

CAPISCE PROJECT

**POLICY PAPER**

**TOWARDS AN  
EFFECTIVE RIGHT  
TO INFORMATION  
FOR CHILD  
VICTIMS  
OF HUMAN  
TRAFFICKING**



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The 1989 Convention on the Rights of the Child recognises all children as rights holders in all circumstances. The European Union (EU) continues its efforts to give children a voice and to support those in vulnerable situations. In 2021, the European Commission reaffirmed that protection of children is a core objective of the EU's work and the best interests of the child are at the heart of EU policies.<sup>1</sup> The EU Strategy on victims' rights (2020–2025)<sup>2</sup> and the EU Strategy on the Rights of the Child<sup>3</sup> pay particular attention to child victims of human trafficking and of sexual abuse. These two strategies identify priorities to complement and reinforce, where necessary, the EU Strategy on Combating Trafficking in Human Beings (2021–2025).<sup>4</sup> Among the proposed actions to improve the situation of child victims of trafficking, the Commission reiterates the importance of strengthening a child-friendly justice in which judicial proceedings are adapted to children's age and needs. To this end, "national justice systems must be better equipped".<sup>5</sup>

In the past decade, several declarations, guidelines and legal instruments promoting a child-friendly justice have been adopted by international and regional bodies. The Council of Europe<sup>6</sup> and the European Union have been particularly active in setting standards to enhance children's access to justice and adequate treatment during legal proceedings. Since the adoption of the Directive 2012/29/EU *establishing minimum standards on the rights, support and protection of victims of crime*,<sup>7</sup> Belgium's, France's, Italy's and the Netherlands' legal frameworks are constantly evolving. However, practical measures to ensure that child victims are duly informed about their rights and the criminal justice procedures in place are very limited.

1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategy on the rights of the child*, COM(2021) 142 final, 24.3.2021.
2. Commission Communication on the *EU Strategy on victims' rights (2020–2025)*, COM(2020) 258 final, 24.6.2020.
3. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategy on the rights of the child*, COM(2021) 142 final, 24.3.2021.
4. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the *EU Strategy on Combating Trafficking in Human Beings 2021–2025*, COM(2021) 171 final, 14.4.2021.
5. EU strategy on the rights of the child, COM(2021).
6. Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice* (2010); new *Strategy for the Rights of the Child (2022–2027)* adopted on 23 February 2022 by the Committee of Ministers.
7. 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.



## CAPISCE PROJECT

# COMPARATIVE RESEARCH AND TRAINING FOR INTERPRETERS IN BELGIUM, FRANCE, ITALY AND THE NETHERLANDS

While child trafficking remains under-reported in Europe, research and evidence on the implementation of child victims' rights and the treatment of trafficked children in criminal justice systems show that it is a great concern in most EU countries. Despite States' efforts to recognise the importance to protect child victims according to their specific needs, the impact of such efforts on the ground is barely visible. In order to better understand the challenges in Belgium, France, Italy and the Netherlands and to recommend targeted actions, the CAPISCE project conducted an analysis of the application of Chapter 4 of the Victims' Rights Directive regulating the rights of children during investigation and criminal proceedings, while working with interpreters from these four countries and raising their capacity to ensure that migrant child victims' voices are heard and understood. Training modules for interpreters whose task is to assist victims during investigations and criminal proceedings were organized together with the European Association for Legal Interpreters and Translators (EULITA) and the national ECPAT groups. The training sessions were an opportunity to identify challenges and possible solutions.

The comparative study concluded that the four countries are indeed facing important shortcomings and challenges regarding the implementation of the EU Anti-trafficking Directive, the Sexual child abuse Directive and the Victims' Rights Directive. It also confirmed that provisions are not implemented in an effective and homogeneous way, although the legislation is mostly in line with all three directives.

Importantly, the study underlined the necessity of interpreting and applying the measures of the Victims' Rights Directive in the light of the Anti-Trafficking Directive and the Child Sexual Exploitation Directive provisions. The Victims' Rights Directive brings more coherence in the treatment of child victims by explaining the concept and approach of "vulnerable victims" and by not making the "identification of a potential victim" a precondition to enjoy victims' rights as well as to receive assistance and support from the State. Regrettably, UNICEF Guideline 3.1 on the Protection of Child Victims of Trafficking (2006) stating that: "identification of a child as a victim of trafficking and the provision of assistance to him or her shall not depend on his or her willingness or ability to provide the police with information or to testify against his or her traffickers" has not been followed by the Member States.

