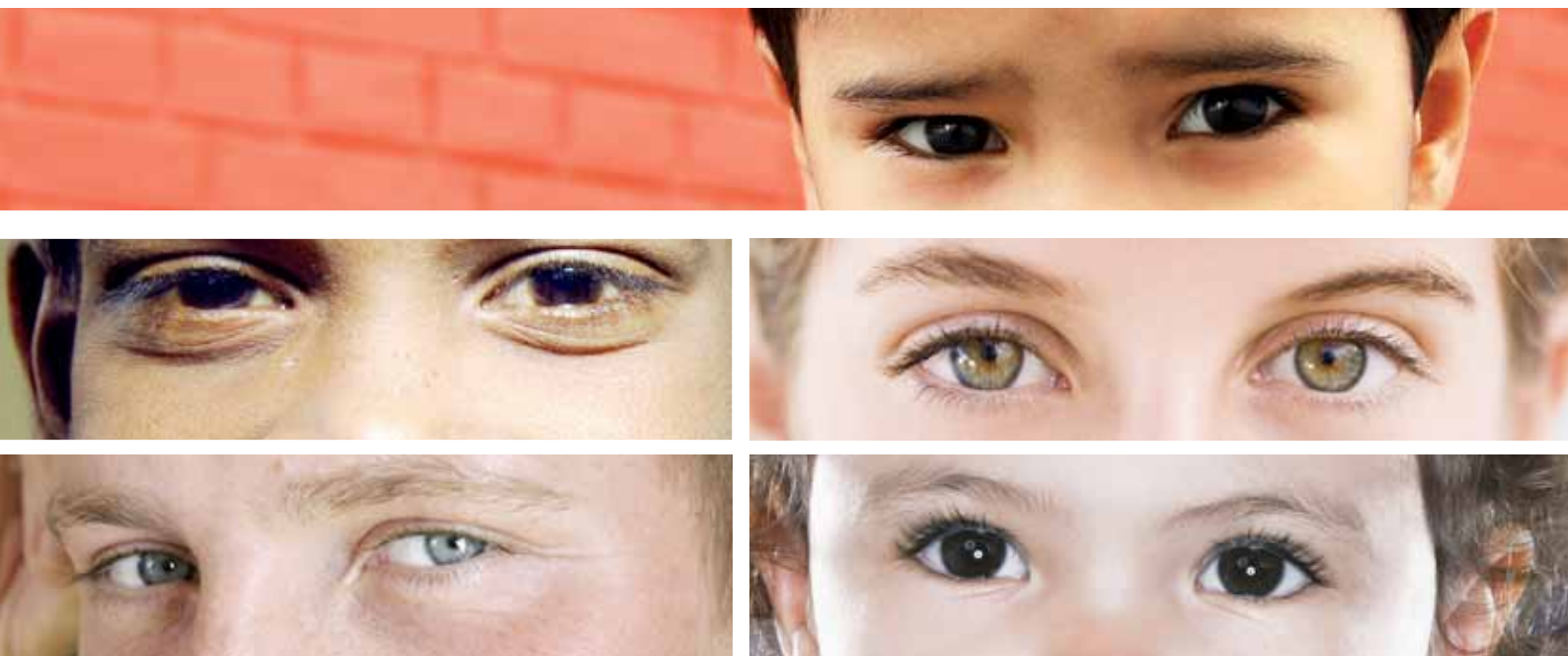


Governance fit for Children

To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?



WE ARE the world's leading independent organisation for children.

OUR VISION is a world in which every child attains the right to survival, protection, development and participation.

OUR MISSION is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives.

The report was written by Olivia Lind Haldorsson, Head of Office, Save the Children EU Advocacy Office.

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Foreword

[FROM THE UN COMMITTEE ON THE RIGHTS OF THE CHILD]

The Convention on the Rights of the Child (the CRC) has the ambition to face two challenges:

- ❖ to confirm the status of the child, who has to be considered as a person, not as an object of adults' benevolence, entitled with dignity and rights – from a historical point of view, a “new” child was born in 1989;
- ❖ to offer universal coverage of all rights to which the child is entitled, irrespective of the place, where the child is living.

This new status of the child, subject of rights, is well illustrated by two principles of the CRC: The primary consideration to be given to the best interests of the child (CRC, art. 3), which places the child at the centre of all decisions affecting him/her, and the child's right to be heard (CRC, art. 12), which considers the child as competent enough for influencing such decisions. These two articles complement each other and present a concept of the active and participating child, which now has to be made a reality.

But how to translate this new status of the child and all the provisions of the CRC, including social, economic and cultural rights (food, shelter, education, health...) and rights to protection (against violence, exploitation, neglect...) into the different realities of countries, regions, communities, ethnicities, cultures and juridical systems?

The legislators of the CRC have not proposed a universal mechanism, but have drafted the article 4 stating that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”, which leaves it to the State Parties find out which measures are helpful to achieve the shared objectives of the CRC. Additional articles give directions; Article 42 (make the CRC widely known), Article 44(6) (make reports widely available), Article 2 (respect the rights of all children) and Article 3(2) (ensure protection and care).

On this basis, the Committee has generated the concept of “General Measures of Implementation” that are to serve as general prerequisites for the implementation of children's rights in details. In the General Comment No. 5 on “General measures of implementation” (CRC/ GC/2003/5) the Committee has explained what all State Parties should consider to do: examine and amend laws, allocate resources, coordinate measures, raise the awareness, carefully monitor the implementation process and arrange for an independent assessment of progress made. These measures are the toolbox for promising efforts to make the substantive rights a reality for children.

The instruments of this toolbox look so far away from what children need and desire. The Committee knows that children are not living in Ministries or in Services, but in villages and cities, in large families or with one parent alone, in an apartment house or in the streets. Still, the very concrete actions, appropriate to context and cultural background, require a framework of general measures in order to secure their effectivity and sustainability.

The studies presented in this report series has investigated, in which ways five member states of the EU and EU institutions have used such general measures of implementation. The results will be seriously considered by the committee in order to make its recommendations to State Parties the most applicable and useful for the benefit of children and their universal rights.

Jean Zermatten

Vice-Chair of the Committee on the Rights of the Child

Lothar Krappmann

Member of the Committee on the Rights of the Child

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Olivia Lind Haldorsson,
Brussels May 2011

I. Introduction

1.1 Implementing the UN Convention on the Rights of the Child

The 1989 UN Convention on the Rights of the Child (UNCRC) and its Optional Protocols¹ enshrine a clear set of principles and standards for children's rights, through which children not only receive protection, but are also seen as active contributors to society. Encompassing civil, political, economic, social and cultural rights, the UNCRC provides a comprehensive framework against which to evaluate existing and proposed legislation, policy institutional structures and programming.

The UNCRC has been ratified by almost all States. This reflects that there is a universal commitment to respect, protect and fulfil the rights of the child. However the act of ratification alone does not automatically ensure that the rights of the child are implemented. The UNCRC should be seen as a dynamic tool for the development of a comprehensive and coherent approach to implementing children's rights by all the key stakeholders – including central and local government, NGOs and other groups and individuals working with children, as well as children themselves. What is needed is the political will to translate the principles and standards of the Convention into practical action at community, national, regional and international levels.

Under Article 4 of the UNCRC, States Parties are obliged to '*undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized*' in the Convention.² Article 44 requires governments to submit periodic reports on progress towards implementation to the UN Committee on the Rights of the Child in Geneva². Following hearings the UN Committee on the Rights of the Child is able to discuss the report of a particular State Party with government representatives³, the Committee publishes 'Concluding Observations'. These set out the Committee's assessment of implementation of the UNCRC in the State Party examined, highlighting any progress made and underlining any problematic areas, and inviting the Government to respond to specific recommendations.

To assist states in fulfilling their obligations, the UN Committee, the UN treaty monitoring body for the CRC, has drawn up a series of guidelines ('General Comments') for interpreting and implementing the provisions and principles of the CRC.

