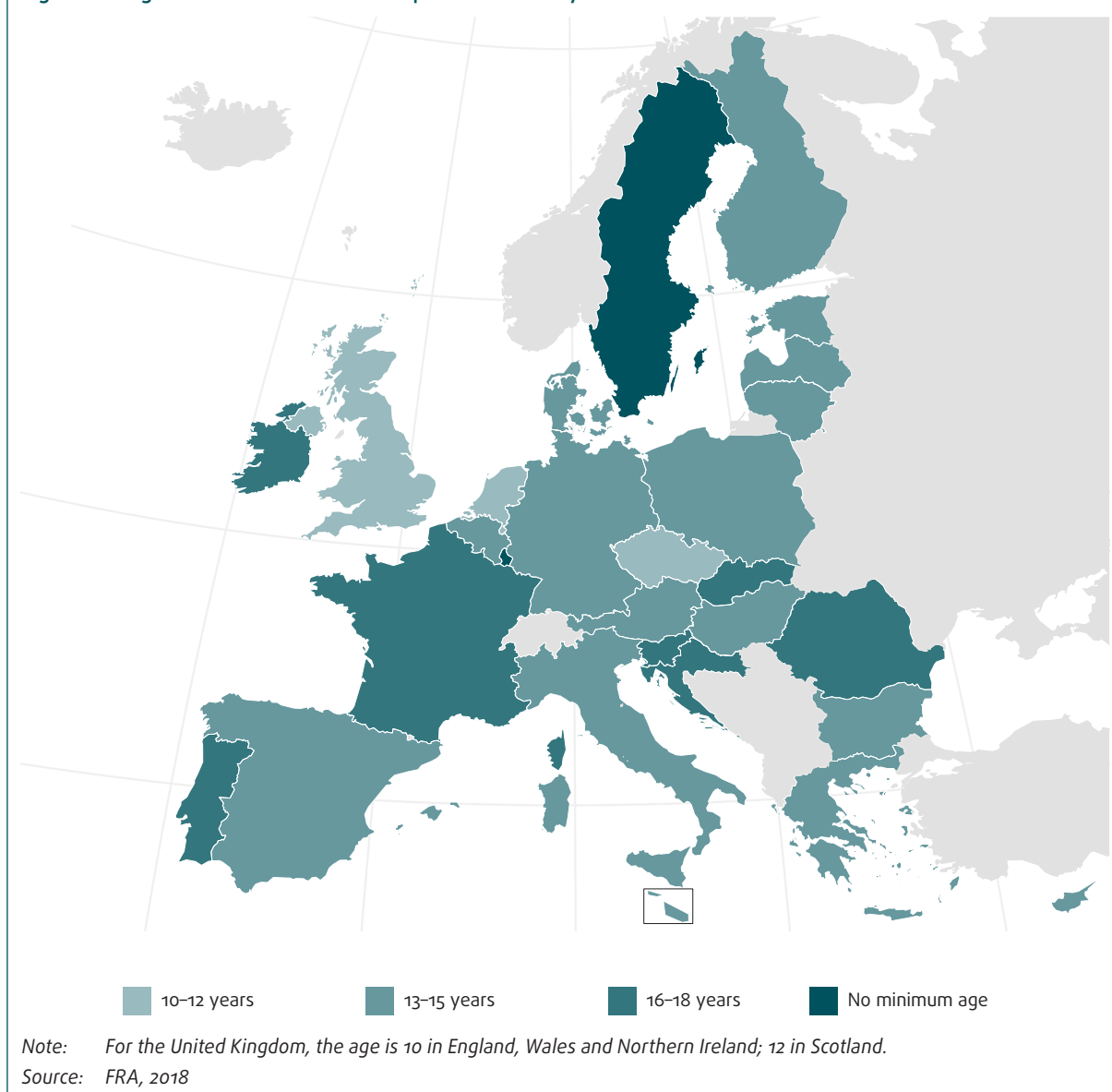
Taking into consideration the best interests of the child principle, restrictions on and deprivation of children's liberty should be used only as a measure of last resort and for the shortest possible time period, as provided in Article 37 (b) of the CRC.⁴⁷ Article 40 (4) of the CRC suggests a whole range of alternatives – such as guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes – “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

The EU legal order also enshrines the rule that deprivation of liberty is to be a last resort for child offenders, in Article 10 (2) of the Directive on special safeguards for children. Article 11 thereof stipulates that “Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures)”. In addition, Article 7 provides that an individual assessment should take place before a sentence is pronounced, considering among other factors the child's maturity and age.