For more information see *The protection of child victims of human trafficking during investigation and criminal proceedings in compliance with the 2012/29/EU Directive on victims' rights*, ECPAT-France (November 2021). Accessible at <https://ecpat-france.fr/en/french-european-publications/>

In parallel, trafficking of children remains a challenge in the EU. The situation with regard to minors is increasingly unclear in most EU countries. Official statistics and national sources indicate that the child trafficking remains under-reported. Very few trafficked children are identified, very few participate in criminal proceedings or receive compensation when, for instance, in 2017–2018, children accounted for nearly a quarter (22%) of all registered victims of human trafficking in the EU-27. Nearly three quarters (74%) of all trafficked children registered in the EU-27 were EU citizens.<sup>8</sup> More concretely, in France, between 2016 and 2020, the number of trafficked and exploited child victims increased from 17% to 27%.<sup>9</sup> In Belgium, 22 of 336 trafficked persons who entered in the human trafficking specific scheme between 2018 and 2020 were minors,<sup>10</sup> and in Italy, among the 2033 trafficked persons officially identified and assisted in 2019, 161 were children (7.9% of total victims).<sup>11</sup> In the Netherlands, the proportion of reported child victims of trafficking decreased from 25% in 2015 to just 8% in 2019,<sup>12</sup> although evidence shows that child victims seem to be more at risk of repeated victimisation.<sup>13</sup>

During the CAPISCE project, it became evident that a major gap in the protection of child victims remains the lack of information provided to children. With this Policy Paper, ECPAT would like to inform European and national policy-makers of the need to enhance the rights of child victims to information before and during criminal proceedings and to highlight interpreters' key role in this matter. The following recommendations were elaborated to support the efforts of the four countries to uphold the right of child victims to information, while reflecting the challenges and promising practices identified during the CAPISCE project.

## **1. EU decision-making bodies should consider adopting a new directive detailing child victims' rights including clear procedural safeguards to ensure duly protection of children tailored to their specific needs, age and to the type or nature of the crime. A specific regulation would promote inclusiveness and effective child-friendly justice at the national level and it could be part of the efforts to create a "child-friendly culture in the European Union".<sup>14</sup>**

Right to information is one of the Victims' Rights Directive's key aspects. Article 1 clearly stipulates that "the purpose of this Directive is to ensure that victims of crime

**8.** European Commission, Directorate-General for Migration and Home Affairs, *Data collection on trafficking in human beings in the EU*, Publications Office (2020), <https://data.europa.eu/doi/10.2837/897741>

**9.** INTER/STATS, *La traite et l'exploitation des êtres humains depuis 2016 : une approche par les données administratives*, Service statistique ministériel de la sécurité intérieure, analyse no.36 octobre 2021.

**10.** MYRIA, *Rapport annuel traite et trafic des êtres humains 2021 : Visiblement invisible* (2021).

**11.** Save the Children, *Piccoli schiavi invisibili* (2020). Official data from the Department for Equal Opportunities (database SIRIT). <http://www.pariopportunita.gov.it/materiale/banca-dati/>

**12.** Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Human Trafficking Victims Monitoring Report 2015–2019 Summary* (2020)

**13.** Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Human Trafficking Victims Monitoring Report 2016–2020 Management Summary* (2021)

**14.** See *EU strategy on the rights of the child*, COM(2021), Point 7.

receive appropriate information, support and protection and are able to participate in criminal proceedings". To this end, the Directive lays down detailed provisions on the right to access and receive information. It includes the right to understand and to be understood (Article 3), the right to information about victims' rights (Article 4), the right to be informed when making a complaint and about the case (Articles 5 and 6) and the right to interpretation and translation (Article 7). In addition, Article 1.2 emphasises that children's best interests shall be a primary consideration and the "child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child".

Generally speaking, EU law addresses the right to information in most of its directives dealing with criminal justice aspects. In most cases, this right is addressed in a generic way. The Victims' Rights Directive is one of the few directives requiring that information shall be provided in a child-friendly manner (Recital 21, Articles 3.2 and 4.2). For instance, the Directive 2011/93/EU *on combating the sexual abuse and sexual exploitation of children and child pornography* only refers to the right to information in its preamble. The Directive 2011/36/EU *on preventing and combating trafficking in human beings and protecting its victims* do require that information is transmitted to trafficked persons (Article 11.5&6) but does not indicate how the information should be provided to children.

Unlike the Directive 2016/800/EU *for children who are suspects or accused persons in criminal proceedings*,<sup>15</sup> the EU has not adopted, so far, a specific regulation for children who are victims of a crime. The strategy of

the EU legislator was rather to include extensive provisions on child victims' rights<sup>16</sup> in the Victims' Rights Directive. Yet, if many provisions expressly address child needs and specificities, such as for the right to be heard in criminal proceedings, other provisions apply to adults and children alike, with a specification that personal characteristics of the victim or specific needs shall be taken into account. Thus, Articles 4 to 7 on the right to receive information and interpretation do not clearly explain how information should be provided to children and do not underline the importance of the role and attitude of interpreters towards child victims.