This study focuses on General Comment No.5 on the 'General Measures of Implementation' (GMI)⁴, which sets out the key cross-cutting measures required to implement all the rights in the CRC.⁵ They are intended to promote the full enjoyment of all the rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies, comprehensive data collection,

1 Optional Protocol on the sale of children, child prostitution and child pornography, General Assembly resolution A/RES/54/263 Of 25 May 2000, entered into force 18 January 2002; and Optional Protocol on the involvement of children in armed conflicts, General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force 12 February 2002

2 An initial report is submitted two years after ratification, and thereafter states present periodical reports every fifth year. Since it is the state that bears ultimate responsibility for ensuring observance of the CRC, it is the government that reports to the UN Committee. Alternative or supplementary reports and comments can, however, be submitted by 'other competent bodies', including non-governmental organizations.

3 Representatives of NGOs who have sent their own Report are invited to meet the UN Committee "behind closed doors" in a pre-session so they can present their point of view on the situation regarding the rights of the child in their country.

4 General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) and General Comment No. 5 (2003), UNCRC/GC/2003/5, 27 November 2003. Also relevant are the General Guidelines regarding the form and contents of periodic reports to be submitted by states parties under Article 44, paragraph 1(b) of the Convention, UNCRC/C/58, 20 November 1996

5 The report also addresses General Comment No.2, which sets out further standards for independent human rights institutions for children. UN Committee on the Rights of the Child (2002) General Comment No.2 The role of independent national human rights institutions in the promotion and protection of the rights of the child

awareness-raising, training and the development and implementation of appropriate policies, services and programmes. According to General Comment No.5, the emergence of initiatives and mechanisms such as these *'indicates a change in the perception of the child's place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights'*.

1.2 Background and Focus of the Report

Over the years, a number of studies of good practice in relation to the UNCRC have been carried out. However, few have focused on the GMI, despite the fact that these provisions underpin the implementation of the UNCRC as a whole.

In 2010, Save the Children received financial support from the European Union's Fundamental Rights and Citizenship Programme to assess how far the UNCRC General Measures of Implementation have been realised in five European countries: Italy, Lithuania, Romania, Sweden and the United Kingdom and by the European Commission. The report also includes measures taken by the Council in the area of external affairs.

This study forms part of the project "Governance fit for Children" and presents the findings of the research undertaken regarding the European Commission and the Council.⁶ The recommendations take into account examples of progress presented in the regional report, which brings together evidence from the national studies carried out for the same project.⁷

The following General Measures of Implementation are covered in this study: legislative measures, development of national children's rights strategies or action plans, coordination of implementation of children's rights work, monitoring implementation, data-collection and development of indicators, making children visible in budgets, cooperation with civil society and information and awareness-raising.

The study was coordinated by Save the Children Sweden and financed by the European Commission.

1.3 Development of the Study

The results of this study are drawn from a desk review of EU documents as well as interviews with key stakeholders.

The desk study included analysis of the Lisbon Treaty, the Charter of Fundamental Rights and a number of EU documents from the policy areas covered in this study, including communications, directives, Council Conclusions, guidelines and European Parliament (EP) reports. The report also draws on statements from the Children's Rights Action Group (CRAG).⁸

Interviews were made with officials of the European Commission (Directorate-Generals Development, External Relations, AIDCO, Home Affairs, Employment and Social Affairs), the Council secretariat, the European Parliament, the Fundamental Rights Agency and Member State Permanent Representations

6 Please note that the research for this report was conducted at the very beginning of the creation of the EEAS, before any changes had been made to the Commission's structure and when a good deal of uncertainty prevailed. This study refers to the "RELEX family", which still was used during the research. With the creation of EEAS this term is no longer used.

7 Governance fit for Children "To what extent have the general measures of implementation of the UNCRC been realized in five European countries", Save the Children Sweden March 2011

8 The CRAG is a group of NGOs working together to support the implementation of the 2006 Communication 'Towards an EU Strategy on the Rights of the Child' and to influence elaboration of a children's rights strategy.

to the EU (Sweden and Spain), UNICEF, Eurochild⁹ and Mieke Schuurman (Children's Rights Consultant).¹⁰ Interview questions were developed on the basis of the General Measures of Implementation covered by the study and adapted to reflect the mandate and role of the respondents.

This study limits its research to a focus on the European Commission and a small number of policy areas (External Relations, Justice and Fundamental Rights, Home Affairs and to some extent Employment and Social Affairs) and the Council (only external affairs). The results presented in this study are therefore not representative of all EU institutions and Commission Directorate Generals (DGs). Interesting and important aspects of the EU institutions' efforts may not be included in this study. An important limitation to the study is the lack of input received from the Children's Rights Unit in the European Commission, which aims at ensuring oversight and coherency. Similarly, Save the Children did not have the means to conduct interviews with staff in EC (now EU) Delegations.

This study only examines *child specific* initiatives, and does not look at measures that support implementation of EU policy in a broad sense, e.g. human rights in general. The study does also not include measures that focus on related issues or "similar" issues. For instance, the EU has a well-developed focus on Youth, including an EU Youth Strategy and structured dialogue through consultation and an annual Youth Forum. This study does not examine or draw on these initiatives in any detail, since the age group covered by 'Youth' in this context (13-30) is considerably different to the UNCRC's focus on children (0-18).

Given the huge range of information that could be covered under different policy areas and initiatives, it is acknowledged that the report may not provide a fully comprehensive picture. Nonetheless we believe that the findings set out here provide some important insights into how far the European Commission has come in terms of implementing the GMI in child specific policy contexts.

A key challenge to the research is that the EU is not a signatory to the UNCRC. Interpretation of the EU's obligations and role in relation to children's rights varies substantially between individuals across the EU institutions and DGs reflecting different levels of knowledge and attitudes to children's rights. This has sometimes coloured the interviewees' responses with personal views as to whether the General Measures of Implementation are relevant to the EU's legislative and administrative system. Another challenge to this research is that the EU is in the middle of a process of change as a result of the Lisbon Treaty, which entered into force in December 2009. Analysis and interviews are in many cases influenced by uncertainty and speculation.

⁹ www.eurochild.org

¹⁰ The interviews were done before the restructuring of the Commission and the creation of EEAS and DEVCO.

2. EU Context

2.1 The European Union and Children

The EU is a significant and influential actor, that adopts policy, takes action and spends substantial amounts of money in its own region and globally. Action taken by the European Union inevitably has a substantial impact on the lives of children inside¹¹ and outside its borders.¹² Children may be negatively affected by EU action, just as they may benefit widely from consideration of children's rights, both through mainstreaming and by specific targeted action.

The EU is unique in that it can pass law, and has mechanisms to enforce that law within its borders. EU internal policy and legislation therefore have direct bearing on EU Member States' national policy and legislation that affect children. The EU specifically addresses child protection concerns and has direct impact on the situation of children who are vulnerable, marginalised, socially excluded and/or affected by poverty in the EU. Children are also affected by EU policies of which they may not be the primary target (environment, employment, energy etc).

In external affairs, the EU is the largest donor of development aid in the world, engages heavily in humanitarian aid and is an important and influential actor in international fora such as the United Nations (UN) and the G20. The EU also plays an important role in peace-building and promoting the rule of law in conflict-affected countries. The EU is a key actor in climate change debates and its other policies such as trade and energy have significant impacts on children even though these may be less visible.

The EU engages in Human Rights Dialogues with countries, including with its near neighbourhood and accession countries. Our research in Romania shows that the accession process to the EU was a major driver of positive change for children, as child protection was a key issue on the negotiation agenda.