Regarding pre-trial detention, recital 45 of the directive points out that children deprived of liberty are in a very vulnerable situation, which may result in great risks to their physical, mental and social development. Member States are therefore expected to avoid and, if not possible, to limit pre-trial detention to the shortest period of time, as stated in Article 10 (1).



Figure 6: Age at which children can be placed in solitary confinement when detained



Solitary confinement of children

Solitary confinement of a child detainee means that the child is held separately from other detainees for a limited period of time as a disciplinary sanction, or for the child's protection or as a preventive measure. As underlined by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT), solitary confinement "can have an extremely damaging effect on the mental, somatic and social health of those concerned" and "should only be imposed in exceptional circumstances, as a last resort and for the shortest possible time".⁴⁸ This is even more so in the case of children.

Rule 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty prohibits disciplinary solitary confinement or any other punishment that may

compromise the physical or mental health of the child concerned.⁴⁹ Having regard to the definition of solitary confinement introduced in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) in 2015,⁵⁰ the CPT observed an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles, and endorsed this approach.⁵¹

Subsections (a) and (c) of Article 37 of the CRC provide that no child can be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and that every child deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons of his or her age. The Committee on the rights of the child in its General Comment No. 13 on the right of the child to freedom

from all forms of violence⁵² notes that solitary confinement could constitute a prohibited form of mental violence against children.

At EU level, the prohibition of torture, inhuman or degrading treatment and punishment is established under Article 4 of the EU Charter of Fundamental Rights. According to Article 24, the treatment of children should always take as a primary consideration the best interests of the children and their well-being. Article 12 (5) of the Directive on special safeguards for children provides that, in cases of child detainees, Member States are bound to ensure and preserve their health and their physical and mental development. The Directive on special safeguards for children, however, does not explicitly prohibit solitary confinement of children, nor

does it specify a minimum age as of which solitary confinement is permitted.

The issue of setting specific minimum age thresholds for children to be deprived of their liberty or in areas such as their detention together with adults or solitary confinement is not regulated explicitly at the EU level. It therefore lies within the competences of Member States to adopt the appropriate rules. However, when exercising their powers in the field of child detention, Member States should fully respect all applicable binding international and EU rules and principles. FRA examined the relevant legislation of the EU Member States. (For all relevant data on deprivation of liberty and solitary confinement, see [FRA's website](#).)



Endnotes

- 1 Charter of Fundamental Rights of the European Union, OJ 2016 C 202/02.
- 2 United Nations (UN), Convention on the Rights of the Child (CRC), 20 November 1989.
- 3 For example, in related research, the Child Rights International Network (CRIN) is of the opinion that simple age-based restrictions are not always the best approach. In its paper published in April 2016, “Age is arbitrary: Setting minimum ages”, it introduced three group of rationales for establishing minimum age requirements or avoiding setting age limits: a) issues for which the minimum age should be 18 years to prevent abuse of power; b) issues for which minimum ages should be avoided, as age restrictions serve no protective purpose and potentially curb children’s development, freedoms, and even protection; c) issues for which the child’s effective capacity should be the deciding factor due to tensions between children’s protection and autonomy. The last point is particularly relevant for children’s participation in judicial proceedings.
- 4 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315 (Victims’ Rights Directive).
- 5 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, OJ 2016 L 132 (Directive on special safeguards for children).
- 6 Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, OJ 2003 L 338.
- 7 Council of Europe (2016), *Council of Europe Strategy for the Rights of the Child (2016-2021)*, Strasbourg, March 2016, p. 4.
- 8 FRA (European Union Agency for Fundamental Rights) (2017), *Child-friendly justice, Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States* Publications Office of the European Union (Publications Office), Luxembourg.
- 9 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011 L 335.
- 10 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, OJ 2011 L 101 (Anti-Trafficking Directive).
- 11 Regarding the issue of access to justice, please refer to FRA (2016), *Handbook on European law relating to access to justice*, Publications Office, Luxembourg.
- 12 Consolidated version of the Treaty on European Union, OJ 2016 C 202/1.
- 13 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), European Treaty Series No. 5, Rome, 4 November 1950.
- 14 Article 21 of the EU Charter of Fundamental Rights and Article 14 of the ECHR.
- 15 Article 3 of the CRC.
- 16 Article 12 of the CRC.
- 17 Article 37, 38 and 40 of the CRC.
- 18 Treaty on the Functioning of the European Union, OJ 2012 C 326/47.
- 19 Other relevant legislative measures include:
 - a) 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, OJ 2010 L 280;
 - b) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ 2012 L 142;
 - c) Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and 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, OJ 2013 L 294;
 - d) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ 2016 L 65.
- 20 FRA (2017), *Child-friendly justice, Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, Publications Office, Luxembourg.
- 21 Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Strasbourg, 17 November 2010, pp. 17-18 and pp. 50-52.
- 22 UN, Committee on the Rights of the Child (2009), *General Comment No. 12 (2009), The right of the child to be heard*, CRC/C/GC/12, 12 June 2009, p. 3.
- 23 Article 24 (2) of the Charter and Article 3 (1) of the CRC.
- 24 FRA (2017), *Child-friendly justice, Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, Publications Office, Luxembourg.
- 25 UN, Committee on the Rights of the Child (2009), *General Comment No. 12 (2009), The right of the child to be heard*, CRC/C/GC/12, 12 June 2009, pp. 9-10.
- 26 Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Strasbourg, 17 November 2010, p. 16.
- 27 FRA (2017), *Child-friendly justice, Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, Publications Office, Luxembourg, p. 7.
- 28 UN, Committee on the Rights of the Child (2009), *General Comment No. 12 (2009), The right of the child to be heard*, CRC/C/GC/12, 12 June 2009, pp. 6-7.
- 29 UN, Economic and Social Council, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC Res 2005/20, 22 July 2005, para. 18.
- 30 FRA (2017), *Child-friendly justice, Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States*, Publications Office, Luxembourg.
- 31 *Ibid.*
- 32 Recital 1 and 9 of the Directive on special safeguards for children.
- 33 Recital 7 of the Directive on special safeguards for children.
- 34 Article 4 of the Directive on special safeguards for children.
- 35 Article 6 and 18 of the Directive on special safeguards for children.

