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# European framework of the best interests of the child

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Universitat de València

Project Number: 612177-EPP-1-2019-1-CY-EPPKA3-IPI-SOC-IN







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## I. Introduction

As stated in Art. 24 of the [Charter of Fundamental Rights of the European Union](#), the best interests of the child is a fundamental right and principle, as previously recognised in the 1989 [United Nations Convention on the Rights of the Child](#).

One of the most important areas for the development of this fundamental principle is education, an area that belongs to the sphere of competence of the State, since within the European Union it is relegated to political declarations or recommendations that are not binding for the Member States. This does not mean, however, that there has been little action: throughout all these years there has been a great deal of normative production and political declarations aimed at guaranteeing the protection of child in the field of education.

In this paper we aim to analyse EU action in different areas such as digital education, children's participation or lifelong learning, and we will analyse some of the main projects or programmes it has launched.

Until the early 1970s, education was an issue outside the EU institutions. It was a "sensitive" competence that should remain within the competence of the Member States. In fact, the word "education" does not appear in the founding treaties (Shaw, 1991). Reference was made, however, to vocational training, as this did fit better into the set of policies that the European Communities were planning to carry out, i.e., mainly economic (for example, coordination between countries on vocational training policies in agriculture is mentioned). The fundamental objective of the Treaty of Rome was to create a common market, "the abolition, between Member States, of obstacles to the free movement of goods, persons, services and capital" (Treaty of Rome, 1957). Free movement between Member States was one of the defining characteristics of the European Community, mainly of employees and self-employed persons. Hence, this concept of free movement was hardly applicable to education, as students did not fall into these categories and teachers are mostly civil servants, not employees. (St. John, Education and Solidarity in the European Union, 2020).

Thus, the major legal provision in the Treaty of Rome in relation to education was the one referring to vocational training. It was not until November 1971 that the first Council of Education Ministers of the six member countries of the Council met for the first time. At this meeting, the ministers unanimously maintained their position of favouring cooperation to increase the mobility of teachers, students and researchers between EC member countries, as well as abolishing the various barriers (whether administrative, linguistic or social) that prevented it. The Council also invited the former Belgian Minister of Education, Professor Henri Janne, to produce a report setting out the main elements of the European Community's education policy.



The [Janne Report](#) was published in 1973 as "only one stage in a process which, sooner or later, will have to take the form of a more or less comprehensive and active Community policy in the field of education" (Janne, 1973). The report presented some of the activities already carried out (the European University Institute, the abandoned attempt to create a European Centre for the Development of Education, the creation of the European Schools, etc.), which he described as major steps, but which, nevertheless, were of little importance and were being implemented slowly and always under intergovernmental, not Community, conditions. For Henri Janne, there was an irreversible recognition of a European educational dimension and an irreversible initial movement towards a Community-level education policy. The main objectives the report put forward for initiating this Community policy were the need for language teaching and learning; greater mobility, exchanges and cooperation; lifelong learning; and education in new technologies.

In addition, the same year, a month before the Janne report was presented, in January, the decision was taken to include education in the ad hoc organisation of the European Commission. Education thus came under the responsibility of Directorate General XII for Research and Science Policy, coordinated by European Commissioner Professor Ralf Dahrendorf. A year later, in 1974, the Commission published the communication "[Education in the European Community](#)" for the Council (European Commission, 1974). In this communication, attention was given to the educational dimension of Europe, promoting greater collaboration between higher education institutions, the development of European schools and greater mobility in education. This was followed by the publication of the [Resolution of the Ministers of Education, meeting within the Council, of 6 June 1974 on cooperation in the field of education](#) (Council, 6 June 1974), reflecting the fact that the European Union's cooperation in the field of education was a key element of the European Union's education policy. (St. John, Education and Solidarity in the European Union, 2020).

The European Community, in line with all these developments, adopted the [first Action Programme for Education](#) in 1976 (Council, February 1976) which contained six main sections: improved education and training facilities for nationals of other Member States and non-Member States, given increasing migration; coordination in relations between the different European education systems; the compilation of data and statistics in education; increased cooperation in higher education; language teaching; and the pursuit of equal opportunities in access to all forms of education.

The 1980s and early 1990s saw the development of various programmes that demonstrate the European Community's interest in education: principally, the creation of the Erasmus programme from 1985, which sought greater mobility among students and teachers, and became the EC's largest action programme. Other programmes were Comett, FORCE and Eurotecnet, PETRA and Youth for Europe, Lingua, Tempus....

It was with the [Maastricht Treaty \(1992\)](#) that the normative basis for education in the EC was laid. Article 126 stated that "The Community shall contribute to the development of quality education by encouraging cooperation between Member States". It further stated that "Community action shall be aimed at (a) developing the European dimension in education; (b) encouraging mobility of students and teachers; (c) promoting cooperation between educational establishments; (d) developing exchanges of information and experience on issues common to the education systems of the Member States; (e) encouraging the development of youth exchanges and of exchanges of socioeducational instructors" and (f) encouraging the development of distance education. A year later, in 1993, the [Green Paper on the European dimension in education](#) (Commission of the European Union, 1993) was published, which sought to stimulate debate on the possibilities offered by this article for European Community policies. It highlights the general objectives for all EC schools to contribute to equal opportunities, giving young people a sense of responsibility in society. Thus, the three objectives of the European dimension of education set out in the Green Paper were (a) to contribute to the development of European citizenship, (b) to provide opportunities to improve the quality of education and (c) to prepare young people for a better integration into society and for a better transition to working life. In 1995, the [White Paper on education and training, entitled "Teaching and learning. Towards the learning society"](#) (Commission of the European Union, 1995) which, after reviewing the challenges facing European education policy at the time, set five objectives: (a) to encourage the acquisition of new knowledge, (b) to bring schools and the business sector closer together, (c) to combat exclusion, (d) to develop proficiency in three European languages and (e) to treat capital investment and investment in training on an equal basis.

With the new decade, the Lisbon European Council of 2000, which set out a [new strategy for the Union](#) (European Council, 2000), is a must. The objective was set for 2010 "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". The main strategic objectives about education systems were threefold: to make education systems (1) more efficient and improve their quality, (2) more accessible and (3) more open. An analysis carried out years later by the so-called "Kok group" showed that, while the Lisbon strategy was a great tool, the lack of political commitment hindered its success.

