



Ingi Iusmen
Helen Stalford (eds.)

The EU as a Children's Rights Actor

Law, Policy and Structural Dimensions

Barbara Budrich Publishers



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We are acutely aware of the fact that children's voices do not feature as boldly or directly in this collection as we would have liked. That, perhaps, is more appropriately saved for another outlet that is more sensitively designed to ensure that such contributions are valuable and relevant to children and young people themselves. What we hope to have achieved in this collection, instead, is to bring children's rights perspectives to bear on the systemic, cultural and political factors that need to be addressed if the EU is to make a meaningful contribution to the global campaign to protect and promote children. To assist us in achieving this, we engaged children and young people in a discussion of the themes featured in the collection during the course of a two year international, interdisciplinary seminar series, *'European Responses to Global Children's Rights Issues: Building Capacity and Exchanging Knowledge'* (2013-2015). We are immensely grateful to the UK Economic and Social Research Council (ESRC) for their generous funding of this important series. We also owe a huge debt of thanks to the staff of Eurochild, particularly Jana Hainsworth, Mieke Schuurman, Mafalda Leal and Andrea Witt, who have offered such reliable and inspiring partnership in hosting the series in Brussels and contributing to this collection. Our administrative team that support the European Children's Rights Unit at the University of Liverpool, as well as the administrative staff at the University of Southampton, also played a critical role in organising the series and managing publicity and dissemination. Our heartfelt thanks go to Rachel Barrett, Wei Chen, Angie Walker, Gill Schofield and Natasha Graham in particular.

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Introduction: The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions

Ingi Iusmen and Helen Stalford

'Children have always been and remain at the heart of EU policy. Inspired by the Convention, the EU promotes children's rights through specific Guidelines as well as through the EU Agenda for the rights of the child for internal action [...] In order to prevent and respond to violence against children, which remains a harsh reality, we need to ensure that children benefit from enhanced access to justice and that, starting with birth, every child's right to his or her identity is respected [...] In promoting children's rights worldwide, the EU will continue to work closely with international organisations, UN bodies; in particular UNICEF, and relevant civil society organisations.'

(Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission, 2014)

The rise of an international child rights agenda

20 November 2014 marked 25 years since the adoption of the 1989 UN Convention on the Rights of the Child (CRC), which provided a paradigm shift in the way international law views children as both 'beings' and 'becomings' (Freeman 2011: 27). The CRC is the most ratified of all the treaties on human rights and it constitutes the first international instrument to focus on children as autonomous, rights-bearing subjects, possessing individual and inalienable human rights. Therefore, their well-being is a question of rightful entitlements (Veerman 1992; Freeman 2000; Archard 2004). The Convention provided a new *Weltanschauung* in terms of how children should be approached in legal, policy and normative terms at the national level. For instance, the CRC included fundamental principles that should underpin all children's rights, such as the 'best interests of the child' (Article 3) and the right to have a say (Article 12) in all matters affecting them within the family, schools, local communities, public services, or judicial procedures, to name just a few. The Convention constitutes a landmark in international law by establishing children's status as legally empowered subjects of entitlement.

Over the last two decades the Convention has shaped how states and non-state actors think about children in legal, policy and normative terms at the societal level. More concretely, state parties to the CRC are legally obliged to incorporate its principles within their domestic legal and procedural infrastructure and to ensure that all national law and policy adhere to the rights

and principles enshrined therein. But the CRC has also exerted a significant influence on the way in which children's human rights are considered and articulated at supra-national level, providing a universally endorsed framework within which international polities can forge greater national compliance and co-operation on children's rights issues that are either shared in common by states parties, or which straddle national boundaries. Civil society actors, NGOs, social movements and quasi-governmental bodies play a growing, crucial role both in facilitating communication between this multifarious network of children's rights interlocutors and in identifying where gaps in implementation of children's rights are evident on the ground. What the CRC has provided the backdrop to is, in effect, a genuinely global partnership whose members share remarkably clear and consistently articulated objectives for the protection and promotion of children's rights, notwithstanding the diversity of contexts within which children's rights are located across the world. Maintaining an effective and co-ordinated global partnership of this nature is all the more crucial if there is to be any hope of responding to the ever more nefarious effects of economic and political globalisation and of the rapid, almost boundless advancements in online technologies on children's lives, including a rise in child labour, child trafficking, illegal migration, sexual exploitation and violence (Timimi 2005, Aitken 2001; Pogge 2008).

But that is not to say that the CRC is uncontested; the 'partnership' of children's rights activists have far from resolved some of the tensions – culturally, ideologically, jurisdictionally and economically – that are exposed in many areas of children's rights protection, tensions which are compounded by the vague, ill-defined nature of key, ubiquitous notions such as 'best interests of the child' (Cordero Arce 2012; Van Bueren 1998; Freeman 2000). Furthermore, the absence of any overarching enforcement mechanism, significant inconsistencies in the way in which the Convention has been transposed into domestic law across the signatory states, and the relatively impotent, resource-intensive nature of the Committee on the Rights of the Child's monitoring function, are critical barriers to its full and effective application (Tomás 2002; Freeman 2000; Gareth 2005, Stalford and Drywood 2011: 204).

Despite these shortcomings, the CRC retains its appeal as the *lingua franca* of children's rights advocacy at the regional, national, European and international levels. It has been highly successful in transforming declarations of 'rights' that appeared indifferent to the specific needs and interests of children's into much more sensitive, responsive tools for promoting children's rights. For instance, at the European level, the enforcement mechanisms of the European Convention on Human Rights (ECHR) are now routinely interpreted in the light of the CRC standards and principles (Kilkelly 2002). This, in turn, has given rise to 'the most extensive body of jurisprudence concern-

ing children's civil rights of any of the regional human rights fora' (Van Bueren 2007: 15-16). A similar pattern of 'children's rights auditing' has occurred organically across other international jurisdictions such as the ICC, the Inter-American Court of Human Rights, the European Committee of Social Rights and the African Court on Human and People's Rights (Liefwaard and Doek 2014), notwithstanding the inability of international polities to ratify the CRC. The jurisprudence generated by this process, in turn, acts as a powerful fortification of the children's rights obligations incumbent on domestic States.

The European Union (EU) has emerged as a more recent protagonist in this international children's rights partnership, but far from simply jumping on the bandwagon, it has carved out a distinct and potentially extremely powerful role in developing and enforcing children's rights, not just across the Member States of the EU, but in non-EU states as well.

