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OSCE Human Dimension Meeting, Warsaw, 29 September 2013

Working session 16 (specifically selected topic): Rights of the Child

**Statement by the European Union Agency for Fundamental Rights (FRA) –
(Maria Estebanez, Senior Policy Manager)**

Dear Moderator and participants in the Human Dimension Implementation Meeting:

First I would like to thank ODIHR for organising this meeting and the OSCE more generally for the opportunity to address you. The EU Agency for Fundamental Rights is mandated to assist EU institutions and Member States, providing them with evidence-based expertise on fundamental rights issues. The rights of the child is a core fundamental rights issue guaranteed under Article 24 of the EU's Charter of Fundamental Rights. In this context our Agency has reported on several issues affecting child rights over the past years. In our reports we have highlighted strengths and weaknesses in the legal and policy framework of the European Union and its Member States, as well as specific examples of good practice.

Ladies and gentlemen,

Children are fully-fledged holders of fundamental rights under international law, and European law in particular. They also hold specific rights linked to their particular needs and interests. Parents, guardians, other representatives and carers often play a key role in creating the conditions allowing children to enjoy their rights both in their private life and in public domains. **According to the EU Charter of Fundamental Rights** (Art. 24), children have the right to such protection and care as is necessary for their well-being. They enjoy basic civil rights such as freedom of information and the right to be heard: they may express their views freely, and such views need to be taken into consideration on matters which concern them in accordance with their age and maturity. **The broad panoply of rights developed under European law and case-law cover a broad spectrum** ranging from basic civil rights and freedoms and equality and non-discrimination, to personal identity issues, family life, alternative care an adoption, child protection against violence and exploitation, economic social and cultural rights and adequate standard of living, immigration and asylum, consumer and data protection, and children's rights within criminal justice and alternative (non-judicial) proceedings.

The right to residence in the EU of children who are EU citizens should not be deprived of any useful effect by refusing residence rights to the parents. Regarding family life and care, the right to maintain contact with both parents in all forms of parental separation is guaranteed, and a child rights-based approach to improper removals in breach of custody arrangements required. EU law demands the child to be heard in proceedings regarding the child's return following wrongful retention and/or removal. **To place a child in alternative care**, relevant and sufficient reasons as well as procedural safeguards in decision-making are required. Inadequate housing alone is not a sufficient reason.

Acceptability of healthcare requires informed consent or authorisation. Children can only be included in clinical trials if the administered medicinal product is expected to be of direct benefit to them, outweighing the risks. As consumers, children are protected against any advertising and tele-shopping which could cause moral or physical harm to them under EU law.

A key element of private life under European law and jurisprudence is the right to know one's origins, including in case of adopted children. Even in cases of anonymous births the right to access non-identifying information is guaranteed and possibilities to waive confidentiality envisaged.

Children have the right to object to the processing of their data, except on compelling legitimate grounds. **There is a duty to ensure effective protection against identity theft of children and against arbitrary refusal of citizenship.**

The protection of children against violence/exploitation extends to all settings, whether private or public. There is a duty to conduct efficient investigations into arguable allegations of abuse, harm, and violence against children. There is also a duty for authorities to protect children including in conducting investigations. **Children in criminal proceedings are entitled to be treated fairly and in a child-friendly manner.** Court proceedings should be adjusted to children's needs to ensure effective investigation. Children have the right to access a lawyer from the initial stages of the criminal proceedings and from the first police interrogation. If detained, they are to be treated age-appropriately and with respect for their dignity. **Children should not be detained together with unrelated adults.** Child victims and witnesses are entitled to protection against victimisation, recovery and reintegration and effective participation in criminal and alternative proceedings.

Regarding migration and asylum, the decisions on child entry and residence are to be taken in the framework of appropriate mechanisms and in accordance with adequate procedures in the child's best interests. Age assessment procedures need to take account of child rights, and child best interests need to guide family reunification cases. The detention of children should only be used as a last resort. There is an obligation to place children in appropriate accommodation. Migrant children can remain in an EU State regardless their parent's status to complete education or where establishing family life elsewhere would be difficult. Migrant children have the right to an effective remedy. Under the European Social Charter, children who are unlawfully in the country are entitled to healthcare beyond urgent medical assistance, they also have the right to adequate housing. Access to child allowances and parental leave must be non-discriminatory.

It would be important that European, and possibly other States, reflect on the best ways to make the rights I mentioned effective in practice with the support of the monitoring and implementation mechanisms available, especially within the EU.

In closing, let me add that our Agency has recently published in co-operation with the European Court of Human Rights and the Council of Europe a [Handbook on European Law relating to the Rights of the Child](#). This handbook, which you may find useful to share with legal practitioners, raises awareness and promotes the respect of the rights of the child in reference to the European standards that I mentioned.

Thank you very much for your attention.