Finally, it is worth mentioning the [Europe 2020 strategy](#) (European Commission, 2010), which recognises the important role of education. Responsibility for education remains with the Member States, and the role of the European Union is to "support, coordinate or supplement" their action (Art. 6 TFEU). This strategy seeks to provide this support, which is embodied in the strategic framework for Education and Training 2020 (ET2020), which provides a platform for supporting cooperation and funding in education and training. A number of targets are set for 2020: that 95 % of children should be enrolled in pre-primary education, no more than 15 % of 15-year-olds should be underachieving in the PISA core competences, or that the percentage of children dropping out of education should be less than 10 %, for example.



These have been, broadly speaking, the European Union's lines of work in the field of education since its creation. We cannot make an exhaustive analysis of all of them here. In any case, it should be noted that, at least initially, most advances in Community education policy were of an economic rather than a social nature. This reality has changed over the years, but it can still be said that the greatest progress has been made in this more economic and professional sense (St. John, *Tracing the Roots: The Origins and Evolution of European Union Education Policy*, 2019). It is fair to highlight, however, the role that the EU has played in a field that initially was not even mentioned in its treaties and that, at present, is still not directly within its competence. The number of EU documents on education, whether binding or not, is enormous: it has been said that between 2000 and 2015 alone, more than 500 official documents were issued by the EU on these matters (Matarranz, Valle, & Manso, 2020).

## II. Organisational and regulatory framework

### 1) Regulatory framework

The protection of children in the EU is reflected in the founding Treaties of the EU, mainly following the adoption of the [Lisbon Treaty](#) (2007). Currently, Article 2(3) of the TEU establishes as one of the main objectives the "protection of the rights of the child". In the same article, but in paragraph 5, relating to the Union's external relations, we are told that "in its relations with the wider world (...) it shall contribute to (...) the protection of human rights, in particular the rights of the child". Moreover, the TFEU also reinforces this objective in Articles 79(2) and 83(1), which gives the Parliament and the Council the power to adopt measures in the field of combating sexual exploitation and trafficking of children. It should be recalled that the TFEU articles on non-discrimination and citizenship (19 and 20 respectively) also apply to children.

[The Charter of Fundamental Rights of the European Union](#) (European Parliament, Council, European Commission, 2012) contains numerous articles on children's rights. Its Article 24 is, in fact, an article devoted entirely to the "Rights of the Child". It literally tells us that:

1. *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*
2. *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*
3. *Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*

There is an explicit mention of the best interests of the child as a "primary consideration" in all acts involving children, both for public and private institutions.

It is interesting to quote the [European Parliament resolution of 12 February 2019 on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework](#) (European Parliament, 2020), which recalls the obligation of public and private institutions "to make children's best interests a primary consideration".

Article 14 TFEU recognises the right to education in a broad sense and, more specifically, to receive free of charge all compulsory education, as well as the "freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right ", a formula for balancing the right to education and educational freedom similar to that found in Article 27 of the [Spanish Constitution](#).

Other articles that deserve to be mentioned in this paper are: Art. 21 (non-discrimination on the grounds of, among many other issues, "age"), Art. 32 ("Prohibition of child labour and protection of young people at work"), and more indirectly, Art. 7 ("Respect for private and family life") and Art. 33 ("Family and professional life").

Having briefly noted the references in the Union's primary law, in secondary law, soft law takes precedence over the Union's binding rules as such. Indeed, as we can see in the [European Parliament resolution of 4 September 2007 on institutional and legal implications of the use of 'soft law' instruments](#) (European Parliament, 2008), it is stated that "in the context of the Community, soft law all too often constitutes an ambiguous and ineffective instrument which is liable to have a detrimental effect on Community legislation and institutional balance and should be used with caution" and that it "cannot be a substitute for legal acts and instruments, which are available to ensure the continuity of the legislative process, especially in the field of culture and education", areas where soft law is particularly relevant. Be that as it may, there are some documents that we should cite, such as the [White Paper "Teaching and learning: Towards the learning society"](#) (Commission of the European Union, 1995), the [Council conclusions on local community development through education and training](#) (Council, 1997), the [Council Recommendation on European cooperation in quality assurance in higher education](#) (European Parliament, Council, 2006), or the [Council Conclusions on quality evaluation in primary and secondary education](#) (Council, 2014), among many others.

There are, however, EU regulations (hard law), such as the [Regulation on the production and development of statistics on education and lifelong learning](#) (European Parliament and Council, 2008) or the [Commission Implementing Regulation about Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments](#) (European Commission, 2016).

Despite the absence of EU competences and the preference of soft law, we see below, and this is another important fact, that the various EU institutions speak out on children's rights and education.

## 2) Organisational framework

In this section we will take a brief look at the EU institutions and agencies that have expressed themselves on children's rights and education. We emphasise that virtually all EU institutions have expressed themselves on this issue.

The complex administrative organisation in the field of education, with numerous and very diverse Agencies, is remarkable, also in the European Union.

### *A) The Council and European Council*

The Council plays a key role in the Union's education policy, especially when the Education Ministers of the respective EU partner states meet. The Council plays a leading role in the design and development of EU education policy. It should also be remembered, as has already been mentioned, that it has been responsible for drawing up the Education Action Plans since it approved the first one in 1976. Also, more specifically in vocational training, since 1963, when it approved a [Decision "establishing the general principles for the implementation of a common policy on vocational training"](#) (Council of the European Economic Community, 1963). A quick historical overview above confirms the Council's clear leading role in this area. More recently, in 2018, the Council brought together European Education Ministers and other public and private education stakeholders at the [First European Education Summit](#) under the theme "Laying the foundations of the European Education Area: for an innovative, inclusive and values-based education", with the Council emphasising the idea of the European Education Area. In fact, a year later, in 2019, the [Council Resolution on further developing the European Education Area to support future-oriented education and training systems](#) (Council, 2019) was adopted, highlighting the importance of creating a coordinated European Education Area as a competitive advantage for the present and the future. To this end, it emphasises the necessary investment in education, which can serve as an enabler for the creation of such a European Education Area. Furthermore, its implementation "should pay special attention to effective accessibility, equal opportunities and inclusion policies, ensuring access and transitions to lifelong learning".

Also of interest is the [Council Recommendation on High-Quality Early Childhood Education and Care Systems](#) (Council, 2019), which recommends all Member States to "Improve access to high-quality early childhood education and care systems" and to "Work towards ensuring that early childhood education and care services are accessible, affordable and inclusive".

## *B) European Commission*

If the Council has played a leading role in education, the Commission has played a leading role in children's rights, although it has of course been involved in the development of European education policy.