The emergence of the EU as a children's rights actor

Since the mid-2000s, the EU has sought to extend its embrace of human rights norms to children and young people, inside and outside the European Union by drawing on the CRC as the key source of inspiration for its children's rights measures. The EU's commitment to advancing child rights measures based on the CRC principles in both its internal and external policy dimensions has been primarily steered by the European Commission (Iusmen 2013) with the European Parliament making some important (albeit rather more symbolic) rhetorical gestures in support. The promotion of children's rights-based norms, responds to the 'normative-power' image that the EU has sought to promote via its external policy (Manners 2002; Sjursen 2006).

While the EU has, for over 50 years, shown sporadic interest in areas connected with children's lives (Stalford 2012), it is only since the late 1990s, in the context of negotiations around EU Eastern enlargement and external development co-operation, that the EU's activities have been grounded in a more explicit children's rights normative framework (Iusmen 2014). The protection of child rights emerged as an issue pertaining to the Area of Freedom, Security and Justice as part of the Hague Programme 2005-2009, when the Commission adopted its first action plan on child rights included in the *Communication Towards an EU Strategy on the Rights of the Child* (2006). This action plan and accompanying statement of intent provided a set of policy measures in line with a rights-based framework (European Commission 2006: 2). Since then a wide range of policy documents and financial

instruments¹ have been adopted and deployed to target child rights issues in EU external policy, particularly as part of the EU enlargement process,² not to mention across a growing range of internal market activities.

‘Actorness’

Many studies have focused on the EU’s role as an actor in world politics (Bretherton and Vogler 2006; Nuttall 2000; Ginsberg 2001; Smith 2006; Peterson and Smith 2003; Knodt and Princen 2003; Hill and Smith 2005). A number of EU ‘actorness’ models have been developed to capture the EU’s role in and its impact on international politics. Jupille and Caporaso’s (1998) model of ‘actorness’ focuses on four dimensions of EU international actorness: cohesion, authority, autonomy and recognition. According to Jupille and Caporaso’s model, *cohesion* indicates the extent to which an actor is able to formulate internally consistent policy preferences; *autonomy* is determined by institutional distinctiveness, namely that the EU can operate independently from individual EU Member States; *authority* pertains to the legal competence of the EU to act; and *recognition* refers to acceptance of the EU by other actors. Bretherton and Vogler’s (2006) model provides a process-oriented approach by focusing on the EU’s behaviour in international politics. According to them ‘actorness is constructed through the interplay of many factors, both internal to the Union and in the external environment of ideas and events that permit or constrain EU action’ (Bretherton and Vogler 2006:2). Their model of EU ‘actorness’ comprises three dimensions: *opportunity*, which provides the external context; *presence*, which renders the EU’s ability to have an influence beyond its borders; and finally, *capability*, which indicates the ability to exploit opportunity and capitalise on presence.

The EU’s actorness with respect to international child rights includes all the dimensions captured by the two models above. It entails actions taken to address child rights violations and promote children’s rights principles in both the EU’s external and internal policy dimensions. More specifically, it

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- 1 The Council adopted the *EU Guidelines for the Promotion and Protection of the Rights of the Child* (2007) and, in so far as children’s rights in zones of conflict are concerned, the Council issued *EU Guidelines on Children and Armed Conflict* (2003, 2008). The Commission developed an action for EU external policies by adopting the *Communication A Special Place for Children in EU External Action* (2008). Child rights are also promoted via the EU’s thematic programmes in EU development and cooperation policy, primarily via the Investing in People and the European Instrument for Democracy and Human Rights (EIDHR).
 - 2 A new *acquis* Chapter in the Progress Reports was created in 2005 – Chapter 23 on ‘Judiciary and Fundamental Rights’ – and human rights, including child rights, are now monitored and assessed both under this chapter and under the political criteria (Iusmen 2014:115).

involves the EU's development and deployment of a set of clearly identified legal, policy, procedural, institutional and financial instruments, inspired by international human rights instruments (such as the CRC). Such measures have to be developed and interpreted within the confines of EU competence in policy sectors where the EU has the powers (exclusive, shared or supportive) to intervene. But it also demands some sensitive and challenging balancing of children's rights objectives with the broader, potentially competing objectives of market integration and economic growth. This is where the EU exercises the greatest potential to effect dramatic changes in the way that children's rights are perceived and disposed – above and beyond other international or national actors in fact. It is in a distinctly powerful position insofar as it wields unique legal, political and financial authority over its Member States and over the external regions that rely on its support. It has potent enforcement mechanisms, and unparalleled resources to support rigorous monitoring, data-collection and cross-national policy exchange and collaboration. It follows that if it can succeed in mainstreaming children's rights considerations into the textual spirit of all EU legal and policy making – including those areas that are of seemingly only tangential relevance to children's lives – then it is creating the context for a progressive 'normalisation' of children's rights; a context which regards respect for children's rights not just as the chance outcome of a niche set of legal or policy initiatives, but as absolutely integral to the broader success and sustainability of the EU.

Embracing the CRC

The magnitude of the EU's potential reinforces the importance of ensuring that any efforts to embed children's rights within its procedural, institutional, legal and policy architecture are firmly rooted in an ideologically persuasive framework. The explicit EU constitutional reference to the protection of children's rights as one of the core objectives of the EU (Article 3(3) TEU) and the panoply of children's rights measures included in the EU Charter of Fundamental Rights³ carry significant credence in this regard (Lamont 2014; Stalford 2012; McGlynn 2002: 392-94; Ruxton 2005: 21-22). This is further reinforced by the increasingly explicit allusions to the CRC in the substance of binding EU legislation (Stalford and Drywood 2011; Stalford 2012). But

3 The EU Charter of Fundamental Rights (Article 24) contains explicit references to child rights provisions in the CRC, such as child participation, protection and care for children's well-being as well as the principle of the 'best interests of the child' guiding all actions relating to children. Other Charter articles are also relevant for children, for instance Article 14 – right to education; Article 21 – non-discrimination; Article 32 – prohibition of child labour and protection of young people at work or Article 33 – family and professional life.

allusions are one thing; achieving meaningful positive impacts are another thing altogether.

The EU as a ‘Children’s Rights Actor’

The EU’s role as a child rights actor is examined in this book from two connected perspectives: first, as the development and adoption of EU-level *systems* (policies, laws, processes) aimed at the protection of children’s rights; and second, as a critical assessment of the *impact* of the EU’s actions on children’s rights protection at the national level.