This lack of precision is also reflected at the national level. It creates a kind of vagueness of the legislation and a lack of certainty. Relevant national legal provisions related to victims' rights to information and interpretation are in most cases applicable to both adults and children alike. For example, the article 10.2 on Victims' Rights of the French Criminal Code, recently amended by the law n°2021-1729 of 22 December 2021, still applies to

<sup>15</sup>. Directive 2016/800/EU 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.


<sup>16</sup>. See: Recital 14 on children's best interests and right to be heard, Recital 17 on victims of gender-based violence, Recital 19 on child victims' rights, Recital 38, Recital 42 on right to be heard, Recital 54 on privacy, Recital 57 on secondary or repeat victimisation, Recital 60 on children's guardian or representative, Recital 66 on children's rights, Recital 69 on more far-reaching provisions on victims of trafficking or victims of child sexual abuse, sexual exploitation or child pornography taking precedence; Article 1 on children's best interests and child-sensitive approach, Article 2 definition of a child, Article 10 on right to be heard, Article 21 on privacy, Article 22.4 on individual assessment of children's special protection needs, Article 23 on special measures (adapted premises, trained professionals, etc.), Article 24 on child victims, Article 26 on cooperation and coordination of services, and Article 28 on provision of data and statistics.

both children and adult victims alike. It should be noted, however, that France made some progress with the adoption of a newly reformed criminal justice law for minors, which came into force on 30 September 2021.<sup>17</sup> It requires that information about rights is provided to the child in a simple and accessible language (Article D12-2). Yet, once again, the improved criminal law applies primarily to children who are suspects or accused persons. If the new law does give more consideration to victims, enhancing child victims' rights is still not its main objective.

Therefore, against this backdrop and considering the feedback received from actors working with trafficked children and from professional interpreters who were trained during the CAPISCE project, clear legal instructions are needed in order to duly inform child victims. It will ensure that children receive all necessary information and advice to make a decision in favour of their best interests.<sup>18</sup> Right to information should be considered as a proceeding safeguard to avoid causing additional trauma or stress for the child. To be informed creates a sense of well-being and a climate of trust by avoiding the feeling of anxiety caused by hearings and criminal proceedings in general.

**2. To guarantee a child-friendly justice, the right of the child to receive information during investigations and criminal proceedings should be recognised as a prerequisite to the full enjoyment of other rights and should be better regulated.**

The right to receive information during criminal proceedings is a prerequisite to fully exercise and enjoy other rights, regardless if the victim is an adult or a child. In addition, respecting children's right to be informed is of greater importance for accessing justice, seeking redress, guaranteeing the effective participation of children in proceedings and hearing their views. Since 2009, the UN Committee on the Rights of the Child recommends that States integrate the right to receive information in a child-friendly way into all legislative and other measures to implement the CRC's article 12 on the right of the child to be heard.<sup>19</sup>

 *“All processes in which children are heard and participate must be:*

*Transparent and informative – children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact.”*

**Source:** UN Committee on the Right of the Child, General comment No. 12, *The right of the child to be heard*

<sup>17.</sup> French law n° 2021-683 of 27 may 2021.

<sup>18.</sup> UN Committee on the Rights of the Child, General comment No. 12, The right of the child to be heard, U.N. Doc. CRC/C/GC/12 (2009).

<sup>19.</sup> UN Committee on the Rights of the Child, General comment No. 12.

**2.1. Information provided to a child, in particular during investigations and criminal proceedings, should be done in a child-friendly way regardless of the format, language or type of information. Such approach should be integrated in the National Referral Mechanism and in the future National Action Plan against Trafficking in Human Beings.**

Ensuring that child victims are informed in an appropriate manner means to pay attention on how information is provided (written or oral, language, type of information) and to adjust its pace and attitude towards children. As recommended by the Council of Europe 2010 Guidelines on child-friendly justice, the way information is provided to children should be "age-sensitive, tailored to children's needs and guarantees an individualised approach without stigmatising or labelling children".

Child-friendly information is equally important in written or oral communication. The measures taken to facilitate the reception of Ukrainian displaced or unaccompanied children have shown how essential it is to have written communication tools adapted to the needs and age of the target group. These efforts should be extended to all types of information provided to migrant children.

**2.2. The use of the services of a qualified professional interpreter shall be mandatory, including for less common languages. Measures should be taken to promote the profession and accommodate the demand for interpreters of less common languages.**

A large number of trafficked children do not speak the language where the investigation and the criminal proceedings are taking place. In this context, interpretation is crucial and needs to be adjusted to the child's needs and to the type or nature of the damage suffered. Only professional interpreters have the qualification to perform as appropriate without causing additional harm. The quality of interpretation is a key aspect of the administration of justice which unfortunately has been neglected over the years.

