European Union Agency for Fundamental Rights, selection of relevant and recent passages from published reports related to Call for submissions – Report on child, early and forced marriage in humanitarian settings – A/HRC/res/35/16

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# Marriage with consent of a public authority and/or public figure

“It is up to each Member State to legislate in regards to the right to marry, as established in Article 9 of the EU Charter of Fundamental Rights. The European Convention on Human Rights guarantees the right to marry for those of ‘marriageable age’ according to national laws (Article 12). In General Comment No. 4, the CRC Committee recommends setting the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

However, most national legislation allows children to marry at a younger age with the consent of a public authority and/or the consent of their parents. This lower age is mostly set at 16 years. Seven Member States have not regulated any lower age for these exceptions.

**Key aspects**

* In all Member States, the minimum age required for marriage coincides with the age of majority and is set at 18 years – with the exception of **Scotland**, where the age of marriage is 16 years, which is also the age of majority.
* Most national legislation provides for the possibility to marry before reaching the age of majority with the consent of the parents and/or a judicial or administrative body. Only in **Denmark**, **Germany**, **the Netherlands** and **Sweden**(as well as in **Poland**, but only with regards to men), no possibility to marry below 18 years exists, as recommended by the CRC Committee.
* For most of the other Member States, the absolute minimum age explicitly set for marriage with consent, either parental or by a public authority, is 16 years. Only Estonia sets the minimum age at 15 years. In **Belgium, Finland, France, Greece, Ireland, Luxembourg** and **Slovenia**, no minimum age for marriage is stipulated in the legislation.
* **Poland’s**legislation makes a distinction between men and women – a woman may request to get married at 16 years, however, there is no such exception for men.
* Some Member States provide for certain exceptions to the minimum age. In **Lithuania**, a child can marry with consent from the age of 16 years; however, in the case of pregnancy, the court may allow the pregnant child to marry even before that age. In **Croatia**, a civil court may allow a person who has reached the age of 16 to marry if the judge determines that the child is physically and mentally mature enough for marriage and that the marriage will not jeopardise the child’s well-being.

Latest developments: In **Finland**, policymakers are assessing whether to set an absolute minimum age for marriage, without any room for dispensation. In **Ireland**, a bill proposes to remove all exemptions that currently enable children to marry.

**Type of consent required for children to marry**

* Seven Member States (**Austria, Belgium, Bulgaria, France, Luxembourg, Spain** and **Romania**) require children to obtain both parental and judicial approval if they want to get married before the age of 18 years. However, in some cases, the court can authorise the marriage if it considers the parental refusal to have been unfounded or abusive.
* In **Croatia**, the **Czech Republic, Finland, Greece, Ireland, Italy, Poland** and **Slovakia**, a judicial body needs to consent, but parental consent is not needed. In the **Czech Republic, Finland** and **Greece**, for example, parents or guardians are heard but their consent is not required.
* In three Member States (**Finland, Hungary** and **Slovenia**), an administrative body – rather than a judicial body – approves marriages of children. In **Hungary**and **Slovenia**, the parents are heard.
* When a competent body needs to approve a child marriage, the laws provide rather vague criteria that the competent body has to consider, such as ‘serious reasons’ or ‘good cause’, or whether the applicant is considered to be mature for marriage and it is in their best interest. In **Cyprus, Latvia, Malta** and the **United Kingdom**, a marriage may be solemnised by parental consent only, and no approvals from further bodies are needed.

**Differentiations among religious marriages and registered civil partnerships**

* In all of the 18 Member States where religious marriage is legally recognised, the same minimum age requirements apply as for civil marriage.
* Out of the 22 Member States that provide for registered civil partnerships, in 13 Member States – **Austria, Belgium, Croatia, Cyprus**, the **Czech Republic, Estonia, France, Greece, Finland, Hungary, Italy, Luxembourg** and **Slovenia**– rules allowing persons under 18 years to marry do not apply to registered civil partnerships.
* In **Malta**and the **United Kingdom**, no such differentiation exists; the same rules apply for civil partnerships and marriage.