What renders this book unique in the field of EU child rights scholarship is the variety of contributions –from academics, legal experts and child rights practitioners – as well as the interdisciplinarity of the chapters, which cover international law, European politics, public policy and childhood studies. Some of the contributions draw upon qualitative evidence collected as part of empirical research or anecdotal evidence collected through years of experience of working in the NGO sector. The CRC provisions and principles, other international human rights instruments and progressive theorisations of children’s rights provide primary reference points against which EU actions and performance as a child rights actor is being assessed.

The development of EU-level systems to protect child rights

The chapters included in the first section of the book scrutinise the extent to which existing EU systems facilitate the protection and promotion of children’s rights. Stalford’s chapter critically assesses the extent to which children can access EU-level justice remedies to hold Member States and the EU institutions themselves to account for alleged breaches of their rights. Her findings highlight the doublestandards of the EU in failing to provide children with basic access to justice at EU level, on the one hand, whilst, on the other, pursuing so vociferously the ‘child friendly justice’ agenda at the national level. Schuurman’s chapter partially responds to some of the concerns raised in Stalford’s chapter by making concrete suggestions as to how children’s rights could be mainstreamed in a more comprehensive and meaningful way into all areas of EU law and policy-making. Her suggestions are informed by the findings of interviews with key EU officials and by good practice examples at the domestic level. Lind-Haldorsson and O’Donnell’s chapter adds further support to a holistic, systemic approach to EU children’s

rights by scrutinising how the EU can add value to the development of more effective child protection systems across the Member States. Lamont's chapter, on the other hand, illustrates the important function that cross-border administrative structures, such as Central Authorities and the European Judicial Network, can and should play in reinforcing child rights principles when implementing EU family law.

The effects of EU actions (law, policy) on child rights

The second half of the book provides a critical and empirical analysis of how the current EU actions impact – directly and indirectly – on national child rights provisions and, more concretely, on children's lived experiences. Rap's chapter draws upon detailed cross-national comparative expositions of domestic juvenile justice processes to explore the extent to which they are amenable to current European initiatives pertaining to child friendly justice. Iusmen's chapter investigates the emergence of children's de-institutionalisation as an EU issue and the current EU policy on de-institutionalisation, as well as its shortcomings. How the rights of two distinct categories of children are protected and, indeed, corrupted by the operation of the EU's internal market preoccupations are examined in Drywood's and Ferreira's chapters. Drywood scrutinises the relevance of the EU's role in securing the protection of child rights in the recruitment of young foreign footballers, while Ferreira's chapter examines the extent to which the EU has achieved a satisfactory protection of child rights in the field of EU labour policy. Similarly, Savirimuthu's contribution reveals just how challenging it can be to achieve a healthy balance between protecting children and supporting the development of autonomous decision-making in an environment which is characterised by age-insensitive marketing and digital profiling. Finally, Vandenhoe's chapter provides an insightful analysis of the strengths, weaknesses, opportunities and threats of deploying child rights-based approaches to EU development cooperation.

These chapters collectively provide fresh, critical insights into substantive issues that have come to characterise the EU children's rights agenda (such as child protection and child friendly justice). They also break new ground, exploring more niche, hitherto 'hidden' examples of cross-border child exploitation (such as online data protection and football recruitment). Crucially, they offer practical, methodological suggestions as to how administrative, legal and policy processes can be sensitised to children's rights so that they respond more effectively to the overarching EU children's rights agenda.

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Journeys to European Justice: (How) Can the EU Enable Children to Enforce their Rights?

Helen Stalford

Introduction

This chapter examines the legitimacy and effectiveness of the EU as a children's rights actor by examining the extent to which children influence the laws and policies it develops. It interrogates what mechanisms are in place to ensure conscientious implementation of EU children's rights measures and how the EU tests and responds to the impact of those measures on the ground. In that sense the analysis departs from the common tendency to view access to justice issues through the lens of national justice processes and examines how children claim their rights in a distinctly supra-national – in this instance European Union (EU) – context. The analysis deliberately excludes any consideration of judicial enforcement of EU children's rights, either from the perspective of the national courts or from the perspective of Court of Justice¹, thereby departing from the routine conflation of 'access to justice' with 'access to the courts'. By examining more routinely available (non-judicial) justice channels through which children can actively enforce and advance their EU rights, the discussion questions whether the EU genuinely endorses practices that are compatible with a child rights-based approach.

The notion of a child-rights based approach is inherent in the notion of 'child friendly justice' (CFJ). CFJ is one of the key priorities identified by the Commission in its seminal 2011 'Agenda for the Rights of the Child' (Commission 2011: 6) and in the various legislative, policy and research funding initiatives that have ensued. CFJ has become something of a mantra in broader children's rights law and policy-making, not only at European level, but at domestic and international level too. The EU, in particular, continues to invest significant resources in research, training and knowledge exchange projects across a range of domestic children's rights contexts. This has already yielded a wealth of comparative, qualitative and quantitative data providing rich insights into children's experiences of the justice system, and into the

1 These issues are explored further by the author in Stalford 2014; and Stalford and Drywood 2011.

extent to which practitioners adapt processes to meet the needs of children.² These initiatives complement parallel efforts aimed at ensuring that international (supra-national) justice processes are amenable to children's rights, as well as an established and ever-expanding body of scholarship exploring the extent to which the distinct interests and needs of children are accommodated in various justice settings (see chapter 5 by Rap in this collection; Kilkelly 2001; Fortin 2006; Council of Europe 2008; Nolan 2011; Tobin 2012). This chapter adds a new perspective to this body of work by examining the extent to which the EU's *own* justice processes are amenable to claims from and on behalf of children.