In 2006, as mentioned above, the Commission adopted the [Communication "Towards an EU Strategy on the Rights of the Child"](#) (Commission of the European Communities, 2006), where it "proposes to establish a comprehensive EU strategy to effectively promote and safeguard the rights of the child in the European Union's internal and external policies" with a number of objectives. Within this Strategy, structures such as the European Forum on the Rights of the Child and its Steering Group, the Commission's Coordinator for the Rights of the Child and the Commission's Inter-Service Group have been set up. This was one of the first steps in a coordinated way to bring together in a single document a comprehensive strategy on children's rights.

This was followed by the Commission's Communication ["An EU Agenda for the Rights of the Child"](#) (European Commission, 2011), where "Commission calls on the EU institutions and on the Member States to renew their commitment to step up efforts in protecting and promoting the rights of children". It highlights the potential impact of a lack of investment or commitment in this area by European and national policies, stressing that "these policies require determined action by the Member States", for which the Commission "is ready to offer its support and cooperation". It is interesting to note how the best interests of the child are expressly cited, stating that "EU policies that directly or indirectly affect children should be designed, implemented, and monitored taking into account the principle of the best interests of the child". Action is sought in several areas such as 'Child-friendly justice', 'Targeting EU action to protect children when they are vulnerable' and 'Children in the EU's external action', concluding with a commitment to children's participation and awareness-raising given that, the Communication highlights, '76 % of children interviewed were not aware of having rights' and '88 % of respondents indicated that the EU should provide more information to children about their rights in an accessible way', according to Eurobarometer surveys in 2008 and 2009.

In addition to the above-mentioned structures created in the framework of the 2006 Communication, it is worth mentioning the role played by the European Commission's Directorate-General for Justice and Consumers, which plays a significant role in the European Forum on the Rights of the Child. Another Directorate-General of the Commission is the Directorate-General for Education, Youth, Sport and Culture.

Furthermore, 2013 saw the adoption of the [Commission Recommendation "Investing in children: breaking the cycle of disadvantage"](#) (European Commission, 2013), which emphasises to Member States the need for the implementation of "policies to address child poverty and social exclusion, promoting children's well-being, through multi-dimensional strategies", through 3 key pillars that should guide actions in this regard: "access to adequate resources", "access to affordable quality services"

and “children's right to participate”, for which the European institutions are encouraged to “mobilise relevant EU financial instruments”.

More recently, and in the field of education, in 2018, the Commission published the [Communication “Building a stronger Europe: the role of youth, education and culture policies”](#) (European Commission, 2018), which highlights that the EU “is placing youth, education, training and culture high on its policy agenda, in particular since the Leaders' meeting in Gothenburg and the European Council of December 2017”. It underlines, as does the [Communication on the European Education Area](#) (European Commission, 2020), the need to continue working on the construction of the European Education Area.

Finally, we highlight the [Digital Education Action Plan 2021-2027](#) (European Commission, 2020) and the various White Papers where, as mentioned in other sections, the key importance of education has been highlighted.

### *C) European Parliament*

The European Parliament has played an important role in producing documents regarding children rights. In fact, the Intergroup on the Rights of the Child and the European Parliament Coordinator for the Rights of the Child play a special role in the organisational work of the Parliament. Thus, the European Parliament has taken important steps in areas such as the recognition of diplomas, degrees and qualifications between partner countries, and in relation to vocational training in agriculture. Of note is the [European Parliament Resolution “Learning EU at school”](#) (European Parliament, 2016), which “Underlines the increasing importance of a European dimension in education”. Furthermore, the Euronest Parliamentary Assembly, established in 2011 by the European Parliament and MEPs representing the Eastern European partners, adopted, for example, the [Resolution on “Innovation in education and education reforms in the EU and Eastern partners' countries: challenges and opportunities”](#) (Euronest Parliamentary Assembly, 2020). This resolution stresses that it is essential to increase public financial support for education. It also argues that e-skills are essential, which is why all schools must be well equipped with computers and quality internet access.



### *D) Court of Justice of the European Union*

The CJEU has mainly ruled based on preliminary rulings, with the exception of an action for a declaration of invalidity ([C-540/03. European Parliament v Council](#)). In a preliminary ruling, as is well known, a national court asks the CJEU for its interpretation of a question of EU law that is relevant to the case brought by that court at national level. In short, for the CJEU to be called upon by a national court there had to be some European law to be consulted. Hence, until recent years, this European Court only heard a small number of questions concerning children's rights. This situation has changed with the recognition of the best interests of the child in the TEU with the inclusion of the Charter of Fundamental Rights in the primary law of the European Union.

The Court recognises that the child has EU citizenship rights like any adult, thus giving children an autonomous right of residence, as well as the right to social and educational benefits.

Furthermore, it is stated that the CJEU has treated references to the Convention on the Rights of the Child (CRC) with caution, as if they form a full part of the Union's body of law could lead to disagreements within the Union on sensitive issues such as immigration, as we can see in CJEU, C-540/03 (European Parliament v. Council), 27 June 2006. This situation is, however, changing with the inclusion of the EU Charter of Fundamental Rights as an integral part of its primary law.

It should be remembered, in this regard, that the European Court of Human Rights does have extensive case law on children's rights, such as the right to protection from inhuman or degrading treatment (Art. 3 ECHR) or the right to a fair trial (Art. 6 ECHR). In the same way and perhaps even more intensely than the CJEU, the ECtHR refers to the CRC, although without giving it a direct legal value. An example taken from this Handbook is the case of [Maslov v. Austria](#), which concerns the deportation of the applicant, who had been convicted of several criminal offences committed when he was a minor. The ECtHR considered that the consideration of the best interests of the child includes the obligation to facilitate his or her reintegration, citing Article 40 of the Convention. According to the Court, severing the child's family and social ties is not the most appropriate method of facilitating his or her intervention, making expulsion a disproportionate interference with the applicant's rights under Art. 8 of the ECHR (respect for family life).

### *E) Court of Auditors*

The Court of Auditors has played a minor role in the area of children's rights or education. Its main task in this area, as in practically all others entrusted to it, is to audit the use of EU resources in order to determine whether they are being managed responsibly and whether the results obtained are as expected. In this regard, it is worth highlighting two reports of importance for the matter under discussion. The first is a special report that was published at the end of September 2020, no. 20 of that year, and is entitled ["Combating child poverty – Better targeting of Commission support required"](#) (Court of Auditors, 2020). This report assesses EU policy on child poverty, firstly analysing the [Commission Recommendation "Investing in children: breaking the cycle of disadvantage"](#) (European Commission, 2013). It stresses that this is a positive initiative to break the cycle of child poverty, as, although it is not binding, it serves as support from the Commission for the rest of the Member States to start implementing policies in this area. The Court of Auditors, however, points out that, although the objectives and actions to be carried out were detailed, there was no detailed and moderately planned roadmap for carrying them out, even though the European Parliament and social entities belonging to the ad hoc working group on child poverty and welfare had requested it. Moreover, according to the audit institution, it is difficult to measure the implementation of the Recommendation due to the chosen indicators, which the Court found to be insufficient (and non-existent for the third pillar). It is therefore "difficult, if not impossible, to measure the direct and quantitative impact of the Recommendation".