**Legal background**

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages states that all States parties shall “specify a minimum age for marriage and that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses” (Article 2). The Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices clarifies that “child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent” (para. 20). Clear rules related to exceptions permitting marriage for persons under 18 years are essential to ensure that Member States and the EU safeguard the free will of the child and to combat forced marriage, which qualifies as a form of gender-based violence under the Victims’ Rights Directive (2012/29/EU). (See also FRA’s publication [Addressing forced marriage in the EU: legal provisions and promising practices](http://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)). Furthermore, in view of the migration situation in the EU, this issue is increasingly significant in terms of recognition of third-country child marriages as well as of child marriages in a Member State other than the Member State of residence or relocation.”

*(FRA, Mapping minimum age requirements concerning the rights of the child in the EU, Section on* [*Marriage with consent of a public authority and/or public figure*](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/marriage-age)*, November 2017)*

# Consent for sexual activity with an adult

“The establishment of a minimum age for sexual consent, the age at which a child can decide to have sex with someone, aims to protect children from abuse or consequences of early sexual activity, such as early pregnancy or sexually transmitted diseases.

Directive 2011/93 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography defines the age of sexual consent as “the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child”.

The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) asks States parties to set a minimum age for sexual consent, below which it is prohibited to engage in sexual activities with a child.

All countries have established a minimum age under which engaging in sexual intercourse with a child is considered a criminal offence. Roughly half of the Member States add exceptions, making intercourse lawful if the partners are of similar ages or the age difference is not higher than a certain number of years. This follows the CRC Committee’s request for States to “avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity” (General Comment No. 20).

**Key aspects**

* All Member States establish a minimum age for sexual consent. Most Member States set this between 14 and 16 years.
* The lowest minimum age is 14 years, set in seven Member States: **Austria, Bulgaria, Estonia, Germany, Hungary, Italy** and **Portugal**. The highest is set at 18 years – in **Malta**.
* About half of the Member States apply different age limits to sexual acts between young persons. For example, in **Cyprus**and **Italy**, the law provides an exception for consensual sexual activities between persons if neither of them is under 13 years old and the age gap does not exceed three years. Some Member States provide higher age thresholds for sexual activity between a child and a recognised person of trust, authority or influence over the child.

**Member States where the minimum age for sexual consent and the minimum age for marriage with consent by parents or a public authority differ**

* In most Member States, the age for sexual consent is below the age of marriage.
* In **Cyprus**and **Malta**, the minimum age for sexual consent is above the age at which children can get married with the consent of a public authority and/or the parents. In several Member States, the lowest age is not regulated while the age for sexual consent is between 15 and 17 years.

| **Member States where the minimum age for sexual consent and the minimum age for marriage with consent by parents or a public authority differ** | | |
| --- | --- | --- |
| **Member State** | **Age at which children can marry with consent** | **Age for sexual consent** |
| **CY** | 16 | 17 |
| **MT** | 16 | 18 |

There are also differences between the minimum age for sexual consent and the age at which children can access reproductive or sexual health services without parental consent, some inconsistently so. See section: [Access to reproductive or sexual health services](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-health-services).”

*(FRA, Mapping minimum age requirements concerning the rights of the child in the EU, Section on* [*Consent for sexual activity with an adult*](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-consent)*, November 2017)*

# Accessing reproductive or sexual health services

“In its General Comment No. 20, the CRC Committee states that all adolescents “should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education”.

For adolescents, in particular girls, access to reproductive or sexual health services is crucial for their well-being and general health. Most EU Member States regulate children’s access to sexual and reproductive health services, including contraceptive methods, in the same way as other health services. Thus, the same limitations that children would face when accessing general health services apply for accessing reproductive or sexual health services.

**Key aspects**

* In **Greece, Hungary, Malta, Poland** and **Slovakia**, children cannot access sexual or reproductive health services without parental consent. In other Member States, this depends on the child’s maturity and an assessment by the health service providers.
* In **Bulgaria, Ireland, Lithuania, the Netherlands, Romania, Spain** and the **United Kingdom**, the minimum age to independently access these services is 16 years. In **Denmark**and **Slovenia**, it is 15 years. In **Slovenia**and the **United Kingdom**, the minimum age can be lowered, depending on maturity.
* In several Member States, access depends on the maturity of the child. For example, in the **United Kingdom**, although general rules apply, contraceptive advice and treatment can be given to a child under the age of 16 years without informing the parents if the child understands all aspects of the treatment and its implications. The child cannot be required to inform their parents.
* In some countries, there is a discrepancy between the age of sexual consent and the age at which children can access reproductive or sexual health services without parental consent. In **Greece, Poland** and **Slovakia**, the age of sexual consent is 15 years. However, accessing reproductive or sexual health services without information being submitted to the parents is only possible at 18 years. In **Hungary**, the difference is four years: the age for sexual consent is 14 years, while children can access reproductive or sexual health services without parental consent only at 18 years.”