The analysis focuses on the main non-judicial 'points of entry' to EU-level justice, notably the EU Ombudsman, the EU Citizens' Initiative, EU Parliamentary petitions and infringement proceedings. In focusing on these contexts, the analysis highlights the importance of securing children's access to justice at all stages of law and policy-making, whilst at the same time drawing attention to the limitations and challenges inherent in such processes. It interrogates the extent to which children can and do really access justice at EU level, and speculates on the impact of this on the way that children's rights are disposed of and developed at both EU and national level. The chapter concludes somewhat cynically that the EU, for all of its rhetorical and financial commitment to child friendly justice, is very far from practising child friendly justice within its own justice mechanisms. Indeed, it has some way to go before it evidences a meaningful commitment to children as individual and active rights holders who can readily access EU mechanisms to hold both the EU institutions and their nation states to account. This raises serious questions as to the progress the EU can really make to advance children's rights in a way that inspires other polities at the national or, indeed, the international level if the measures it enacts and the processes by which they are enforced remain impenetrable to the very individuals they are designed to protect. With this in mind, the discussion includes some thoughts on how and whether such processes can be made more accommodating of children, par-

2 For instance, in 2012, the EU Fundamental Rights Agency commissioned research involving over 570 interviews with justice professionals (judges, prosecutors, lawyers, guardians, people working at courts, psychologists and social workers) across 10 EU countries to gain their perspectives of how children's rights are protected within justice proceedings, particularly in courts. This was complemented by a similar number of interviews with children and young people in 2013-2014. The project findings should be released in 2015. See <http://fra.europa.eu/en/project/2012/children-and-justice>. Similarly, DG Justice of the European Commission funded an in-depth study of children's involvement in judicial proceedings across the 28 Member States of the EU. This was to address the significant gap in reliable, comparable and official data on the situation of children, particularly in the context of justice proceedings (Commission 2011, p. 5). See further <http://www.childreninjudicialproceedings.eu/Home/Default.aspx>.

ticularly given the anticipated increase in child rights-related claims arising out of EU law in the future.

To set the scene for this analysis, the initial sections define precisely what is meant by ‘access to justice’ and summarise the key components of ‘child friendly justice’ by reference to the relevant legal and policy guidance.

1. Defining Access to Justice

Access to justice governs a range of processes related to the enforcement and advancement of rights. There is a multi-layered legal framework underpinning children’s access to justice in a European context, drawn both from the more generic international human rights provision as well as from dedicated children’s rights law and guidance. The Universal Declaration on Human Rights, for example, asserts that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” (UDHR 1948, Article 8). Similarly the International Covenant on Civil and Political Rights 1966 refers to an “effective remedy” (Article 2(3a)) for all the rights in the Covenant and further guarantees the right to “take proceedings before a court” (Article 9(4)), the right to a “fair and public hearing” (Article 14(1)), and the right to be tried without undue delay (Article 14(3c)). More recently, the 2006 UN Convention on the Rights of Persons with Disabilities, noted for its ratification by the EU, places an explicit obligation upon states to ensure equal access to justice to those persons with disabilities, including a requirement to provide their agents with appropriate training to accomplish this (Article 13).

In a European context (specifically the Council of Europe) the European Convention on Human Rights 1950 (ECHR) protects individuals’ right to a fair trial and to an effective legal remedy (Articles 6 and 13 respectively), provisions that have been expansively interpreted to cover a range of civil, criminal and administrative proceedings. Access to justice for those seeking to uphold their economic and social rights (not traditionally the focus of ECHR proceedings) is facilitated by the European Social Charter.³ Importantly, this instrument makes explicit reference to legal and social protection,

3 Adopted in 1961 (ETS 035) and revised in 1996 (ETS 163). All EU Member States have ratified the 1961 version of the Charter. All Member States with the exception of Croatia, Czech Republic, Denmark, Germany, Greece, Luxembourg, Poland, Spain and the UK have ratified the 1996 version of the Charter.

particularly for children in the context of criminal proceedings, family proceedings and administrative proceedings.⁴

Access to justice is equally embedded in the EU legal order. In fact, it is regarded as fundamental to the Union's constitutional claim to be grounded in the rule of law and to the EU's ongoing pursuit of good governance.⁵ The Court of Justice, through an established jurisprudence dating back to the 1980s, has played a central role in articulating and reinforcing the EU and national authorities' obligations to facilitate access to justice.⁶ More recent changes to the EU's constitutional architecture, particularly following the 2009 Lisbon Treaty, further reinforce (and arguably extend) the rights associated with access to justice. Notably, the Charter of Fundamental Rights which now is on the same legally-binding footing as the Treaties (Article 6(1) TEU), summarises all of the key ingredients associated with the right to an effective remedy and a fair trial (Article 47), including: the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law; the right to be advised, defended and represented; and the right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.⁷ More specifically, the EU has assumed a direct correlation between achieving access to justice and ensuring cross-border recognition and enforcement of judgments, notably in the context of international family (including parental child abduction) or civil proceedings (such as cross-border child maintenance claims). Thus, a requirement has been incorporated into the Treaty on the Functioning of the European Union (TFEU) that the Union shall "facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters." (Article 67(4) TFEU. See further Lamont's discussion in Chapter 3 of this collection).

Drawing on this extensive legal framework, jurisprudence and procedural guidance, access to justice is characterised by three key broad components:

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- 4 See in particular Article 17 – the right of children and young persons to social, legal and economic protection.
 - 5 The Commission has defined good governance as having five basic components: openness, participation, effectiveness, coherence and accountability (Commission, 2001).
 - 6 The Court of Justice first recognised in the *Johnson* ruling of 1986 that the fundamental right to judicial process, as enshrined in Article 6 ECHR, forms part of the general principles of EU law binding upon the MS when acting within the scope of the Treaties, and thus applies for the benefit of all individuals whose Union rights are implemented through the national systems of judicial protection (Case 222/84 *Johnston* [1986] ECHR 1651). See further Dashwood et al. (2011: 289) for an overview of subsequent case law.
 - 7 In that sense, Article 47 Charter is more generous in scope than Articles 6 and 13 of the ECHR, insofar as it extends to a right to financing legal proceedings for those who lack the resources to pursue their rights. This is currently being used to challenge widespread cuts in legal aid that have been imposed in recent years, particularly in the context of immigration proceedings (Meyler and Woodhouse 2013).

- it is inclusive (it applies to all individuals, regardless of age, ethnicity, gender, physical or mental capacity, socio-economic, political or legal status);
- it implies access to ‘an effective legal remedy’, broadly construed;
- it governs justice processes at all levels, from the local, to the national, European and the international level.

Importantly, access to justice extends far beyond facilitating effective access to formal, judicial proceedings aimed at interpreting and enforcing the law; it is equally applicable to administrative processes, including the right to challenge laws and other decisions that are unfair, or to campaign for remedies that accommodate individual interests and rights more effectively. This raises questions as to how this body of guidance is brought to bear specifically on *children’s* access to justice.