Furthermore, it is important not to overlook the fact that EU internal and external affairs are often linked, in particular with regard to the EU's internal policy on justice, freedom and security. From a children's rights and child protection perspective, the most obvious policy areas are migration and development, through which the EU can intervene at several stages to protect and support affected children. However, links do exist between internal and external regarding the EU's action on human rights issues more generally, when development policies run the risk of being put second to under internal political priorities such as security, terrorism and migration control.

The EU has already taken substantial action to address the situation of children including adoption of legislation, promotion of children's rights with partners and in international fora and financial support for research, data collection and programme interventions in Europe and in third countries. Progress has been made in promoting children's rights focusing on key policy areas of child protection, child poverty, social exclusion, and discrimination against children. Other, more specific, recent policies have targeted child trafficking and prostitution, violence against children, child labour, media and the Internet, health and education, to mention just a few.¹³

The main responsibility for policy regarding children sits with the Commissioner for Justice, whose duty it is to develop and consolidate areas of freedom, security and justice, ensuring that citizens benefit

¹¹ There are over 94 million children (0-18 years) in the EU, accounting for 19.2% of the entire EU population.

¹² Children often make up over 50% of the population in developing countries

¹³ See e.g. http://ec.europa.eu/justice/policies/children/docs/children_state_of_play_en.pdf

from progress made at a European Level. The DG Justice Commissioner's role, as laid out in her mission statement, includes "enforcing the rights of the child". Other DGs, which have competence to take specific action on children, will be responsible for their own specific policy area to children.¹⁴

Despite progress made, the EU has been criticised for its fragmented approach to addressing children's rights and the lack of a strategic framework for this. Realisation of the General Measures of Implementation, adapted to the EU's administrative and legislative context, has been promoted as a means of ensuring a more systematic and coherent approach to children's rights.

2.2 The EU and Children's Rights

"Article 6 of the Treaty on European Union establishes that the Union is founded on the respect of human rights and fundamental freedoms, on the rule of law and on principles which are common to the Member States. Upholding the common European principles enshrined in the Treaty means taking full account of the UN Convention on the Rights of the Child and, similarly, of the provisions of the European Convention on Human Rights that affect children's rights.

The EU Charter of Fundamental Rights provides a clear political mandate for action on children's rights even if it does not establish any new powers or tasks for the Community. It is also worth noting in this respect that EU action has to comply with the principles of subsidiarity and proportionality and should not encroach on the jurisdiction of the Member States. A number of different instruments and methods suggest themselves, including legislative action, "soft law", financial assistance and political dialogue."

(http://ec.europa.eu/justice/policies/children/policies_children_intro_en.htm)

The UN Committee on the Rights of the Child welcomes the "inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the Convention, which helps to underline the key message of the Convention - that children alongside adults are holders of human rights"¹⁵. However, it is emphasised that this does not mean that respect for children's rights is ensured automatically: "In order to promote the full implementation of these rights, including, where appropriate, the exercise of rights by children themselves, additional legislative and other measures may be necessary."¹⁶

The EU has not acceded to the UNCRC, however a number of precedents confirm the obligation of the EU to respect and promote children's rights in all of the policy areas in which it has competence to act.

The relevance of the UNCRC as one of the sources of fundamental rights is recognised in various EU legislative acts.¹⁷ In the majority of these acts the UNCRC is identified as one of the international instruments setting standards for the protection of human rights that must be respected.¹⁸ Moreover,

¹⁴ http://ec.europa.eu/dgs/justice/index_en.htm

¹⁵ General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

¹⁶ General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

¹⁷ More than 60 EU legislative acts, proposals and soft law containing references to the UN Convention have been identified without systematic research.

¹⁸ Typically, a general recognition of the UN Convention as one of the sources of inspiration can be found in acts concluded with third countries (e.g. 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJ L 317, 15.12.2000, p. 3-353) or legislative acts concerning aid, the rights of immigrants, third-country nationals or stateless individuals (e.g. Council Regulation (EC) No 443/97 of 3 March 1997 on operations to aid uprooted people in Asian and Latin American developing countries).

references to child rights enshrined in the UNCRC have been included in acts that specifically deal with the protection of children.¹⁹ EU legislative acts have for instance recognised the UN Convention as the source of and authority on the legal standard of protection of the “best interests of the child”.²⁰

References to the UN Convention have also been included in EU soft law instruments. Of specific importance in the area of child rights is the 2006 Commission Communication “Towards an EU Strategy on the Rights of the Child”, which explicitly notes that the UN Convention must be “fully taken into account” in whatever action the EU takes in accordance with its competences.²¹

This is also echoed in the EU Agenda for the Rights of the Child, which states that “Article 3(3) of the Treaty on the European Union explicitly requires the EU to promote the protection of the rights of the child”, and this is further enshrined in article 24 of the Charter of Fundamental Rights.²²

The European Court of Justice has expressly recognised the need to respect children’s rights and requires EU law to take due account of the UN Convention on the Rights of the Child.²³ The relevance of the UN Convention is also increasingly recognised in Opinions of the Advocate General.²⁴

The entry into force of the Lisbon Treaty explicitly provides for the protection of children rights as an objective of the EU, both internally and in its relations with the wider world:

Art 3 (3): “... It [the EU] shall combat social exclusion and discrimination, and shall promote justice and protection, equality between women and men, solidarity between generation and protection of the rights of the child...”

Art. 3(5): “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security ... and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”

The EU Charter of Fundamental Rights, binding under the Lisbon Treaty²⁵, includes the rights that all citizens of the EU enjoy vis-à-vis the EU’s institutions and the Member States in implementing EU legislation. The Charter also applies to the EU’s external action in so much that the EU’s work in the area of fundamental rights goes beyond its internal policy areas²⁶. Article 24 clearly reaffirms the EU’s commitment to the rights of the child²⁷:

19 See for example Council Decision of 29 May 2000 to combat child pornography on the Internet, OJ L 138, 9.6.2000, p. 1-4, specifically recalling Article 34 of the UN Convention.

20 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals specifically states that “[I]n line with the 1989 United Nations Convention on the Rights of the Child, the “best interests of the child” should be a primary consideration of Member States when implementing this Directive.”, OJ L 348, 24.12.2008, p. 98-107.

21 Communication from the Commission – Towards an EU Strategy on the Rights of the Child, COM (2006) 367 final.

22 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child COM (2011) 60 Final

23 See e.g. Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769, paragraph 37. The Court also refers to the principle of respect for family life and the UN Convention, paragraph 57; Case C-244/06 Dynamic Medien Vertriebs GmbH v. Avides Media AG [2008] ECR 505.

24 Between 2003 and February 2009, the UN Convention has been referred to in 6 Opinions of Advocate Generals.

25 The Czech Republic, Poland and the UK have opted out from the Charter...

26 Communication from the Commission “Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union” (2010) 573 final, page 4.

27 Charter of Fundamental Rights 18.12.2000 EN Official Journal of the European Communities C 364/13

“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.”

The obligation to respect children’s rights does not confer competence on the EU to deal with children’s rights as a general policy area. However, the lack of *general competence* on children’s rights does not prevent the EU from taking action and adopting measures targeted at the fulfilment of children’s rights under *existing legal basis*.²⁸ Rather, the EU has an obligation to do so.

28 “... notwithstanding the above-mentioned lack of general competence, various particular competencies under the Treaties do allow to take specific positive action to safeguard and promote children’s rights. Any such action needs to respect the principles of subsidiarity and proportionality and must not encroach on the competence of the Member States. A number of different instruments and methods can be envisaged, including legislative action, soft-law, financial assistance or political dialogue.” Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

3. Findings

3.1 Legislative Measures

3.1.1 Introduction

The UN Committee on the Rights of the Child encourages States Parties to the UNCRC to consider signing and ratifying or acceding to the two Optional Protocols and other key international human rights instruments.²⁹

All EU Member States have ratified the UNCRC, although not all have signed and ratified or acceded to the Optional Protocols. Many of the EU Member States have also entered reservations.³⁰ The EU has not acceded to the UNCRC and its Optional Protocol (see 3.1.2). Chapter 3.1.2 and 3.1.3 examine EU accession to international and regional human rights instruments, with an emphasis on the UNCRC.