| **Member States where there is a discrepancy between the age of sexual consent and the age at which children can access reproductive or sexual health services without parental consent** | | |
| --- | --- | --- |
| **Member State** | **Age for sexual consent** | **Age at which children can access reproductive or sexual health services without parental consent** |
| **EL** | 15 | 18 |
| **HU** | 14 | 18 |
| **PL** | 15 | 18 |
| **SK** | 15 | 18 |

*(FRA, Mapping minimum age requirements concerning the rights of the child in the EU, Section on* [*Accessing reproductive or sexual health services*](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-health-services)*, November 2017)*

# Seeking medical advice without parental involvement

“CRC General Comment No. 12 notes that a child should “have access to confidential medical counselling and advice without parental consent, irrespective of the child’s age”.

Almost half of the Member States do not establish specific rules regarding the minimum age at which children can seek medical advice without parental consent and with no information being disclosed to the parents. Some Member States assess the maturity of the child before allowing them to seek medical advice independently, while others always keep parents informed about a child’s health issues.

**Key aspects**

• In eight Member States (Cyprus, Greece, Hungary, Italy, Latvia, Malta, Romania and Slovakia), parents must be informed when their child seeks medical advice or treatment.

• Eleven Member States (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Luxembourg and Sweden) allow children to seek medical advice without parental consent depending on their maturity.

• In Bulgaria, Lithuania, the Netherlands, Spain and the United Kingdom, children from the age of 16 years can independently seek medical advice and no information will be disclosed to their parents. In the United Kingdom, it is possible for children of a younger age to do so, depending on their maturity. In Slovenia, children from the age of 15 years can seek medical advice, although the age can be set higher or lower than this, depending on maturity.

• In Denmark, whether or not the parents should be informed in cases involving patients aged between 15 to 17 years is assessed on a case-by-case basis; in addition to the child’s age and maturity, it depends on the nature of the treatment, the severity of the illness and the nature of the information.

• In Hungary, children can designate an adult other than their parents to receive their medical information starting at the age of 16.”

*(FRA, Mapping minimum age requirements concerning the rights of the child in the EU, Section on* [*Seeking medical advice without parental involvement*](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/medical-advice)*, November 2017)*

# Accessing abortion services

“CRC General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health states that “States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health”. The Committee recommends “that States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal”.

In three EU Member States, abortion is generally considered illegal, with some exceptions – such as a risk to the pregnant woman’s life. Where legal, the minimum age requirement is often set at 16 or 18 years. Some Member States do not set a minimum age but state that the child’s maturity has to be assessed.

**Key aspects**

• With some exceptions, such as when the mother’s life is at risk, abortion is illegal in Cyprus, Ireland and Malta.

• In nine Member States, abortion is only allowed without parental consent from the age of 18 years (Bulgaria, Denmark, Greece, Hungary, Italy, Luxembourg, Poland, Slovakia and Spain). In some of these Member States, abortion before the age of 18 years may be permissible with judicial or administrative consent.

• In the other Member States, girls can access abortion services only under specific medical circumstances, depending on the maturity of the pregnant child and on the doctor’s assessment. Under a certain age, parental consent might also be needed. Abortion is only possible within a certain timeframe, which is also the case for adult women.

• In France and Luxembourg, if the child expresses the desire to maintain confidentiality, she can designate an adult who is not one of her parents to be given the information and to be with her during the procedure.