2. Applying Access to Justice Principles to Children

In seeking to understand how access to justice principles apply to proceedings involving children, the most comprehensive point of reference is the Council of Europe (CoE) Guidelines on Child Friendly Justice (CoE 2010, hereafter ‘the Guidelines’) developed as part of the CoE’s comprehensive children’s rights strategy.⁸ They are, in legal terms, a relatively ‘soft’ alternative to the provisions described above. That said, they offer a detailed blueprint for child friendly justice governing all types and stages of formal proceedings affecting children and, as such, have informed a range of Council of Europe and, indeed, EU measures in the field.⁹

Consistent with our broad understanding of access to justice, the Guidelines relate to all formal investigative, judicial and administrative proceedings including the police, immigration, educational, social or health care services. Moreover, they refer to children’s rights before, during and after formal pro-

8 The Council of Europe’s children’s rights strategy ‘Building a Europe for and with children’ (2012-2015), runs in parallel with the European Union children’s rights strategy, the ‘EU Agenda on the Rights of the Child’. There are a number of themes and priorities common to both, including child friendly justice, stimulating a degree of collaboration and resource-sharing. See further: <http://www.coe.int/t/dg3/children/>.

9 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 L 315, 14.11.2012, p. 57-73; Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822 final, see paragraph 24 of Explanatory Memorandum.

ceedings, implying a broad application to a range of democratic processes involving the enforcement and enhancement of individual rights. Specifically, ‘child-friendly justice’ is defined in the Guidelines as:

...justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level ... giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity. (Part II.c., emphasis added)

The Guidelines identify the key mechanisms that need to be in place to achieve these guarantees, including: access to appropriate information and advice; the right to be heard; access to the court and to the judicial process; the avoidance of any undue delay in reaching and processing decisions relating to children; protection and, if necessary, anonymity, in the course of participating in proceedings; specialist training and multi-disciplinary co-operation to enable professionals to respond more effectively to children's interests and needs in the context of justice proceedings; and a clear commitment to using detention only as a measure of last resort (Part IV). As the CoE notes:

...the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) – is necessary in a democratic society and equally applies to children, taking ... into account their capacity to form their own views. (Para 1 preamble, emphasis added)

These standards resonate, in particular, with the UN Convention on the Rights of the Child 1989 (CRC) which is replete with references to child friendly justice. In fact, almost every substantive provision of the CRC reflects one of the child friendly justice principles, including children's right to appropriate (legal) assistance and direction;¹⁰ to participate in the decision-making process;¹¹ to undue delay;¹² and to be protected before, during and

10 For example, Article 5 respects children's right to ‘appropriate direction and guidance’ in the exercise of their Convention rights; Article 8 requires that states provide children with ‘appropriate assistance and protection’ when they are pursuing claims relating to their identity, nationality, name and family relations; and Article 14 upholds the rights and duties of parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion, in a manner consistent with the child's evolving capacities. Article 22 requires that asylum seeking children are provided with the necessary protection, assistance and information in the context of family reunification proceedings; and Article 37 guarantees children who are deprived of their liberty the right to prompt access to legal and other appropriate assistance.

11 Article 9 provides that children should have a right to participate and make their views known in child protection proceedings.

after justice proceedings.¹³ These provisions are further bolstered by the four general principles of the CRC¹⁴ and by the recently established complaints mechanism.¹⁵ These, together with the broader provisions referred to above, provide hefty legal and procedural armour to protect children's rights in the justice process.

Ensuring that justice processes are child friendly is as crucial at the international or inter-state level as it is at the national or regional level. International courts and complaints mechanisms offer the last resort for most justice proceedings; the ultimate opportunity to hold authorities and individuals to account for abuses where domestic processes have failed; an international platform for establishing universal moral and ethical standards and setting legal precedents on the interpretation of the expansive body of international human rights laws, whether they expressly refer to children or not. The outcome of those processes can have dramatic repercussions for millions of children. They can stimulate a gradual domino-effect of reforms in domestic child law and practice across a range of jurisdictions,¹⁶ trigger important

12 Article 10 relating to family reunification resonates with the 'no delay' principle underpinning child friendly justice insofar as it requires such applications to be dealt with in a positive, humane and expeditious manner. Similarly, children are entitled to 'prompt decision' relating to whether or not they can lawfully be deprived of their liberty (Article 37).

13 Article 16 acknowledges children's right to legal protection against any interference with their right to privacy, family or correspondence; Articles 19, 20 and 21 provide similar safeguards for children in the context of child protection proceedings.

14 Article 2 (right to non-discrimination); Article 3 (best interests); Article 6 (right to life, survival and development); and Article 12 (right to participation).

15 27 January 2012. The Third Optional Protocol on a Communications Procedure entered into force on 14th April 2014 and, at the time of writing, had been ratified by 46 state parties. It allows individual children to submit complaints to the Committee on the Rights of the Child regarding specific violations of their rights under the Convention and its first two optional protocols.

16 The first ECtHR judgment to deal with children's rights was *Tyrer vs the United Kingdom* (Application No. 5856/72, judgment of 25/04/1978), in which the Court concluded that corporal punishment (in this case birching) inflicted on a young offender at the hands of the police constituted a breach of Article 3 ECHR. This decision triggered a Council of Europe-wide campaign to ban corporal punishment which has contributed, in turn, to legal reform across over half of the 47 Council of Europe states. Paradoxically, the UK remains one of the few countries in which the practice of 'reasonable punishment' by parents is still legal (s.58 Children Act 2004). See also the collective complaints submitted to the European Committee on Social Rights by civil society organisations against states regarding their corporal punishment laws: *World Organisation against Torture (OMCT) vs Greece*, Collective Complaint No. 17/2003; *World Organisation against Torture (OMCT) vs Ireland*, Collective Complaint No. 18/2003; *World Organisation against Torture (OMCT) vs Belgium*, Collective Complaint No. 21/2003; *World Organisation against Torture (OMCT) vs Portugal*, Collective Complaint No. 34/2006.

ethical and cultural debates,¹⁷ re-define the boundaries of parental and state authority over children¹⁸ and the interrelationship between children's welfare and autonomy.¹⁹

Maud de Boer-Buquicchio, former Deputy Secretary General of the Council of Europe, has explained the importance and meaning of access to international-level justice as follows:

What do we mean by "access" to international justice for children? I believe that it means more than being able to fill in a form to lodge an application with the Court. I believe that access to international justice for children occurs when they have a real chance, be it directly or indirectly through family members, legal representatives or NGOs, to have their voices heard and interests taken care of by an international judicial or non-judicial body ... For international justice to be really meaningful for children, we have to identify and act upon ways to improve children's access to information on standards, procedures and decisions; to facilitate their participation in proceedings; to incorporate children's rights in the functioning and decisions of the monitoring mechanisms; to improve the contacts between children and their representatives with the monitoring bodies; and last, to accelerate procedures and improve the scrutiny of the execution of decisions. (2008:10-11)

With this in mind, access to international justice is as much a matter of ensuring that children's rights norms, theories and empirically-verified evidence is brought to bear on decision-making as it is about ensuring that children can participate in justice proceedings, either directly or through a representative.