The UN Committee on the Rights of the Child has also stated that “a comprehensive review of all domestic legislation and related administrative guidance” is an obligation.³¹ The Committee emphasizes, in particular, that it is fundamental that “... *all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced* ...”³²

In the EU context, as it is not a State Party to the UNCRC, this process should be seen in the light of the EU’s obligation to protect and respect children’s rights (see chapter 1.1).³³ This means that only review of legislation should result both in steps are taken to avoid contradiction between the UNCRC and existing as well as forthcoming legislation and policy and, in new legislation and policy addressing gaps is adopted on the basis of existing legal basis.

The scope of this study does not allow comprehensive examination of all EU legislation to assess whether legal review has been carried out successfully. In assessing the extent to which the General Measure on legal review has been met, an attempt was made to examine whether the following criteria, as set out in General Comment No.5, have been met: has there been a commitment to carry out review, and has the review started; does it only cover the UNCRC article per article or is there also a holistic perspective, recognising the interdependence and indivisibility of children’s rights; is the review continuous rather than one-off; does it include proposed as well as existing legislation; is there an independent review carried out and taken into account.

This chapter also looks at the Commission’s action to “mainstream” children’s rights in EU internal and external action and measures. Mainstreaming, which in some cases means taking “a child rights approach”, is mentioned throughout the examined documentation as the process by which the EU will ensure that children’s rights are taken into account in EU legislation and policy. However, “mainstreaming” is often also presented as a tool to ensure that EU legislation and policy is compatible with the UNCRC.

29 UNICEF, 2007.

30 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en

31 General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

32 General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

33 General Comment No.5 also establishes that “States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems”. The UN Committee on the Rights of the Child in particular welcomes incorporation of the UNCRC into domestic law. “Incorporation” means that “the provisions of the UNCRC can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice”. This report does not examine incorporation of the UNCRC into EU law, since the EU is not a signatory to the UNCRC.

3.1.2 EU accession to international human rights instruments

The European Community signed an international human rights instrument, the UN Disability Convention, for the first time in 2007. The signature was made possible by the EU Member States, which gave the European Commission a mandate to negotiate and sign on behalf of the European Community on matters falling under Community competence.³⁴

It was not until the entry into force of the Lisbon Treaty in December 2009 that *legal competence* was established for the EU's accession to key human rights instruments. Article 216 of the Lisbon Treaty provides for the Union's ability to conclude international treaties "where the conclusion of an agreement is necessary to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties ...".

The interviewees agreed that the EU had no plans to sign the UNCRC. However, many Commission officials recognised that there are factors that speak for accession, for example: the UNCRC enjoys EU-wide ratification; Article 3 of the Lisbon Treaty clearly establishes children's rights as an objective on the EU's internal and external policies, and concrete steps have already been taken to act on existing children's rights obligations. On the other hand, it was also noted that accession may not be entirely straight forward since so many articles fall outside the EU's competence.

Member States have also shown interest in exploring EU accession to the UNCRC. In its contribution to the Commission regarding the development of a new communication on the EU Strategy on the Rights of the Child, endorsed by Europe de l'Enfance, the Belgian Presidency invited the Commission "*to prepare an opinion on the EU accession to the CRC, building on the experience with the UN Convention on the Rights of Persons with Disabilities, recognising that signature and ratification would probably take place through a unilateral declaration, a step the UN Committee on the Rights of the Child has welcomed*".³⁵

3.1.3 EU accession to regional human rights instruments

The EU Charter of Fundamental Rights, binding under the Lisbon Treaty, includes rights that all citizens of the EU enjoy vis-à-vis the EU's institutions and the Member States when they implement EU legislation. The Charter only applies to Member States when they are implementing EU law and does not extend the power or mandate of the EU.

Article 24 of the Charter clearly reaffirms the EU's commitment to the rights of the child (see Chapter 1.1.). Protection of children's rights has been integrated into the overall work on ensuring effective implementation of the Charter, and the EU Agenda for the Rights of the Children has been linked with the Strategy for effective implementation of the Charter of Fundamental Rights by the European Union.

The Lisbon Treaty explicitly states that the Union shall accede to the *European Convention on the Protection of Human Rights* (ECHR, article 6). The ECHR includes two direct references to children: Articles 5 and 6, which deal with the lawful detention of minors and the exception to the rule of publicity of a trial. The European Court of Human Rights has also defended children's rights, with reference to the UNCRC, more broadly, since the rights in the ECHR are not limited to adults.³⁶

³⁴ http://www.europa-eu-un.org/articles/en/article_6907_en.htm

³⁵ Contribution of the Belgian presidency of the permanent intergovernmental group "Europe de l'Enfance" to the European Commission regarding the development of a new communication – Towards an EU Strategy on the Rights of the Child, Intergovernmental Group "Europe de l'Enfance", 16 November 2010 in Brussels.

³⁶ See for example *A. v United Kingdom*, Reports 1998 VI, summarised at [1999] E.H.R.L.Rev., Issue 1, 103. and *Hendricks v Netherlands*, 8 March 1982, A No 255-C and *Adriana Opromolla*: "Children's rights under Articles 3 and 8 of the European Convention: Recent case-law" published in *European Law Review*, 2001, 26 Supp.

Accession to the ECHR will complement the system to protect fundamental rights including children's rights since it makes the European Court of Human Rights competent to review EU acts. This should, according to the Commission, *"encourage the Union to follow an ambitious policy for fundamental rights: the more the Union tries to ensure that its measures are fully compliant with fundamental rights, the less likely it is to be censured by the European Court of Human Rights"*.³⁷

Furthermore, accession of the ECHR could lead to further accession of the EU to Council of Europe (CoE) Conventions which are in line with EU fundamental rights obligations and its competence, for instance the CoE Convention on the protection of children against sexual exploitation and sexual abuse.³⁸

The European Parliament has indeed recommended that the Commission also be mandated to negotiate accession to all protocols concerning rights that correspond to those set out in the Charter of Fundamental Rights, including article 24 on children's rights, regardless of whether these protocols have been ratified by the EU Member States. The European Parliament has recognised that *"accession by the Union to the ECHR signifies the recognition by the EU of the entire system of protection of human rights, as developed and codified in numerous documents and bodies of the Council of Europe; in this sense, accession by the Union to the ECHR constitutes an essential first step"*.³⁹

3.1.4 Legal Review

The EU has not yet undertaken *comprehensive* and *systematic* legal review against the UNCRC. There is no *comprehensive* legislative agenda that outlines new legislation needed to address gaps or that identifies existing legislation that needs to be amended, expanded on or repealed due to inconsistencies with the UNCRC.

In 2009, a tender was issued to evaluate the impact of EU instruments affecting children's rights to assess the level of protection and promotion of children's rights in the EU.⁴⁰ None of the interviewees referred to this study as a comprehensive legal review. The results of the evaluation had not been published at the time of finalising this study.

In its 2009 report on the implementation of the 2006 Communication "Towards an EU Strategy on the Rights of the Child", the Commission lists eight documents under the heading "respect and promotion of children's rights in all EU legislative and non-legislative actions".⁴¹ However, none of the interviewees could confirm that a review of proposed and/or existing legislation and policy by the Children's Rights Unit takes place.⁴²

37 Communication from the Commission "Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union CO< (2010) 573 final

38 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No.: 201

39 P7_TA-PROV(2010)0184, Institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms Committee on Constitutional Affairs PE431.057, European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241 (INI))

40 The specific aims of the evaluation were:
to assess the impact of EU actions on children's rights;
(b) to assess the extent to which the Communication COM(2006) 367 is contributing to promote the 'Rights of the Child' within and outside the EU; and
(c) to analyse national policies of the 27 Member States on children's rights.