In January 2021, Special Report No. 2 of that year was published, entitled ["EU humanitarian aid for education: helps children in need, but should be longer-term and reach more girls"](#) (Court of Auditors, 2021). The report highlights the EU's concern about education aid to developing countries, and audits the resources that go to it. The Court concludes that aid reached the neediest children in these countries, but that it reached fewer girls than boys. It also notes that the duration of projects was too short to generate effective and lasting results, which "contributed to some inefficiencies". The Court concludes that the Commission should make use of projects funded by the Enhanced Response Capacity projects in a "more systematic way", that it should provide more support for girls in education projects, that it should provide longer-term funding, improve cost analysis when selecting and monitoring education projects, and improve the sustainability of education cash transfer projects in protracted crises.

Finally, we highlight the importance that the Court of Auditors gives in its 2021+ Work Programme and in its 2021-2025 Strategy to digitisation, with particular emphasis on the digitisation of schools, and on EU support for education in emergency environments, in line with the above-mentioned report.

## F) Other EU bodies

### COMMITTEE OF THE REGIONS

The Committee of the Regions has expressed its concern and views on education on numerous occasions. We will not go into detail here. It is worth citing its opinion of 20 November 2017 on [Modernising school and higher education](#) (Committee of the Regions, 2018), in which it expresses its opinion on the Council Recommendation on tracking graduates and on the need to develop cooperation and modernisation of the education system in EU countries.

The Commission for Social Policy, Education, Employment, Research and Culture (SEDEC), has an opinion paper on ["Brain Drain in the EU: addressing the challenge at all levels"](#) (CdR 4645/2019), where it points out that "brain drain is directly triggered by existing social and economic imbalances between the EU regions" and "draws attention to the risk brain drain poses to the long-term sustainability of the European project" It stresses the need for multilevel governance and digital education to break this gap between countries that leads to brain drain.

### AGENCIES

#### Fundamental Rights Agency

It is an agency that advises the EU and its Member States on fundamental rights. In 2019 it published a report of relevance to the field ["Child rights in the EU - Supporting you. Supporting them"](#) (Fundamental Rights Agency, 2019). It provides some figures on poverty among children in EU member states, on migration of children to Europe, on children in legal proceedings, on child victims of violence (mainly girls), on racism among children and, finally, on children's participation in public and social life. In each of the sections, some considerations of interest are made, as well as links to find out more about the issues in each of them and the Agency's action in them. On immigration, it has published the infographic ["Practical Guidance for Protecting Unaccompanied children in the relocation process"](#). (Fundamental Rights Agency, 2020), which is part of its guide ["Relocating unaccompanied children: applying good practices to future schemes"](#) (Fundamental Rights Agency, 2020).

#### Education, Audiovisual and Culture Executive Agency

The role of this Agency is highly relevant, among many other things, because of the publication of the well-known Eurydice reports on education in Europe. The latest one, published in October 2020, is entitled ["Equity in school education in Europe"](#). (Education, Audiovisual and Culture Executive Agency, 2020). It refers to the importance of equity in schools, considering the important role that education can play in making European societies fairer. In addition, based on three indicators of inclusion and fairness, it differentiates between European countries in terms of equity, showing that, although all education systems refer to equity, the results vary. The report states that school segregation is accompanied by lower levels of inclusion and equity, depending on what is analysed, and that public funding of primary schools is essential to combat it.

Another report worth highlighting, especially with the increasing importance being given to it in practically all national and EU institutions, is the report “[Digital Education in Schools in Europe](#)” (Education, Audiovisual and Culture Executive Agency, 2019). The importance and benefits of digital education are recalled, if it reaches the entire population in an equitable way, both in terms of resources and skills. It stresses the importance of teachers having digital skills, as this is the best way to be able to pass this on to pupils. Most European countries have adopted policies in this area in both primary and secondary education and are still in the process of reforms in this area. The most addressed competences in terms of learning outcomes are, in descending order, digital content development, evaluation of data, information and digital content, and programming/coding.

### **European Training Foundation**

It is a European agency that supports EU countries in reforming their education and training systems. It is made up of education experts and currently has several projects underway, including, among others, training in business development, which seeks to promote the exchange of knowledge between students and companies to foster entrepreneurship across the EU; the promotion of the Centres of Professional Excellence, to connect education with work; and the exchange of stories to connect the European community with [#LearningConnects](#).

### III. Children's rights and education in the European Union

After a historical overview and an overview by EU actors, we will now take a brief look at some of Europe's policies on children's rights and education. An exhaustive analysis here and now is clearly impossible. The following is a list of those that we have found most interesting in relation to the best interests of the child.

#### ***1) Children's rights***

Firstly, it should be noted that the most general normative framework in this area is Article 24 of the [Charter of Fundamental Rights of the European Union](#) (European Parliament, Council, European Commission, 2012), on children's rights, as it is the primary legal document that defines the policies and regulations that the EU will take in this area.

Regarding secondary legislation, a Commission Communication setting out "[An EU Agenda for the Rights of the Child](#)" (European Commission, 2011) is currently of note. In addition, recently, in March 2021, the Commission adopted the [EU Strategy on the Rights of the Child \(2021-24\)](#) (European Commission, 2021), which has undergone a public consultation period between September and December 2020 in which 50 NGOs, public administrations or other interested bodies submitted their comments. It is undoubtedly an important document that will set the political and legislative agenda on children's rights in the European Union in the coming years.

Also, as a generic framework, it is worth citing the EU Guidelines of 6 March 2017 for the promotion and protection of the rights of the child entitled "Leave No Child Behind" (Council, 2017), which is a revised version of the 2007 EU Guidelines (6846/17). These Guidelines first give reasons for action in this area, stating that "The rights of the child are human rights" and refer to the duty that the Treaty of Lisbon gives the Union to act in this area. Thus, what the EU seeks with these Guidelines is to "comprehensively protect and promote the rights of the child in its external human rights policy". The Guidelines say that they will seek to encourage partner countries to comply with their obligations on children's rights, as well as to raise awareness of the issue. It also talks about the 2030 Agenda and its reference to children's rights, stating that these Guidelines will serve as a complement to comply with it.