Maud de Boer-Buquicchio's comments reflect a growing body of case law manifesting the international courts' engagement with and application of children's rights principles and processes in interpreting international treaties.²⁰ References to the CRC, in particular, have become a routine feature of

17 The minimum age of criminal responsibility has been widely mooted in response to a number of key international decisions, including the conclusions of the European Committee for Social Rights (ECSR, Conclusions XV-2, Malta (2003)).

18 As evidenced, for example, in the ECtHR's interpretation of immigrant children's family rights by reference to the best interests principle: *Osman v. Denmark* (Application no. 38058/09); *Mugenzi v. France* (Application no. 52701/09, Judgment of 10 October 2014; and *Mubilanzila Mayeka and Kaniki Mitunga vs Belgium*, (Application no. 13178/03, Judgment of 12 January 2007).

19 See for instance *S.C. vs the United Kingdom*, judgment of 15 June 2004 in which the ECtHR upheld the child's right to participate in justice proceedings as central to fulfilling Article 6 ECHR right to a fair trial and required that the process be adapted accordingly. See also, *Sahin vs Germany*, (Application no. 30943/96, Judgment of 8 July 2003) confirming the child's right to full and accurate information as instrumental to the child's right to participate in custody proceedings.

20 See, for instance, the Inter-American Court of Human Rights (IACHH) ruling in *Juvenile Re-education Institute vs Paraguay* (Judgment of September 2, 2004. Series C No. 112) which referred to Article 6 and Article 27 CRC to interpret the right to life as imposing on the state an obligation to 'ensure to the maximum extent possible the survival and development of the child'. Moreover, the court referred to the Committee on the Rights of the Child's interpretation of the word 'development' in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social develop-

all Strasbourg jurisprudence relating to children (Kilkelly 2009; Kilkelly 2011; Besson 2007; Daly 2011)²¹ often to the point that the ECtHR has been accused of overstepping its function and usurping the role of the Member States in dictating the nature and scope of their children's rights obligations (*Neulinger and Shurukv. Switzerland* (Application No 41615/07) ECHR [2010]; Walker and Beaumont 2011). Other international jurisdictions, such as the inter-American Court of Human Rights (Feria-Tinta 2014), the International Criminal Court (Nyamutata 2014), and the African Commission on Human and Peoples' Rights (Seifu 2008) have followed suit in deliberately endorsing children's rights principles in their jurisprudence and in at least showing some willingness to adapt procedures to facilitate children's participation in proceedings, either directly or indirectly. The fact that more and more states parties to the CRC are ratifying Optional Protocol 3 on a communications procedure is also testament to the widespread support for the use of international non-judicial mechanisms to hold domestic authorities to account (Buck and Wabwile 2013).²²

Save the Children make a similar observation about the importance of supra-national scrutiny of rights violations, particularly where national-level accountability is lacking, but note that "...with the exception of the Council of Europe and the Inter-American system, regional mechanisms tend to be weak or non-existent" (Save the Children 2009: 2). The next section tests this assertion in relation to different justice processes at EU level. But, as a preliminary question, it is important to understand precisely why access to justice for children holds particular significance in an EU context. In the process, it responds to a common contention that it is neither reasonable nor, indeed, feasible to expect the EU to facilitate children's access to its justice mechanisms to quite same the extent as its European or international counterparts, particularly given the former's relatively weak, or at least less mature human rights mandate.

ment. This is in spite of the US's stubborn refusal to ratify the CRC. See further Macaulay 2008. For a full review of the extent to which the IACHR draws on the CRC see Feria-Tinta 2014.

21 Children's rights-related case law is available through a dedicated database, Theseus.

22 Above note 15.

3. Children's Access to Justice at European Union Level – Why Is It Important and What Does It Involve?

There are at least two main reasons why securing children's access to justice at EU level is important. The first is strategic in nature and is about providing children and their advocates with an appropriate channel through which they can communicate with the European institutions as to the actual and desired nature, scope and impact of EU children's rights measures. It is about giving ordinary citizens a genuine say in the kind of role we want the EU to play in promoting issues that, for various reasons, be they political, financial or social, cannot be adequately dealt with at the national level. This is particularly important given the explicit constitutional undertaking by the EU to protect the rights of the child in all activities that fall within EU competence (Article 3(3) TEU; Article 24 EU Charter of Fundamental Rights of the European Union).

The legitimizing effects of enabling children and young people to have a say in how EU measures affecting them are shaped should not be underestimated. Since the adoption by the European Commission of its seminal Agenda on the Rights of the Child in 2011 (Commission 2011), there have been numerous, bold expressions by other EU institutions, attesting to their commitment to the protection and promotion of children's rights when developing EU law and policy. All of these emphasize the importance of securing children's access to justice and of involving children in decisions that affect them, including decisions at the supra-national level. For example, in November 2014, the European Parliament adopted a Resolution on the rights of the child to mark the 25th Anniversary of the UN Convention on the Rights of the Child. In doing so, the Parliament declared that "children's rights are at the heart of EU policies" and urged both the EU institutions and the Member States to "take additional measures to ensure respect for the rights of every child everywhere, especially the most vulnerable" (EU Parliament 2014: para 1). Specifically, the Resolution calls upon the Commission and the Member States "to take the necessary action to ensure that all children can effectively access justice systems that are tailored to their specific needs and rights, whether as suspects, perpetrators, victims or parties to proceedings" (Ibid.: para 12).

The EU's commitment to upholding and protecting children's rights is also evidenced in the Council of the European Union Conclusions on the Rights of the Child, adopted on 4th December 2014 (Council 2014). The Council of the European Union is the main context within which national ministers from each EU Member State meet to adopt laws and co-ordinate

policies.²³ It also co-ordinates Member States' economic policies, approves the EU annual budget and co-ordinates co-operation between the courts and police forces of the Member States. As such, the Council has an important strategic and practical function in the development and actual enforcement of EU measures affecting children at both the EU and national level. It commits itself to: holding thematic debates on the promotion and protection of the rights of the child in relevant Council working groups; ensuring that all new legal and policy proposals adequately address children's rights; and engaging in regular dialogue with the other law-making institutions (namely the Parliament and the Commission) on EU measures affecting children. It invites both the Member States and the Commission to be more effective in their implementation of children's rights at the national level, particularly in relation to the right of the child to be heard, and to increase efforts to create child-friendly justice systems and child-sensitive procedures in order to facilitate children's access to justice.