**2.3. Priority shall be given to face-to-face interpretation in order to foster a climate of trust, encourage child participation in the proceedings, and avoid fears and a feeling of anxiety caused by the situation and criminal proceedings in general. It will also guarantee the confidentiality of hearings.**



### 3. The profession of interpreter should be better regulated and controlled by legislative means.

The guarantee of the right to information is primarily the responsibility of the professional using the service of an interpreter. The interpreter is not a lawyer, nor a psychologist and must confine himself/herself to his/her function of "go-between". Any initiative on his/her part involves a risk to involuntary damage the intention of the legal professional.

This requires the person to be officially qualified and to master all the techniques of interpretation (simultaneous, consecutive with or without notes). Importantly, staff and freelance interpreters shall maintain high standards of professional conduct and respect a code of ethics for interpreters. The quality of interpretation is a safeguard of the proceedings' fairness, especially in cases of trafficking for forced criminality where there is a need to appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked. Therefore, the best guarantee of quality is to ensure that the interpreter is a member of a recognised professional association such as EULITA.

## EUROPEAN ASSOCIATION FOR LEGAL INTERPRETERS AND TRANSLATORS (EULITA)

### CODE OF PROFESSIONAL ETHICS

*The professional ethics of legal interpreters and legal translators derive directly from the principles that are defined in the following sources. They demonstrate the key role of legal interpreters and legal translators in the search for truth and how their work may affect the life and rights of others:*

- *The Universal Declaration of Human Rights, December 1948 (Articles 1–11)*
- *The European Convention for the Protection of Human Rights and Fundamental Freedoms, November 1950 (Articles 5 and 6)*
- *The Charter of Fundamental Rights of the European Union (2000/C 364/01), CHAPTER III – Articles 20–21, CHAPTER VI – Articles 47–50*
- *Directive 2010/64/EU of the European Parliament and Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*

*Legal interpreters and legal translators thus play an essential role in all efforts to ensure the equality of citizens in justice-related communications.*

#### Professional ethics principles of legal interpreter, adopted by the EULITA General Assembly in London, 6 April 2013:

- *Accuracy*
- *Obstacles to Performance Quality*
- *Impartiality*
- *Confidentiality*
- *Protocol and Demeanour*
- *Solidarity and Fair Conduct*

**4. Professional interpreters shall have access to systematic and continuous training sessions on child victims' needs and on child trafficking in order to be prepared and able to perform in an age-appropriate, sensitive and child-friendly way.**

To ensure the quality of interpretation and its appropriateness for children, qualified interpreter must be properly trained to treat children in a friendly and age-sensitive manner and to deal with specific types of crime and extreme forms of violence, such as sexual abuse and inhuman and degraded treatments. In this regard, ECPAT Belgium developed an e-learning tool in French and Dutch accessible anytime by several European countries. The tool follows the interdisciplinary curriculum used during the project, with the participation of a psychologist and an officer of the police section TAM in charge of police training focusing on children's hearings methods (*Technique d'audition pour les mineurs*).<sup>20</sup>

Interpreters are often not prepared or informed about the type of details they will have to face. It emerged from the exchanges during CAPISCE training that interpreters are greatly isolated in the exercise of their profession with a lack of exchanges between peers and of supervision by referents to support them. The emotional and human dimension of their work is often overlooked.

**5. Professional interpreters shall have access to multidisciplinary training with law enforcement and other professionals working on trafficking cases to ensure an appropriate treatment of child victims during hearings and to guarantee the quality of child justice and restorative justice.**

Most of international and national policies emphasise the importance of training of professionals in the child justice system. The 2021 EU Strategy on Combating Trafficking in Human Beings underlines that "cases involving child victims of trafficking require trained officials who are aware of the particular vulnerabilities of child victims and who are well trained on children rights and protection needs during criminal proceedings". The Commission invites Member States to "promote gender sensitive and child rights based training for officers and all practitioners likely to come into contact with victims". It is also essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training. Unfortunately, interpreters are rarely included in such training. They should be able to access existing training and work with interdisciplinary teams active in the field of combating child trafficking and sexual abuse. They also need to be sensitised about physical

<sup>20</sup>. Circulaire commune N° 03/2021 du collège des procureurs généraux près les cours d'appel, adoptée le 14.10.2021, relative à l'enregistrement audiovisuel de l'audition des mineurs et des majeurs vulnérables victimes ou témoins d'infractions.

and psychological trauma as well as about the special needs of child victims.

Furthermore, multidisciplinary training will promote more exchange between law enforcement, criminal justice professionals and interpreters, including about specific elements on the particularities of communicating with the assistance of an interpreter, as required by the Directive 2010/64/EU *on the right to interpretation and translation in criminal proceedings*.