Other interesting documents are the [Council Conclusions "Integrated early childhood development policies as a tool for reducing poverty and promoting social inclusion"](#) (Council, 2018), which insist on ensuring equal access to universal quality early childhood education and care services for all children.

### *A) Social services*

It should be noted here that according to Art. 34.1 of the [EU Charter of Fundamental Rights](#) (European Parliament, Council, European Commission, 2012), the EU "recognises and respects the entitlement to social security benefits and social services". An important part of these in terms of children's rights are child benefits, on which the Court of Justice of the European Union has ruled in specific cases such as, for example, [C-85/96](#), (*Maria Martinez Sala v Freistaat Bayern*, 1998), in 1998, considering that, if a Member State only requires its nationals to reside in it in order to have access to such benefits, the conditions must be the same for nationals of other Member States.

### *B) Legal proceedings*

Another area of interest in this substantive analysis of EU policies on children's rights is judicial proceedings involving children, both in national and European courts, as it is of particular interest to ensure special protection for children in this area. In this respect, European legislation covers both children who are accused or convicted and children who are involved as witnesses or victims. The general rights in proceedings also apply to children, but we will not go into them in detail here, as we prefer to focus on those rights that are special to children. It is true that some rights, such as the right to an effective remedy and the right to be heard and to be defended and advised in Art. 47 of the [Charter of Fundamental Rights of the EU](#) (European Parliament, Council, European Commission, 2012), are of particular importance in the case of a child, who is by nature more defenceless than an adult. The principle of proportionality in Art. 49 is also particularly important. Furthermore, Member States, when adopting certain European Directives such as the [Directive on the right to information in criminal proceedings](#) (European Parliament, Council, 2012) or the [Directive on the right of access to a lawyer in criminal proceedings](#) (European Parliament, Council, 2013), must do so in accordance with the provisions of the [Charter of Fundamental Rights](#), so that the principle of the best interests of the child (Art. 24), among others, must be considered.

More specifically, of particular relevance for children is the [Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#) (European Parliament, Council, 2016), adopted in 2016 by the Parliament and the Council, which states that "Since children are vulnerable and not always able to fully understand and follow criminal proceedings, they should be assisted by a lawyer in the situations set out in this Directive", thus obliging States to provide legal assistance to children at most stages of the proceedings. In addition, they should "should have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved" or by another appropriate adult when the presence of the holder of parental authority "would be contrary to the child's best interests", is not possible or would jeopardise the criminal proceedings, and that hearings involving children should generally be held in camera. If it is ultimately decided to deprive them of their liberty, they will be given specific treatment characterised by "ensure that children who are detained are held separately from adults, unless it is considered to be in the child's best interests not to do so" and their appropriate education, guidance, training and health care are guaranteed.



### *C) Children participation*

This is a key issue and a children's right that is of particular interest in the field of education, given the necessary participation that children must have in the elaboration of public education policies.

Recently, in 2020, the European Commission published a report in the form of a study entitled "[Study on child participation in EU political and democratic life](#)" (RAND Europe, 2020). This report provides an overview of the most common participation structures at EU and national level in EU member states. The study finds that the most common mechanisms for promoting children's participation in political and democratic life are through permanent institutions or structures, such as children's and/or youth councils and parliaments. The Commission, however, also highlights the important role of the Children's Ombudsman (or similar in other countries) in children's participation mechanisms in several countries. Children's and youth councils are found in 27 countries and in the EU. Youth parliaments are found in 15 countries and at EU level (European Youth Parliament). The Children's Ombudsman is a structure operating in all 27 Member States and in the UK and is also part of the European Network of Ombudsmen for Children (ENOC). A comprehensive analysis of all these forms of participation can be found in the above-mentioned report.

The report also discusses the role of stakeholders in promoting the participation of young people and children, highlighting the role of public bodies and civil society organisations, educational institutions and teachers, and children themselves (who, however, in some parts of the EU are not aware of their rights, as mentioned earlier in this paper). The report underlines that children have little knowledge and a mixed view of the EU's role in supporting their participation as children.

The Commission stresses in this analysis that children's participation can be a means to a particular end, but it is also an end in itself. It highlights that in most of the participation mechanisms analysed there are few ways of evaluating them, even less so by children, who would probably know best how to improve them as they are the ones who participate. According to the study, children report feeling let down, lack trust in authorities and, in the absence of information and follow-up, perceive that their opinions do not matter. This is compounded by the fact that only a few mechanisms ensure that children's proposals are binding - they are almost always non-binding, most are treated as recommendations or suggestions. The European Commission also states that the COVID-19 pandemic has further highlighted the importance of technological media in citizen participation, including for children, but also highlights the unequal access by means and skills of children to digital media, resulting in unequal access to participation.

The report also discusses drivers and barriers to children's participation. In terms of drivers for children's participation, it highlights policies, legislation, strategies and action plans, web platforms that facilitate the generation of ideas and exchange of views, and education and training for adults and children. Among the barriers, he cites children's (and adults') language skills and lack of child-friendly versions of documents; also, laws and regulations if they impede participation can be barriers;

societal attitudes about children, their competences and their capacity to participate; lack of information about opportunities for participation; and difficulty in including vulnerable and disadvantaged children. In addition, Covid-19 has brought extra challenges, such as reduced mobility and the difficulty of setting up face-to-face meetings.

It also reviews lessons learned in recent years, firstly that the most successful child participation mechanisms involve children at all stages of the policy-making process, although this is rarely the case. In addition, the role of child representation (where an individual child represents groups of children) facilitates participation, but it is also crucial to provide opportunities for individual voices to be heard. Of vital importance is also the exchange of information and the training of children to facilitate children's participation processes. It is said, as mentioned above, that digital tools and communication platforms create multiple opportunities, but can exacerbate existing inequalities. Finally, it stresses that the EU can give visibility to the issue, led by example by ensuring the implementation of child participation mechanisms at all levels, supporting the exchange of ideas and promising practices.

#### *D) Migrant children*

In this last point related to children's rights, we will analyse EU actions on migrant children, one of the areas in which EU policies have gone much further than in other areas, as we will now see.