Next to the retrospective analysis of the results achieved, the contractor should also formulate first orientations for possible future initiatives in this field. The evaluation should take overall stock of the different actions of the EU at international and European levels in the area of the 'Rights of the Child' until June 2008.

The evaluation should cover:

(i) EU actions i.e. legislative actions, non-legislative actions (e.g. communication, green paper; reports, etc.), funding and significant case law of the European Court of Justice affecting children rights; and
(ii) Member States' national policies on children's rights.

41 Implementation of the European Union's Strategy on the Rights of the Child, State of Play – November 2009

42 The Child Rights Unit in DG JLS choose not participate in this study and has therefore not provided input that negate or support this conclusion.

Various legislative acts, soft law instruments and policy documents make reference to the UNCRC, including “best interest of the child”, and “the right to be heard”.⁴³ Recent examples include the proposals for a Directive on combating child sexual abuse, sexual exploitation of children and child pornography⁴⁴ and the Action Plan on Unaccompanied Minors⁴⁵. While this is a welcome step, it does not guarantee that a piece of legislation or policy conforms to the UNCRC as a whole.

The Action Plan on Children’s Rights in External Action launches the idea of developing a Children’s Rights Toolkit, together with UNICEF. The project, which is nearing completion, aims to develop high-quality tools and a training package around child rights issues for the purpose of improving the capacity of targeted stakeholders and key actors to identify and address child rights issues in their work and to better integrate children’s rights into a whole range of relevant political, legal, budgetary and programmatic actions and structures. The toolkit includes a chapter on legislative reform for children’s rights.⁴⁶ This, however, primarily is geared to help stakeholders in partner countries conduct their own legislative review.

According to the Commission’s descriptions and definitions, mainstreaming offers an important tool, at least in theory, to ensure that EU policy and legislation conforms to the UNCRC. In the 2006 Communication *“Towards an EU Strategy on the Rights of the Child”*, the Commission explicitly recognised the obligation of the EU to take children’s rights into account in conducting its own policies through so-called “mainstreaming”: *“The EU’s obligation to respect fundamental rights, including children’s rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming).”*⁴⁷

The Communication further seeks to ensure that *“all internal and external EU policies respect children’s rights in accordance with the principles of EU law, and that they are fully compatible with the principles and provisions of the UNCRC and other international instruments”*. As from 2007 and onwards, the Commission commits to *“mainstream children’s rights when drafting EC legislative and non-legislative actions that may affect them [children]”*.⁴⁸

The EU Agenda for the Rights of the Child (“the Agenda”) reaffirms previous commitments: *“In the future, EU policies that affect directly or indirectly children should be designed, implemented, and monitored taking into account the principle of the best interests of the child enshrined in the Charter of Fundamental Rights of the European Union and in the UNCRC.”*⁴⁹

In addition, the Agenda promises child rights training for Commission staff to ensure capacity and competence to carry out review. The Agenda also promises transparency by including explanations as to how children’s rights were taken into account in the drafting of relevant legislative proposals. This action is notably linked to the Strategy for the effective implementation of the Charter on Fundamental Rights (the “Fundamental Rights Strategy”). The Fundamental Rights Strategy proposes measures to build a stronger “fundamental rights culture” from the preparatory work and initial drafting of a Commission proposal to impact analysis and checks on the legality of the final text. For instance, the operational guidance to staff

43 More than 60 EU legislative acts, proposals and soft law containing references to the UN Convention have been identified without systematic research.

44 Proposal for a Directive on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

45 Communication from the Commission: Action Plan on Unaccompanied Minors (2010 – 2014) COM(2010) 213/3{SEC(2010) 534}

46 http://www.unicef.org/policyanalysis/index_51859.html

47 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

48 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

49 COM(2011) 60 final - Communication from the Commission - An EU Agenda for the Rights of the Child

on children's rights mentioned in the Agenda includes questions in the "fundamental rights check-list", which was announced in the Strategy for the effective implementation of the Charter on Fundamental Rights. The Fundamental Rights Strategy also proposes action to support other institutions to ensure that fundamental rights are taken into account throughout the legislative process.⁵⁰

Mainstreaming children's rights in the EU's external policy and programmes

In external relations, policy/programmatic review is not linked in the same way to mainstreaming. In development cooperation, children's rights constitute a "cross-cutting issue" and as such needs to be mainstreamed or, in other words, needs to be systematically addressed in all relevant policies. Mainstreaming therefore concerns the writing of all new policies but not the review of existing policies.

The commitment to mainstreaming, or taking "a children's rights approach" to *external* affairs policy and action, is reiterated in several documents. "Mainstreaming" is used in a broad sense: *"...the rights of children will be promoted in partnership with all countries receiving Community development assistance. These issues should be systematically incorporated into the Community's development instruments through all Country and Regional Strategy Papers"*.⁵¹

According to Council Conclusions in 2008, mainstreaming should be *"across EU development cooperation tools, particularly within all country and regional programmes and strategies. Mainstreaming is especially important for general budget support and for key sectors, such as social sectors (especially health, education and social protection for all children), rural development (with emphasis on food security and access to safe water) and governance."*⁵²

However, mainstreaming is also presented as a tool to ensure that all external action is guided by the UNCRC. The EC Communication, "A Special Place for Children in EU External Action", which is an umbrella Communication for the external affairs services (see next chapter), clearly supports the development of an integrated approach to advance children's rights in third countries. Furthermore, the key guiding principle of the "EU's Action Plan on Children's Rights in External Action" is said to be a "holistic and coherent children's rights-based approach rooted in the UNCRC".⁵³ This principle is to guide all planning, implementation and evaluation of "relevant" EU actions (e.g. political dialogues, development programming and Term of Reference for evaluations). The four general principles of the UNCRC are specifically mentioned as guiding all action.⁵⁴

The "EU Guidelines on the Promotion and Protection of Children's Rights" refer to the General Measures of Implementation and reference General Comment No.5, and promises that the EU will, in its relations with third countries: *"Pursue the promotion and protection of the rights of the child in full conformity with relevant international instruments and standards, in particular the Convention on the Rights of the Child, by adopting all necessary legislative, administrative and other measures, in particular the cross-cutting measures identified as "general measures of implementation" by the Committee on the Rights of the Child"*.⁵⁵

50 Communication from the Commission "Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union CO< (2010) 573 final

51 Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (2005)

52 Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action – the development and humanitarian dimensions (May 2008)

53 EC Communication - A Special Place for Children in EU External Action (05.02.08)

54 EC SWD - The European Union's Action Plan on Children's Rights in External Action (05.02.08)

55 EU Guidelines on the Promotion and Protection of Children's Rights (Dec. 2007)

3.1.5 Discussion

Ratification of the UNCRC

At the celebration of the UNCRC's 20th anniversary in 2009, the European Commission emphasised the role of the EU in promoting ratification of the UNCRC, and noted that "in its political dialogue with third countries ...", the EU works towards "... universal ratification and implementation of the UN Convention on the Rights of the Child".⁵⁶

The EU can indeed play an important role in encouraging ratification by all EU Member States and third countries of international instruments such as the UNCRC Optional Protocols and child specific CoE Conventions, including the CoE Convention on the Protection of Children from Sexual Abuse and Sexual Exploitation.

But the EU should also **act on its new competence to accede to international human rights instruments**. The EU should as a priority **explore accession to the UN Convention on the Rights of the Child as a priority**. Following accession to the ECHR, the EU should embark on further accession to child specific CoE Conventions, including the CoE Convention on the Protection of Children from Sexual Abuse and Sexual Exploitation.

Accession to the UNCRC would not create an extension of the powers of, or create new competence for the EU. However, many interviewees felt that it would contribute to more clearly establishing the EU's obligations regarding children's rights and potentially lead to a more coherent EU approach to protecting and fulfilling children's rights. The same interviewees also felt that it would send a strong political signal of symbolic value, which could enhance the role and credibility of the EU as a promoter of children's rights in its region and globally. Some officials also thought that accession to the UNCRC could mean that the EU would allocate more funds towards fulfillment of children's rights.