These initiatives evidence a far-reaching and explicit commitment across the EU institutions to integrate children's rights considerations, as informed by children's direct and indirect participation, into all stages of the legal and policy process at EU-level, and to act in a co-ordinated, sustained way to achieve their effective implementation at the domestic level. It follows then, that the extent to which such commitments are being fulfilled should be open to scrutiny and that, in cases of default, the relevant institutions or agencies be held to account by children and their representatives.

The second reason for ensuring children's access to justice at EU level relates to effective implementation. In short, it is about ensuring that the now proliferate, binding measures contained in EU law that relate to children's rights and welfare are not only transposed in a formal sense at national level, but are conscientiously applied in practice, by agencies, professionals and the courts. Consider, for instance, the EU Victims' Directive which obliges state authorities to make protective provision available to vulnerable victims involved in different justice processes, including children (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, OJ L 315, 14.11.2012). Similarly, the EU trafficking directive imposes a range of obligations on States including: adopting a harmonised definition of trafficking; implementing more robust investigation and prosecution procedures; offering more tailored assistance and protection to victims of trafficking, particularly children; developing awareness-raising

23 The Council of the European Union should not be confused with the European Council where EU leaders meet to discuss the EU's political priorities. Nor should it be confused with the Council of Europe, a distinct non-EU polity, which is composed of 47 Member States and which exercises an explicit human rights mandate (as manifested most famously in the 1950 European Convention on Human Rights).

activities, as well as appropriate professional training with a view to preventing trafficking (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, OJ L 101, 15.4.2011). Likewise, the EU Sexual Exploitation Directive imposes harmonised definitions of and procedures for tackling sexual offences committed against children. It also lays down the minimum sanctions for offenders. Included within this are provisions aimed at combating child pornography on-line and sex tourism, facilitated by rules on the sharing of criminal records information between Member States. Moreover, the directive obliges Member States to provide unconditional assistance, support and protection to victims of sexual exploitation and pornography before during and after criminal proceedings, which includes the appointment of free legal representation and counselling (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, OJ 2011 L 335/1, Articles 18-20). All of these instruments emphasise the need to provide legal assistance and support to children at all stages of the justice process, consistent with the principles and procedures laid down in the Council of Europe guidelines.

Of relevance also is the extensive social welfare provision enshrined in EU immigration and asylum law that guarantees to migrant children that their basic needs to education, health and legal assistance will be met notwithstanding their fragile immigration status,²⁴ and the directly effective EU Regulation governing cross-border child abduction and parental responsibility disputes. This obliges professionals in the family justice process to hear the views of the child and to adopt the best interests of the child as a primary consideration before decisions around return, custody or access are made (Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, [2003] OJ L338/1: para 12 preamble, Arts 12(1)(b), 12(3)(b) and 12(4), Arts 15(1), 15(5) and Art 23(a)). All of this legal entitlement is only of value if effectively implemented and legally enforceable at the national level, and if supported by sympathetic procedures and adequate financial investment, including the provision of legal aid and free, independent legal representation.

24 Asylum Procedures Directive 2013/32 (OJ L 180, 29.6.2013), Article 7 and 25; Child Victims Directive, 2012/29/EU (OJ L 315, 14.11.2012), Article 8; Refugee Qualification Directive, 2011/95/EU (OJ L 337, 20.12.2011), Articles 27- 29; Family Reunification Directive 2003/86/EC (OJ L 251, 3.10.2003), Article 14; Temporary Protection Directive, 2001/55/EC (OJ L 212, 7.8.2001), Article 14; Reception Conditions Directive, 2013/33/EU (OJ L 180, 29.6.2013), Article 14 and 17; Return Directive, 2008/115/EC (OJ L 348, 24.12.2008), Article 14(c). For a summary overview of EU children's rights provision in the context of immigration and asylum see FRA 2015: chapter 9.

And yet, despite these obligations, there is evidence across the Member States of inconsistent, often inadequate implementation of at least some of these obligations, leading to a widespread shortfall in the protection of children's rights. For instance, recent cross-national empirical studies of how young suspects are treated in the criminal justice process have revealed significant disparities in how young offenders are questioned, supported and informed about their rights, and widespread failure to inform child witnesses or victims of the substance and scope of their rights in a way that they can understand.²⁵ Similarly, a detailed, comparative evaluation of immigration laws and processes draws attention to a range of factors at the national level, both systemic (fragmentation of responsibilities across a range of agencies) and procedural (lack of communication between the various professionals working with child asylum seekers), that impede successful implementation of the extensive EU provision governing the rights and welfare of unaccompanied children (O'Donnell and Hagan 2014).

This begs the question as to who should be held accountable for inadequate implementation of such obligations and, indeed, how those responsible can be brought to account. It has already been noted that mechanisms in this regard take on a variety of forms. It does not have to involve a court-based, adversarial process or respond to a particular human rights violation. It can amount to action aimed at enhancing the legislative prominence of certain rights, amending the way that a particular right is framed within the legislation, or at encouraging more conscientious implementation of rights by the relevant domestic authorities. With this in mind, the remaining discussion is framed around three key questions:

- How do children change or propose EU laws with a view to enhancing their rights/experiences?
- How do children complain about EU actions or, indeed, omissions that adversely affect their lives or impede the exercise of their rights?
- How do children harness the EU's non-judicial authority to hold Member States to account for breaching or failing to implement their EU rights?

25 See notably the in-depth study, commissioned by DG Justice of the European Commission, to gather legal, procedural, statistical and qualitative data on children in judicial proceedings across the EU28, available at: <http://www.childreninjudicialproceedings.eu/Home/Default.aspx>. See in particular the comparative report, 'Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union', Luxembourg, 2014, particularly chapter 4. See also the current 2 year project (2014-16), 'Protecting young suspects in interrogations', co-ordinated by Maastricht University and funded by the European Commission. This involves in-depth interviews with young suspects, lawyers and the police as well as analysis of audio samples of police interrogations across Belgium, Italy, Poland, The Netherlands and the UK. See further youngsuspects.eu.