This is clearly reinforced by the fact that the EU has competence in the area of immigration and asylum. In addition to the Article 24 on children's rights in the [EU Charter of Fundamental Rights](#), the provisions on immigration, the right to asylum and protection in the event of removal/expulsion/extradition contained in Articles 18 and 19 of the EU Charter of Fundamental Rights also apply. In this way, the EU has tried to pay attention mainly to those problems specific to unaccompanied children, especially the complicated issues of guardianship and legal representation, age determination, family reunification, asylum...

Regarding the entry and residence of migrant children, conditions vary greatly depending on where the child and his or her parents come from, as well as whether the child is migrating with a family member or not.

In the case of EU nationals, the rights recognised are more extensive: Article 21 of the [TFEU](#) establishes that all EU citizens have the right to "move and reside freely within the territory of the Member States", as does Article 45 of the Charter of Fundamental Rights of the EU. Furthermore, once in the new Member State, they are granted the same rights as nationals of that State in matters such as access to work and working conditions, social benefits, education, health care, etc. On the other hand, if children have parents or carers from an EU Member State, they are also governed by the provisions of the [Directive on free movement and residence](#) (European Parliament, Council, 2004). However, according to Art. 7 of the same Directive, while this right of residence is absolute for the first 3 months, thereafter it is conditional on having "sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of

residence and have comprehensive sickness insurance cover in the host Member State". After five years of residence, family members acquire permanent residence (Art. 16(2) and Art. 18) and this status ceases to have effect.

However, for migrants from outside the EU there are more restrictions, regulated by both European and national legislation. It should be borne in mind, however, that children are considered 'vulnerable persons' under various European regulations (Art. 21 of the [Reception Conditions Directive](#) (European Parliament, Council, 2013) and Art. 3.9 of the [Return of Illegal Immigrants Directive](#) (European Parliament, Council, 2008)). Therefore, Member States must address these special conditions for children from third States applying for asylum in the EU, with Article 24 of the [EU Charter of Fundamental Rights](#) on the rights of the child being applicable, so that the best interests of the child must be considered also in migration matters. See, for example, Article 6 of the [Commission Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person](#) (European Commission, 2016), which sets out special considerations for children, stating that "the best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation" or the [Asylum Procedures Directive](#) (European Parliament, Council, 2013) in Art. 25.6, which states that "best interests of the child shall be a primary consideration for Member States when implementing this Directive".

## 2) Education

Having analysed some interesting issues relating to children's rights, we will now move on to a brief analysis of some issues in the more specific area of education. For a historical review of the development of EU competences in this area, we refer to the first section of this article. In a generic framework, it is worth reading the [Council conclusions on moving towards a vision of a European Education Area](#) (Council, 2018) which have already been cited here.

### A) Digital education

This is a hot topic in the EU debate, especially in the wake of the impact of Covid-19 on the subject, as confinement and non-presential education have made the need for better policies on digital education a necessity that was already in place but has been accelerated.

The [Digital Education Action Plan](#) ((2021-2027) (European Commission, 2020) recently came into force. It presents the European Commission's vision for digital education, proposing increased European cooperation to "learn from responses to the COVID-19", a time when we have used technology in an unprecedented way for, among many other issues, education, and to adapt education and training systems to the digital age. The two strategic priorities set by the Commission in this plan are: (1) "Fostering the development of a highperforming digital education ecosystem", which requires quality infrastructure, connectivity and

equipment, effective planning and skills development, trained teachers and quality learning content; and (2) "Enhancing digital skills and competences for the digital transformation", which requires basic digital skills and competences from an early age and more advanced digital skills to generate more digital specialists, especially girls and women to ensure equal representation. This Plan replaces the 2018-2020 Plan, and includes a series of measures envisaged by the Commission such as "Propose a Council recommendation on improving the provision of digital skills in education and training", "Support, where necessary, Gigabit connectivity of schools, as well as connectivity in schools", "Update the European Digital Competence Framework with a view to including AI and data-related skills" or "propose a Council Recommendation on online and distance learning for primary and secondary education by the end of 2021", among many others.

The Eurydice report on "[Digital Education at School in Europe](#)" (Education, Audiovisual and Culture Executive Agency, 2019) is a very interesting document that analyses the digital education policies not only of the European Union but also of its Member States and has already been mentioned and analysed in the section on the organisational framework of this paper.

In terms of non-binding publications, the European Parliament's 2018 [Resolution on education in the digital era: challenges, opportunities and lessons for EU policy design](#) (European Parliament, 2018), stands out. Here, already in its "having regard", it highlights the importance of digital education given the evolution of technology, which makes digital skills key competences that will be necessary for many jobs of the present and, even more so, of the future. Despite this, it states that "44 % of the EU population aged between 16 and 74 lack basic digital skills". On education, he stresses that "technologies should be better used to support new pedagogies that focus on learners as active participants". It stresses the need for educational institutions to adapt to new technologies and new pedagogical approaches as tools to improve quality and inclusion in education. In this regard, it also calls on states, the Commission and educational institutions to strengthen the safety of children on the internet.

Furthermore, in its [Conclusions on countering the COVID-19 crisis in education and training](#) (Council, 2020), the Council called on Member States to "Continue sharing information, experience and best practices between Member States on how education and training" and to "examine possibilities for innovation and make further efforts to accelerate the digital transformation of education and training systems, and where relevant, boost the digital capacity of education and training institutions and narrow the digital gap". It also calls for increasing the development of digital skills and competences of teaching staff. This requires states to develop their digital infrastructures, skills and competences by making use of EU funds and funding programmes.

The [Council conclusions on digital education in Europe's knowledge societies](#) (Council, 2020) were published in December 2020. They refer to the digital transformation of society and its acceleration in the wake of the Covid-19 pandemic, which underlines the need to better understand the challenges and benefits of digital education. Furthermore, it is considered

an indispensable tool for contributing to the digital transformation from the earliest years of life, otherwise a digital divide could be created, which would further increase existing social inequalities, as can be seen in the fact that during the Covid-19 crisis there were “learners, to a varying degree across Member States, (who) could not exercise their right to education and training fully due to a lack of proper physical and technological access”. The European institutions are asked to increase cooperation between states on digital education in order to adopt “a more integrated approach to the development of digital education policy”, as well as to support its development, with the possible creation of a “European Digital Education Hub”.

### *B) Teacher staff*

The issue of teachers is of great interest as they are the people who are in daily contact with students and may be the first to notice if the BIC is being violated or if there is a risk of it being violated.