A key finding from the interviews is that the most important added value of EU accession would be that the EU would become subject to the monitoring mechanism and reporting obligation under the UNCRC. This would be a major advance since systematic, periodical reporting and examination of progress is currently lacking. Not only would the EU have to introduce a reporting mechanism that ensures structured and coherent reporting across institutions and policy areas, it would also have to establish a process to establish forthcoming implementation priorities and specific goals for the future. Moreover, the UN Committee on the Rights of the Child would provide the EU with useful external supervision over its compliance with the UNCRC. In the longer term, the reporting process and the Concluding Observations may well lead to renewed and strengthened commitments and a more coherent approach to implementing the UNCRC.

One Commission official emphasised that the process leading to ratification would be crucial to prepare the EU for its new obligations, including general implementation obligations, and that this would have a positive impact on the realisation of the General Measures of Implementation in and of itself. Technical and legal considerations would have to be carefully examined, roles and responsibilities defined and implementation mechanisms put in place. An important implication of EU accession may indeed lie with the institutional and structural changes that the EU would have to undergo in order to meet its new obligations under the UNCRC.⁵⁷

⁵⁶ European Commission Press Statement 20 November 2009, "EU marks 20 years of child rights protection and looks ahead"

⁵⁷ "The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children's rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children's budgets and "state of children's rights" reports, NGO coalitions on children's rights, children's ombudspersons and children's rights commissioners and so on." GENERAL COMMENT No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

In this context it is worth highlighting that the national studies made under the “Governance fit for Children” project suggest that ratification has had a generally positive impact on the development of law and policy and that it in some cases has prompted significant legal reform.⁵⁸

In order to secure EU accession to the UNCRC, there are important hurdles that would have to be overcome, including the fact that the UNCRC was designed only for state signatures, not for regional organisations. A parallel can here be drawn with the accession to the ECHR, which also entails accession of a non-State Party to a legal instrument created for States.

The European Parliament called for accession to be completed without altering the features of the ECHR, and for accession arrangements to have the least impact on the workload of the European Court of Human Rights.⁵⁹ Accession to the ECHR by the EU, as an organisation, was made possible through an amendment to the ECHR (Protocol 14), which had to be ratified by all states parties to the ECHR. The process leading to accession of the UNCRC by the EU could be similar.

Some interviewees raised a concern that accession would have to be limited to articles which are not subject to Member State reservation and the Protocols which have been ratified by all Member States since Member States are unlikely to commit to provisions in the EU context that they have not felt comfortable with when ratifying the UNCRC in their national capacity. Proper assessment would have to be done to determine the implications this may have in terms of limiting or preventing EU action that can in fact be taken today in the current policy context.

In order to ensure Member State support for accession to the UNCRC, steps would have to be taken to ensure that accession would not affect the internal situation of the Member States in terms of their reservations to the UNCRC. On the other hand, one interviewee emphasised that the Member State reservations should not prevent EU accession, since the value of accession would depend very much on the degree to which reservations were registered. Similarly, the EU’s accession to the Optional Protocols should not be dependent on their status of ratification of the EU Member States.⁶⁰

Legal Review

The European Court of Justice has recognised the need to respect children’s rights and requires EU law to take due account of the UN Convention on the Rights of the Child.⁶¹ The obligation to ensure compatibility of EU legislation *and policy* with the UNCRC both in internal and external affairs is confirmed by the Commission in several of the documents examined in this study. For example, the Stockholm Programme, which sets out the EU’s programme for Justice, Security and Freedom 2010 - 2014, states that children’s rights must be “systematically and strategically” taken into account “with a view to ensuring an integrated approach”.⁶²

Interviews and documents confirm the commitment to ensure that EU legislation and policy conforms to the UNCRC. However, the criteria for a successful review set out in General Comment No. 5 have not been met.

58 “Governance fir for Children – To what extent have the general measures of implementation of the UNCRC been realized in five European countries”, Save the Children Sweden 2011

59 European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241 (INI))

60 The European Parliament has called for similar provisions in relation to accession to the ECHR. European Parliament resolution of 19 May 2010 on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241 (INI))

61 See e.g. Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769, paragraph 37. The Court also refers to the principle of respect for family life and the UN Convention, paragraph 57; Case C-244/06 Dynamic Medien Vertriebs GmbH v. Avides Media AG [2008] ECR 505.

62 The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 16484/1/09 REV 1 JAI 866 + ADD 1

There is a recognition that the centralised responsibility in the Children’s Rights Unit could contribute to a more holistic, continuous and systematic approach to legal review; however, there was no data or information available that confirms that this has actually happened. Lack of transparency and insufficient information about the process and tools used to carry out the review was highlighted by respondents both inside and external to the EU. Several interviewees confirmed that the Children’s Rights Unit uses the UNICEF Implementation Handbook for the Convention on the Rights of the Child when carrying out review of policy and legislation; however they did not hold information about how a review is actually carried out.

Results from the interviews indicate that there is an increasing effort to mainstream children’s rights in at least some DGs, predominantly in the external affairs DGs.⁶³ While mainstreaming is generally understood as a process to ensure that children’s rights are taken into account and become more visible in EU action, it is also described as a process to ensure that EU legislation and policy conforms with the UNCRC. However, there are valid concerns with the uncertainty of the *impact* of mainstreaming in terms of “child rights proofing” legislation and policy, both regarding “rhetoric versus substance” and the actual change it will generate on the ground. The FRA highlights some important shortcomings: “... *although the European Commission tries to mainstream the UNCRC definition in EU policies, there is still no concrete, consistent definition of ‘child’ under EU law; very little formal EU legislation is directly concerned with accommodating children’s interests and needs; and most relevant EU provisions are framed in rather vague and optional terms.*”⁶⁴

The results of the national research confirm that legal review is a challenge also at national level. While ratification of the CRC has had a positive impact on the development of law and policy, the CRC has not reached the status of a “working tool” by legal staff. Moreover, in spite of significant efforts to harmonise national law with the principles of the Convention there is still some way to go to achieve comprehensive review of legislation and policy.⁶⁵

One could argue that the increased recognition of the EU’s obligations towards children’s rights has had a similar effect to that of ratification of the UNCRC by Member States, in terms of generating legislation and policy for children. However, like the Member States, the European Commission faces a series of challenges in ensuring that the criteria for successful legal review set out in General Comment No. 5 are met, such as stipulating that competent staff with adequate tools carry out systematic and regular reviews of legislation to be fully compatible with the CRC, and to identify and close any existing gaps.

The EU Agenda for the Rights of the Child includes action that could potentially address some of the key challenges, including the operational guidelines, training of staff and “where relevant” feedback as to how children’s rights were taken into account. However, NGOs have expressed considerably concern regarding the lack of ambition and the risk of the tools becoming tokenistic.⁶⁶ The level of success will depend on whether this **action will be adopted and implemented systematically** across the Commission, and whether the lack of **transparency and information exchange** is addressed adequately by DG Justice.

63 A variety of efforts were cited by the various interviewees, including: Incorporating children’s rights in the Mid-Term Review process, including attending meetings at which the MTR of a country was discussed; supporting colleagues in Delegations who are trying to mainstream children’s rights; evaluating the relevant thematic instrument guidelines for applicants (which include aspects such as the topic, specific groups that may be targeted etc), and the project proposals sent in by organisations.