4. How Do Children Change or Propose EU Laws with a View to Enhancing Their Rights?

The discussion has already alluded to the expanding body of EU legislation that addresses the rights of children across a range of areas that fall within EU competence.²⁶ The extent to which these measures positively reinforce the rights of children depends, to a degree, on when they were enacted. Those enacted post 2010 are more likely to correspond explicitly with international children's rights principles and practice. 2011 marked the launch of the EU's formal children's rights Agenda in which the Commission committed to providing "... practical internal training on the rights of the child and other fundamental rights to reinforce and further promote a culture of respect for fundamental rights", and to explaining how child rights considerations were taken into account in the drafting of legislative proposals (Commission 2011: 5). The legal elevation of the EU Charter of Fundamental Rights to the same status as EU treaties in early 2010 supported this process insofar as it made the children's rights provisions contained therein both more visible and legally binding on both the EU and the Member States in their development and implementation of EU law (Art 6(1) TEU). This, in turn, precipitated the introduction of an *ex ante* fundamental rights auditing mechanism to ensure that all new legislation proposals could be screened to ensure their compliance with the fundamental rights obligations contained in the Charter (Commission 2010). With this in mind, the Commission announced that:

In order to reinforce its assessment of the impact of its proposals on fundamental rights, including on the rights of the child, the Commission has prepared operational guidance that will enable its departments to examine the impact of an initiative on fundamental rights, including the rights of the child, and to select the option that best takes into consideration the best interests of the child. (Commission 2011: 5)

There is every indication, from the profusion of children's rights references in more recent EU laws affecting children, that this auditing strategy has been conscientiously applied. That said, it seems to have been a largely top-down process, with limited or no input from children and young people or their advocates as to how a proposed legislative initiative responds to their lived experiences and needs. Furthermore, EU children's rights measures that pre-date 2011, while they might contain sporadic references to children's rights principles, tend to be significantly less considered in how they protect and promote children's rights and, in many cases, obscure or even undermine

26 For a more detailed overview, see FRA Handbook on European Children's Rights, and for a more detailed, critical look at the evolution, content and scope of EU law relating to children, see Stalford, H. (2012) *Children and the European Union: Rights, Welfare and Accountability* (Oxford, Hart).

children's rights. Take, for example, Directive 2010/13 (OJ L 95, 15.4.2010) on Audiovisual Media Services (AVMS) which contains rules limiting children's exposure to potentially harmful media content or exploitative commercial advertising. While this might be framed in terms of protecting the best interests of the child, in reality, the provisions are extremely limited, creating significant leeway for commercial operators to interpret their obligations to meet the (primary) demands of the market economy (Garde 2011 and 2013; Bartlett and Garde 2013).

In a bid to support a more inclusive, empirically-grounded approach, the Commission has conducted a number of public consultations, both to inform the development of its broader children's rights strategy,²⁷ and to elicit suggestions on substantive areas of legal reform.²⁸ These consultations are, in principle, open to any individual or organisation – including children's rights organisations – and the responses are published online. However, the extent to which such contributions are genuinely taken into account in the (re-)drafting of law and policy is rather less apparent, and there appears to be limited or no interrogation by the Commission as to the extent to which those contributions incorporate the views of children and young people.

4.1 The Citizens' Initiative

One of the arguably more transparent routes by which private individuals and their representatives can propose changes in EU law is through the Citizens' Initiative.²⁹ This mechanism was launched by the European Commission in April 2012 to create a 'democratic discourse'³⁰ on issues of concern to EU citizens by enabling them collectively to propose legislation in matters than fall within EU competence. The Citizens' Initiative can be organised and submitted by any national of an EU Member State who is old enough to vote

27 See for instance DG Justice's consultation on the European Commission's Communication (Agenda) on the Rights of the Child (2011-2014) which was open from 11 June 2010 to 20 August 2010: http://ec.europa.eu/justice/news/consulting_public/news_consulting_0009_en.htm.

28 See the Commission's Consultation on the functioning of the Brussels IIa Regulation (EC 2201/2003), the EU law governing cross-border parental responsibility and child abduction disputes, from 15 April 2014 until 18 July 2014: http://ec.europa.eu/justice/newsroom/civil/opinion/140415_en.htm.

29 Articles 11(4) TEU and 24 TFEU. The rules and procedures governing the citizens' initiative are set out in EU Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011, OJ L 65/1.

30 Baldoli, R. (2013) 'Thence We Came Forth to Rebehold the Stars': A First Assessment of the European Citizens' Initiative', in: *European Journal of Risk Regulation*, Vol 4(1) 82-86, at p.82.

in the European Parliament elections (18 years old with the exception of Austria where the voting age is 16). The organiser then has 12 months in which to collect statements of support.³¹ Initiatives must be signed by at least one million citizens from at least 7 Member States and there must be a minimum number of signatories from each of the Member States represented in the initiative, proportionate to the population of that Member State.³² Designated authorities in the Member States represented in the initiative then have to verify the signatures collected, following which the final Citizens' Initiative can be submitted to the Commission. This is then published on the Commission website and the Commission has three months in which to reach a conclusion and determine its proposed action.³³

Notwithstanding the democratic aspirations of the Citizens' Initiative, it has been heavily criticised on a number of grounds, not least for explicitly excluding children as potential petitioners (Stalford and Schuurman 2011: 389). Many of those criticisms are borne out in the exceedingly limited use of the mechanism to date by children and their advocates. This is attributable, not least, to the significant resources required to launch and manage such an initiative in terms of campaigning for and gathering the extensive cross-national support required. The not-for-profit international children's rights networks most inclined to engage in such a process already labour under significant resource constraints and are unlikely to divert valuable funds away from core advocacy or campaign agendas to pursue a protracted process that, more often than not, ends in failure. Taking these logistical obstacles into account, it is hardly surprising that, for all its democratic aspirations, there has not been a single Citizens' Initiative accepted to date that advances in any meaningful way the status of children under EU law.

4.2 Children's Rights 'Champions'

While these formal processes to support civil dialogue are largely inaccessible and, therefore, ineffective as a mechanism for advancing children's rights, there are other initiatives driven, to a large degree, by the advocacy of civil society organisations, that offer potentially better channels in this regard. For example, in 2014, in response to a concerted campaign by 14 international and European civil society organisations, over 90 members of the

31 These statements of support must be collected from other EU citizens who are old enough to vote, in accordance with the procedure set in Articles 5 and 6 of the Regulation.

32 Article 7 Regulation 211/2011. The minimum number of signatories required per Member State represented in the Citizens' Initiative is set out in Annex I of the Regulation.

33 Regulation 211/2011, Article 11.