- 36 Article 14 of the Directive on special safeguards for children.
- 37 Article 7 of the Directive on special safeguards for children.
- 38 Article 9 of the Directive on special safeguards for children.
- 39 Article 8 of the Directive on special safeguards for children.
- 40 Article 13 and 21 of the Victims' Rights Directive.
- 41 Article 23 of the Victims' Rights Directive.
- 42 See also FRA (2017), *European legal and policy framework on immigration detention of children*, Publications Office, Luxembourg.
- 43 Article 4 of the Charter and Article 3 of the ECHR.
- 44 Article 48 (1) of the Charter and Article 6 (2) of the ECHR.
- 45 Article 49 (1) of the Charter and Article 7 of the ECHR.
- 46 *Explanations relating to the Charter of Fundamental Rights*, OJ 2007 C 303, p. 31.
- 47 Article 37 (b) of the CRC; Rule 2 of *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990); Rule 10 of *Recommendation CM/Rec(2008)11* of the Committee of Ministers to member states on the *European Rules for juvenile offenders subject to sanctions or measures*, (2008); Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2015), *24th General Report on CPT's activities*, para. 96.
- 48 Council of Europe, CPT (2011), *21th General Report of the CPT*, paras. 53 and 64.
- 49 UN (1990), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*.
- 50 Rule 44 of *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2015) defines solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement refers to solitary confinement for a time period in excess of 15 consecutive days.
- 51 See, for instance, reports on CPT's reports on the 2015 visit to France (CPT/Inf(2017)7, para. 95), on the 2015 visit to Germany (CPT/Inf(2017)13, para. 70) and on the 2016 visit to Latvia (CPT/Inf(2017)16, para. 96).
- 52 UN, Committee on the Rights of the Child (2011), *General Comment No. 13 (2011), The right of the child to freedom from all forms of violence*, CRC/C/GC/13, 18 April 2011.



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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Finding the right balance between promoting children’s right to participate in procedures that affect their lives and protecting them from harm remains a challenge in the field of justice. Member States address this in various ways, including by setting minimum age requirements for certain rights to kick in, and age limits for special protective measures to apply. These can vary quite considerably across the EU. This report outlines Member States’ approaches to age requirements and limits regarding child participation in judicial proceedings; procedural safeguards for, and rights of, children involved in criminal proceedings; as well as issues related to depriving children of their liberty.

The report is one of two FRA reports addressing minimum age requirements in particular fields. The second report focuses on the asylum context. In addition, FRA has published on its website comparative data on age requirements in nine thematic areas: legal capacity; political participation; health; religion; asylum and migration; access to justice; children in the digital world; social and economic rights; and LGBTI issues. Taken together, the reports and published data provide a comprehensive overview of minimum age requirements in the EU.

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