64 Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, SUMMARY REPORT, Fundamental Rights Agency, 2007

65 “Governance fit for Children – To what extent have the general measures of implementation of the UNCRC been realized in five European countries?”, Save the Children Sweden 2011

66 Response of child rights NGOs to the Communication “An EU Agenda for the Rights of the Child” March 2011

The Commission must ensure that the fundamental rights checklist approach is complemented with comprehensive review against the UNCRC as a whole to ensure that legislation, policy and instruments give due recognition to all provisions. It is important to ensure that the whole body of EU instruments is included in the review: *“Children and their rights cannot be separated from the society of which they are an integral part. In a very real sense, everything that a government does, including the legislation, policies and regulations it adopts, will affect children in some way and so should be tested against the guarantees in the CRC...”*⁶⁷

The Commission should pay particular attention to ensuring that the general principles of the Convention (e.g. non-discrimination [Article 2], the best interests of the child [Article 3], survival and development [Article 6], and child participation [Article 12]) are adequately reflected in legislation, policy and practice at all levels.

3.2 Children’s Rights Strategies and Action Plans

3.2.1 Introduction

In General Comment No.5, the UN Committee on the Rights of the Child urges governments to develop *“unifying, comprehensive and rights-based national strategy, rooted in the Convention. ... If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them.”*

The national strategy is closely linked to coordination, discussed in the next chapter. National strategies are seen as a “product” of coordination across government, providing a framework for coordinated action for the realisation of children’s rights.⁶⁸

General Comment No.5 also states that *“(t)he comprehensive national strategy may be elaborated in sectoral national plans of action - for example for education and health - setting out specific goals, targeted implementation measures and allocation of financial and human resources.”* However, sectoral plans cannot replace or act instead of the national plan, there needs to be a starting point in a unifying and comprehensive plan.

In the context of this study, we replace the notion of a national strategy with that of an EU Strategy.

3.2.2 Towards an EU Strategy on the Rights of the Child

In 2006, the Commission adopted a Communication on Children’s Rights, which 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 and to support Member States’ efforts in this field.”*⁶⁹

The Communication launches *“a long-term strategy to ensure that EU action actively promotes and safeguards children’s rights and to support the efforts of the Member States in this field.”* Seven specific objectives are defined, supported by proposals for action: capitalising on existing activities while addressing urgent needs; identifying priorities for future EU action; mainstreaming children’s rights in EU actions; establishing efficient coordination and consultation mechanisms; enhancing capacity and expertise on children’s rights;

67 Assessing Compliance of National Legislation with International Human Rights Norms and Standards, Nadine Perrault and Erica Hall, UNICEF November 2008

68 Implementation Handbook for the UN Convention on the Rights of the Child, Rachel Hodgkin and Peter Newell, UNICEF 2007

69 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

designing a communication strategy on children's rights and; promoting the rights of the child in external relations. This focus was interpreted by some as an "embryo", at least in theory, to implementing a selection of the General Measures of Implementation.

Furthermore, the Communication promises that the Commission will "*develop a comprehensive strategy to ensure that the European Union contributes to promoting and safeguarding children's rights in all its internal and external actions and supports the efforts of the Member States in this field*" and calls on "*the Member States, on the European institutions and on other stakeholders to take an active part in the development of this strategy and so to contribute to its success.*"⁷⁰

Children's rights organisations were actively involved in the drafting process of the Communication through formal and informal consultation. To support consultation and information to children about the 2006 Communication "Towards an EU Strategy on the Rights of the Child", a child friendly version was developed by Plan International and Save the Children and translated by the Commission into nearly all EU languages.⁷¹

The Commission did not consult with children in preparing the Communication. Plan International and Save the Children organised consultations with children in Europe and in third countries, which were summarised in two reports, available on the Commission's website in most EU languages.⁷² No feedback has been given as to whether these consultations actually fed into policy development.

3.2.3 EU Agenda for the Rights of the Child

As a follow up to the 2006 Communication "Towards an EU Strategy on the Rights of the Child", the Commission started to develop a strategy in 2008. This process was later abandoned and "handed over" to the new Commission in 2009/10.

In February 2011, the Commission adopted "An EU agenda for the rights of the child" ("the Agenda"). The Agenda is rooted in the UNCRC and explicitly recognises the EU's obligations vis-à-vis children's rights.

Whilst the Agenda recognises the need for coordination and an integrated approach, it does not provide a proper framework for coordinated action. The Agenda includes commitments towards ensuring that children's rights become an integral part of the Fundamental Rights policy, that data will be produced to ensure evidence-based policy making, and that the Forum will continue to serve as a basis for cooperation with stakeholders. All these aspects are further discussed in other sections of this report.

The Agenda also includes action in relation to seven different areas: child-friendly justice, unaccompanied minors, Roma children, missing children, bullying, implementation of the EU Guidelines on children's rights and children affected by armed conflict and child participation. The Agenda focuses much more on internal relations than external, or on links between the two.

According to the Commission, the Agenda is based on the contributions made by stakeholders in a public consultation, and a targeted consultation with children (Eurobarometer Qualitative Study on the Rights of the Child), which is further discussed under the chapter on cooperation with civil society below.

70 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

71 http://ec.europa.eu/justice/policies/children/policies_children_intro_en.htm#part_1

72 http://ec.europa.eu/justice/policies/children/policies_children_intro_en.htm#part_1

3.2.4 External Relations

There are several child-specific policy guidance documents for the EU's external affairs.⁷³ This study will look more closely at two documents that are of relevance to the Commission specifically: the EC Communication, "A Special Place for Children in EU External Action" and the accompanying EC Staff Working Document (SWD), "The European Union's Action Plan on Children's Rights in External Action".

The stated objective of the Communication and its SWDs is "...to establish a framework for a comprehensive EU approach towards the protection and promotion of children's rights in third countries. Such an approach must be based on a holistic and universally applicable view of children's rights...". The Communication also highlights the importance of "(e)nsuring effective complementarity between the different policy tools and financial instruments of the EU as well as the European Development Fund".

The EU's response, set out in the Communication, is intended to cover the following areas: children and adolescents in development cooperation; children in trade policy; children and adolescents in political dialogues; regional and global actions; empowerment of children and adolescents; and children and adolescents in humanitarian aid.

The Action Plan details the priority actions the EU will take at national, regional and global levels: political and policy dialogues and mainstreaming of children's rights, including in country programming and with a focus on social sectors, governance, food security and sanitation. At regional and global levels, the priority areas are child labour, child trafficking, children affected by armed conflict, and all forms of violence against children.

The key principle said to underlie the Action Plan is a "holistic and coherent children's rights-based approach rooted in the UNCRC". A child rights approach, including the four general principles of the UNCRC, should guide all planning, implementation and evaluation of "relevant" action. Monitoring is to be undertaken by the EU and the recipient government. It is to be linked to reporting commitments under the UNCRC and its Optional Protocols. Within the EU, an informal EU Member States expert working group was envisaged, meeting annually and acting as an Advisory Group for the implementation of the Plan.

3.2.5 Other Initiatives

The Communication "Action Plan on Unaccompanied Minors" serves as an example of an initiative that focuses on a *particular group of children* in internal affairs. This Communication sets out the Commission's views on what actions should be undertaken at EU level in relation to unaccompanied children of third country origin and what principles should inform such action.⁷⁴

The Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action – the development and humanitarian dimensions (May 2008) are the most comprehensive Conclusions on children and cover a wide range of issues. They do not give strategic

73 Besides the two discussed in this chapter, these include the Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action – the development and humanitarian dimensions (May 2008), the EU Guidelines on the Promotion and Protection of Children's Rights (December 2007), the EU Guidelines on Children and Armed Conflict (updated May 2008), Implementation Strategy for the EU Guidelines on Children Affected by Armed Conflict (currently undergoing review). There are also a large number of sector-specific policy documents – for example pertaining to education, health, water and sanitation, food security, etc. These, with the exception of those dealing with primary and secondary education, are not children-specific. These plans serve to elaborate what the EC will do in the specific areas, but there are no links between them, nor to an overall strategy or to the Action Plan on children's rights in External Relations. Each 'sector' operates very independently of the others, despite proven links between issues such as education, health, water & sanitation and nutrition.