Already in 2017, we see published a Communication from the Commission called “[School development and excellent teaching for a great start in life](#)” (European Commission, 2017). It details the areas in which action is needed to improve the quality of European education. One of the challenges that the Commission sees as necessary to achieve this goal is to “support teachers and school leaders in achieving excellent teaching and learning”. In this regard, the Commission believes that there is an urgent need to improve the attractiveness of the teaching profession, as “the loss of prestige of the profession and staff shortages are problems faced by many Member States, with a consequent decline in the quality of school education”. To this end, the Commission argues that improving selection processes with “a broader range of skills and attitudes” beyond the strictly academic can help, not forgetting the importance of pay and working conditions, as “teachers often earn significantly less than the average for tertiary-educated workers”. In addition to the attractiveness of the profession, the Commission says there is a need to improve teacher education, particularly about participation in continuing professional development, which needs to be “accessible, affordable and relevant”. It mentions Erasmus+ grants as a means of promoting teacher education. Finally, the Commission also sees greater support for school leadership as important, stating that effective leadership improves pupil and teacher performance. It considers it necessary to improve the attractiveness of this position, to improve its training and to develop a leadership programme based “on a vision shared by staff, parents and the local community”.

Also of note in 2017 is the Commission's report “[Preparing Teachers for Diversity: the Role of Initial Teacher Education](#)” (European Commission, 2017), which stresses the need to better prepare teachers for diversity in the student body with a series of recommendations to member countries in this regard, including “recognise the diversity of their societies as an asset, and not a deficit”. This requires the establishment of policies that promote the integration of this diversity, especially in initial teacher training.

In the Eurydice 2019 on [Integrating Students from Migrant Background into Schools in Europe](#) (Education, Audiovisual and Culture Executive Agency, 2019), also in the field of diversity and more specifically migrant pupils, it is stated that teachers “often feel unprepared and insecure when confronted in the same classroom with students from different cultural and linguistic backgrounds” and that in many EU countries there is a “lack of teachers’ competences to deal with students from diverse cultural and linguistic backgrounds in the same classroom”. While most national authorities appear to have taken some action to address this lack of training, it is reported that “The use of teaching assistants and intercultural mediators to support migrant students’ school integration does not seem to be sufficiently exploited”. Moreover, only half of the education systems analysed by Eurydice provide some form of support to school heads to ensure the successful integration of migrant children.

Recently, probably taking up the Commission's mandate from the 2017 Communication discussed above, the Council has published [Conclusions on teachers and trainers for the future](#) (Council, 2020) in which it stresses that teachers are an indispensable driving force in the education of pupils “in preparing individuals of all backgrounds and ages to live, learn and work in the world of today, as well as in creating and leading future changes”. It highlights the changes that have taken place in education in recent years, which place even greater demands on these teachers, affecting both the staff themselves and the attractiveness of the profession. Notably, point 6 reminds us that the competence to regulate the teaching profession rests with the Member States, in a kind of declaration to make it even clearer that this document does not go beyond recommendations to the Member States. It states that their role goes beyond training for the world of work, as they also have a responsibility to educate pupils “also to foster their social responsibility and civic engagement, to convey human values, as well as to support their personal growth and wellbeing”. Not only their education and knowledge, but also their motivation, enthusiasm and job satisfaction are important. However, teachers face many difficulties, some of which are highlighted in point 10 at the general level and in point 13 for each level of education. In order to combat these difficulties and to have motivated and satisfied teachers, it is necessary, according to point 16, that the States implement policies that support their work and that they are given adequate training in all areas. It is also important to encourage cross-border mobility as a powerful opportunity in “developing (...) social, intercultural, multilingual and interpersonal competences” of teachers. It concludes by inviting Member States to involve teachers and trainers in public education and training policies and to take measures to “improve the attractiveness and status of the profession”.

### *C) Lifelong learning*

Since the Lisbon European Council in March 2000, lifelong learning has been a key concept in understanding the training policies of both the EU and its Member States. It is about giving people the opportunity to acquire skills and knowledge from childhood to post-retirement, in order to enable them to participate as active citizens in society.



We can observe the importance of this concept in the EU in two documents that we will now briefly analyse. Firstly, we find the [Council Recommendation of 22 May 2018](#) on key competences for lifelong learning (Council, 2018). This document serves to make recommendations to the Member States in this area. One of these recommendations is to "support the right to quality and inclusive education, training and lifelong learning" and "support the development of key competences", for which it seeks to increase the training of teaching staff and all those involved in learning in order to "raising the level of achievement of basic skills (literacy, numeracy and basic digital skills) and supporting the development of learning to learn competence as a constantly improved basis for learning and participation in society in a lifelong perspective", as well as the strengthening of all instruments and resources dedicated to this. In this Recommendation, the Council understands key competences to be literacy; multilingual; mathematics and science, technology and engineering competence; digital; personal, social and learning to learn; citizenship; entrepreneurship; and cultural awareness and expression, setting out essential knowledge, skills and attitudes for each of them.

Secondly, the [Council conclusions on the key role of lifelong learning policies in empowering societies to address the technological and green transition in support of inclusive and sustainable growth](#) (Council, 2019) are noteworthy. These Conclusions define lifelong learning as learning that "covers learning from early childhood education and care to that of post-retirement (...) with the aim of improving knowledge, skills and competences from a personal, civic, social and/or employment-related perspective". To this end, it is necessary to promote lifelong learning in such a way that it is provided on equal terms to all citizens, so that everyone has the same opportunities to access it, as it is a learning process that benefits society. These Conclusions invite the Member States to "develop strategic approaches to boost lifelong learning policies" and to recognise the positive impact of lifelong learning on the sustainable development of countries, promoting more concrete ways of doing so, such as, among others, developing education and training systems to enable seamless lifelong learning, facilitating transitions between the different levels.

#### *D) School dropouts*

Early school leaving has also been a focus of EU education policy action. In fact, as we can see in their commitments set out through their Europe 2020 Strategy, EU member countries committed themselves to work towards bringing the ESL rate below 10 % of all pupils by 2020. As stated in the Commission Communication "[Tackling early school leaving: a key contribution to the Europe 2020 Agenda](#)" (European Commission, 2011), the importance of achieving this target is highlighted both as a contribution to labour market inclusion and as a major contribution to

breaking the vicious cycle of poverty. It states that it "is therefore a key measure in reaching the target of lifting at least 20 million people out of the risk of poverty". The Commission states that early school leaving has a profound impact on the personal and professional future of children, as it "reduce their chance to participate in the social, cultural and economic dimensions of society", affecting important things such as their income, well-being, health and children. School dropout is also said to be caused by numerous educational, individual and socio-economic factors that are often interconnected. Prominent among these factors are socially disadvantaged and low-education backgrounds, i.e., "Children of parents with low levels of education and from socially disadvantaged backgrounds are more likely to leave education and training before completing upper secondary education levels than other young people". It states that the rate "is even higher for Roma populations, who tend to be among the most socially excluded members of society". All the conditions, says the Commission, must be considered in order to tackle this problem, although, it stresses, there is a lack of a coherent policy on the part of the Member States. It is also necessary to be aware of the national, regional and local conditions of the problem, i.e., to know the motivations that have led these children to drop out of school, because policies that follow in their development a set of objective data reflecting the reasons why this is happening are the best way to ensure that the problem is solved. It is stressed that EU collaboration can play an important role in curbing early school leaving at EU level.