• The lowest minimum age requirement expressly set for abortion without parental consent is 15 years in Slovenia.“

*(FRA, Mapping minimum age requirements concerning the rights of the child in the EU,* [*Section on Accessing abortion services*](http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/access-abortion-services)*, November 2017)*

# Addressing forced marriage in the EU: legal provisions and promising practices

“There is also a close link between forced marriage and child marriage. International law obliges states to specify in their legislation a minimum age for marriage recommending that this be set at 18 for both boys and girls (see Section 2.2). Marriages concluded by children who lack legal capacity as they have not yet attained the minimum age for marriage are invalid. Many states provide for exceptional situations in which the lack of legal capacity can be replaced by other means, for example, by parents’ consent or a court decision. Forced marriage is primarily practised among certain ethnic communities. Perpetrators of forced marriages are usually parents or family members and can include members of the extended family, potential in-laws and husbands and members of the local ethnic community.3 Forced marriage disproportionately impacts on women and girls. The Istanbul Convention, which is the core European document in this regard, considers forced marriage a serious form of violence to which women and girls are exposed (preamble). According to its Article 37, state parties are under a duty to criminalise “the intentional conduct of forcing an adult or a child to enter into a marriage”. The convention entered into force on 1 August 2014. As of end April 2014, Austria, Denmark, Italy, Portugal and Spain had ratified it, with more EU Member States expected to follow soon.”

*(FRA,* [*Addressing forced marriage in the EU: legal provisions and promising practices*](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)*, 2014, p. 9)*

“There is evidence that some EU Roma communities continue to practise child marriage.22 In a recent survey of the Roma population, FRA found that, across the 11 EU Member States surveyed, around 2 % of Roma girls aged 10–15 are reported to be ‘traditionally married’ or cohabiting with a partner. On average, around 16 % of Roma men and women aged 16–17 are legally or traditionally married or cohabiting, according to the research, which was conducted in the 11 Member States where most Roma live: Bulgaria, the Czech Republic, France, Greece, Italy, Hungary, Poland, Portugal, Romania, Slovakia and Spain. Marriage affects activity patterns, particularly education: only 6 % of Roma women aged 16–17 who are married or cohabiting are in education, compared with 36 % of all Roma women in this age group.”

*(FRA,* [*Addressing forced marriage in the EU: legal provisions and promising practices*](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)*, 2014, p. 13)*

“In addition, Article 19 of the UN Convention on the Rights of the Child obliges states to protect children from all forms of physical or mental violence. “All forms of” violence also includes forced and early marriage, as noted by the Committee on the Rights of the Child in 2011 in its General Comment No. 13 (paragraph 29). The Committee noted that given their specific vulnerability to maltreatment the obligation to protect a child from all forms of violence should continue to apply when children under the age of 18 attain majority or emancipation through early marriage and/or forced marriage (paragraph 33).”

*(FRA,* [*Addressing forced marriage in the EU: legal provisions and promising practices*](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)*, 2014, p. 18)*

“According to Article 37 (1) of the Istanbul Convention, state parties are under a duty to criminalise “the intentional conduct of forcing an adult or a child to enter into a marriage”. Under Article 37 (2) of the convention this duty also extends to criminalise “the intentional conduct of luring an adult or a child to the territory” of a state with the purpose of forcing the person to enter into a marriage. In a 2006 resolution on women’s immigration,32 the European Parliament called on EU Member States to introduce in their national legislation measures aiming at prosecuting any of their citizens who may seek to contract or help to organise a forced marriage, including when the forced marriage is contracted outside their territory (Point 33). It also urges the Member States which have not yet done so to ensure that effective and deterrent penalties apply under their criminal codes to all forms of violence against women and children, particularly forced marriage (Point 35).”

*(FRA,* [*Addressing forced marriage in the EU: legal provisions and promising practices*](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)*, 2014, p. 18)*

“In Sweden, before a marriage is registered, the two persons who intend to enter into the marriage must together request an examination of impediments to marriage (Hindersprövning) by the Swedish Tax Agency (Skatteverket),53 which runs the registry of births, marriages and deaths.54 If it finds that there is no impediment to the marriage, it shall issue a certificate to that effect according to Chapter 3, section 4 of the Marriage Code (Äktenskapsbalk).55 However, if it discovers cases of forced marriage or unauthorised child marriages, the Tax Agency shall notify the public prosecutor. The Swedish Tax Agency’s decision on impediments to marriage may be appealed to the administrative court in accordance with Chapter 15, section 2 of the Marriage Code.56 The examination of impediments to marriage applies to all marriages performed in Sweden, including those where either or both parties are non-nationals.”

*(FRA,* [*Addressing forced marriage in the EU: legal provisions and promising practices*](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf)*, 2014, p. 20)*