Following the inclusion of this target in ET2020, a report was produced by a working group on the situation in 2011 and, although it states that important steps have been taken by some States, it highlights that much remains to be done. This report, entitled "[Reducing early school leaving: key messages and policy support](#)" (European Commission, 2013), sets out a series of key messages to strengthen the approach to the concept of early school leaving and its causes.

In order to understand the importance that this issue has had in the debate within the European Union, it is worth noting that in 2012 a conference was held in Brussels ([Reducing early school leaving: efficient and effective policies in Europe](#)), devoted entirely to early school leaving, which was attended as speakers and participants by European and national education policy makers and experts in the field, and which served as the starting point for a meeting of the aforementioned EU working group, which is responsible for publishing the report analysed and which meets regularly to exchange experiences and good practices, as well as to contribute to the development of Community policies on early school leaving.

We also highlight the [Council conclusions on reducing early school leaving and promoting success in school](#) (Council, 2015), which take stock, at the midway point between 2010 and 2020, of policies and outcomes in relation to early school leaving among young people in the framework of the ET2020 target. Despite progress, "still too many pupils continue to leave education prematurely". It invites States to finalise their plans to combat early school leaving.

The [Education and Training Monitor](#) is a report providing data and analysing trends in early school leaving across the EU and all Member

States. The latest one published, at the end of 2020 (with data for 2019), shows that 10.2% of all students drop out of school early, just 0.2% above the proposed target, so significant progress has been made across the European Union, where the figure was 14% in 2009. In addition, 19 Member States are below the target of 10 %. It highlights that ESL is lower in cities than in rural areas and villages, and that, as mentioned above, the socio-economic background of students has a strong impact, with parental education playing a key role. It is highlighted in this Monitor that the 3 types of policies that have been implemented can be classified into three types: (1) prevention measures aimed at reducing the risk of early school leaving before problems start, (2) intervention measures aimed at preventing early school leaving by improving the quality of education and training, and (3) compensation measures aimed at helping early school leavers to re-enter education. The latter appear to be well established across the EU, while the first two vary by Member State.

### *E) Migrant children*

As mentioned above, this section will look at education issues of particular concern to migrant children on European territory. Indeed, EU recognises children's right to education regardless of their immigration status, as can be seen in a wide range of European documents, such as Article 27 of [Directive on the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted](#) (European Parliament, Council, 2011), which states that "Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals". Again, however, it must be clear that the EU has no direct competence in the field of education, hence it can only regulate the right of migrant children on an equal footing with the right of national children.

Again, as we have already seen in relation to the rights of migrant children, children born in the EU who move to a Member State have greater rights in the educational context, as they have the right to be admitted to educational establishments under the same conditions as nationals, as we can see, among other documents, in Article 10 of the [Free Movement of Workers Regulation](#) (European Parliament, Council, 2011), both in public and private establishments, both in compulsory and non-compulsory education. The Court of Justice of the European Union has already ruled on this on several occasions and has understood this right in a broad sense to include not only the right to equal access but also the right to education-related benefits, as can be seen, for the first but not the last time, in the case of [Donato Casagrande v. Landeshauptstadt München](#) (Donato Casagrande v Landeshauptstadt München, 1974)

However, for children who are nationals of non-EU countries, they can only access "state-funded" education under the same conditions as nationals. Moreover, equal access to benefits is not included in this case. However, the [Refugee Qualification Directive](#) (European Parliament, Council, 2011), in particular Art. 28, obliges Member States to ensure that qualifications obtained in other countries are duly recognised even in the absence of evidence of such recognition.

## IV. Conclusions

The European Union has played an important role in the fields of education and children's rights, as we can see from a reading of its primary law, namely Art. 24 of the EU [Charter of Fundamental Rights](#) (European Parliament, Council, European Commission, 2012), which recognises the best interests of the child.

Although education does not fall within the European Union's own or shared competences, it does appear in Article 6 of the TFEU as a competence to support the Member States. This is why today practically all EU institutions have taken some kind of measure, have made some kind of declaration or have carried out some kind of action in this field.

Thus, although, as in practically all policies, the role played first by the Council and then by the European Commission and the European Parliament stands out, other institutions, such as the Court of Auditors or the Court of Justice, have also taken important steps forward concerning these aspects.

However, as is to be expected, we also highlight the fact that most of the initiatives that have been taken forward by all the institutions are non-binding and are more political declarations or statements of intent than actual legal documents. These initiatives have proliferated particularly in recent years, as we have seen throughout this paper.

Nevertheless, the EU's progress on education and children's rights has been and is evident. It is probably one of the supranational bodies that has done the most in this regard. As we have seen, there is sufficient evidence to argue that the EU's role in strengthening issues such as migrant children's rights, children's participation and progress on digital education has been very important.

Until relatively recently, there was a lack of a coordinated and comprehensive strategy on education and children's rights. Although, as we have seen, progress has been made for decades, it has often been in the form of actions that were not part of an overall EU education plan. However, this has changed in recent years, as can be seen in various documents. In this regard, it is worth noting that the first European Education Summit between the Council of European Education Ministers and education stakeholders was held in 2018. This Summit resulted in the [Council Resolution on further developing the European Education Area to support future-oriented education and training systems](#) (Council, 2019), which is a coordinated and comprehensive guide to the next steps to be taken to develop the closest thing to a European education policy to date. Since then, the concept of the "European Education Area" has been progressively developed with new documents and initiatives, such as the recent [Council Resolution on a strategic framework for European cooperation in education and training towards the European Education Area and beyond](#) (Council, 2021).

There are still important challenges that have arisen recently, such as how the Union will respond in the medium and long term to issues such as digital education, in the face of the emergence of the digital divide as a real problem both between and within countries, even more so with the Covid-19 crisis. What does seem clear is that the EU is beginning to take even more decisive steps on education at the European level, even though, as we have said, it is not one of its direct competences.

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# European framework of the best interests of the child

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