74 Communication from the Commission to the European Parliament and the Council Action Plan on Unaccompanied Minors (2010 – 2014) {SEC(2010) 534}. The Council has adopted conclusions that refer to the Communication and provide political orientations on EU actions in the field. Council conclusions on unaccompanied minors 3018th Justice and Home Affairs Council meeting Luxembourg, 3 June 2010.

guidance but do serve to highlight priorities for the EU and to give some examples of what actions should be undertaken.

The EU Guidelines on the Protection and Promotion of Children's Rights (2007) were the second set of Guidelines to be drawn up specifically on children. They state that the EU intends to "observe as a matter of priority in its external human rights policy the promotion and protection of ALL rights of the child". However, a decision was taken that, owing to the vast extent of all children's rights, it would be more realistic to focus on one theme at a time. The document is therefore divided into two parts – a 'general measures' section (not to be confused with the UNCRC GMI) and specific action in Priority Areas, known as the 'Implementation Strategy' in an Annex. The Priority Area chosen for the first period of two years, and subsequently renewed for two further years, was 'Violence against Children'.

3.2.6 Discussion

The Commission has made substantial progress in terms of defining its approach, mechanisms and plans to implement its children's rights commitments from the 2006 Communication to the Agenda. However, whilst important steps have been taken, the Commission is yet to deliver a strategy that provides a framework for coordinated action along the lines of General Comment No.5.

General Comment No.5 states that strategies should be developed in consultation with relevant stakeholders, including children. The degree to which the Commission has lived up to this varies considerably (see Chapter on Collaboration with Civil Society). Several attempts were made to consult with stakeholders in developing the Agenda, e.g. through expert meetings and a public consultation; however respondents criticised the lack of transparency and feedback and felt that outcomes were pre-judged by the way the consultations were focused and carried out.

Both the 2006 Communication and the Agenda include important aspects in relation to such issues as coordination of implementation, mainstreaming of children's rights, cooperation with stakeholders, but all policies in internal and external relations fail to set out a truly holistic approach which covers all children's rights and EU policy areas. Moreover, while all the documents discussed in this chapter take children's rights as their starting point or make reference to the UNCRC, none of them include a **focus on the wide range of rights in the UNCRC reporting clusters**⁷⁵, and they **particularly omit the full range of General Measures of Implementation**. The documents are particularly weak on monitoring mechanisms.

From reading the documentation and discussing with various EU officials, the most important obstacles to developing and implementing a Strategy on the Rights of the Child include: lack of child rights expertise; lack of meaningful consultation with implicated actors; lack of ambition; too much focus on "concrete action"; and lack of resources dedicated to the implementation of the Strategy. Another obstacle that was mentioned is that the Commission's over-emphasis on formulating concrete action prevented it from formulating and putting in place mechanisms to ensure a systematic and coherent approach across policies. Instead, too much focus is placed on thematic priority areas which are not derived from a systematic and thorough assessment of needs and gaps.

General Comment No.5 suggests that sectoral plans cannot replace or act instead of the national plan, and that there needs to be a starting point in a unifying and comprehensive plan. This is echoed in the NGO Action Group on Children's Rights (CRAG) response to the Agenda: "*Action should flow from, and*

75 For the purposes of periodic reports to the UN Committee on the Rights of the Child, the UNCRC articles are combined under clusters of rights as follows: General Measures of Implementation; Definition of a Child; General Principles; Civil Rights and Freedoms; Education, Leisure and Cultural Activities; Family Environment and Alternative Care; Basic Health and Welfare and Special Protection Measures.

*be coherent with, an overall vision and strategy, within a framework of clear, overall priorities. They should be decided on the basis of clear analysis of past action and an assessment of needs and gaps. By contrast the actions proposed in the EU Agenda appear to be a compilation of actions already in the pipeline or a continuation of commitments made in the 2006 Communication.*⁷⁶

A Member State official emphasised that while a strategy can include priority areas, it must start with formulating tools that allow for analysis, discussion and assessment of which areas should be prioritised. The core purpose of the Strategy should be to provide a framework that generates action, ownership and responsibility among other DGs in their respective policy areas.

Moreover, one MEP stated that setting priority areas in stone for a set period removes the flexibility needed to ensure that the Commission can respond to relevant and current problems in a timely fashion. It is also important that when Action Plans are developed, they should include **measurable objectives, clearly defined roles and responsibilities, timelines, monitoring and evaluation mechanisms**, which feed into the achievement of the overall strategy.

When considering the ambition and elements that the Strategy should cover, it is critical to bear in mind the comments that have come out in response to the study questions as regards human and financial resources. Unless considerably **more resources – both financial and human – are to be dedicated to implementation**, it will be impossible to have an ambitious – or even holistic – strategy. This has also been recognised in our research in the selected Member States.

There are differences of opinion in external affairs as to what an EU Strategy on Children's Rights should include, and as what its value will be to external affairs, partly owing to the very different nature of EU's role as regards children's rights in third countries. However, this in itself presents an interesting angle, since a holistic strategy should also cover the work of the EU delegations which are extremely important in writing country strategy papers determining the EU's agenda for the coming years in a country and in implementing EU policies on the ground.

Nonetheless, both Commission officials and NGOs reacted with disappointment to the Agenda's lack of relevance and ambition with regards to external affairs.

The External Affairs family has in recent years made substantial progress in developing its approach to children's rights. The EC Communication, A Special Place for Children in EU External Action, is an umbrella Communication – a framework setting out the approach. Importantly, it clearly supports the **development of an integrated approach** to advance children's rights. Furthermore, since Council Conclusions were adopted referring clearly to the Communication, this has led to the involvement of the Member States. However, this document does not constitute a strategy addressing (all) children's rights. It states that it wishes (together with the two Staff Working Documents attached to it) to “establish a framework for a comprehensive EU approach towards the protection and promotion of children's rights in third countries”, but the areas listed as falling under the EU's response demonstrate the lack of a truly holistic approach to children's rights.

As regards the accompanying Action Plan, one Commission official cited the lack of management commitment as a key obstacle to developing the Action Plan: it was not considered a priority. Another referred to the difficulty of translating policies into concrete actions. Moreover, it was felt that there is

76 CRAG Response to the EU Agenda for the Rights of the Child, March 2011

not enough staff to implement such a wide-ranging Action Plan. Another comment, more linked to the drafting of any children's rights-related policy, was that there should be a move away from saying that the EC/EU is committed to taking action on behalf of children, to committing to supporting partner countries to put in place policies that are in line with their international commitments.

Lastly, concerning the EU Guidelines for the promotion and protection of children's rights, one might assume that they could act as an overall strategy for EU action on children's rights. However, this is far from the case given what they actually address, and the fact that it appears that it is mostly the Annex which is being implemented. It should also be noted that these Guidelines refer to the EU's relations with third countries and not to what the EU intends to do itself.

3.3 Co-ordination of implementation

3.3.1 Introduction

The UN Committee on the Rights of the Child has emphasised that implementation of the UNCRC is a continuous process which requires permanent mechanisms in government. The key aim is to ensure effective coordination in implementing the UNCRC.⁷⁷ The Committee recognises that there are several ways of ensuring such coordination and that appropriate solutions should be found for each system. However, General Comment No.5 gives some indication of good practice: *"It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children - can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention."*

In the EU context, coordination mechanisms have to cater for its characteristic as a regional body including the fact that there are several different institutions which work on both internal and external affairs and that what is appropriate for one may not be so for the other.

This chapter focuses only on the coordination mechanisms in the Commission within both internal and external relations.

3.3.2 The Children's Rights Unit in DG Justice and Fundamental Rights

As previously mentioned, the Commissioner for Justice holds the main responsibility for policy towards children. As a result of the 2006 Communication "Towards an EU Strategy on the Rights of the Child" a children's rights coordinator has been appointed, now heading a unit with a small team. The "Children's Rights Unit", is placed in DG Justice (DG JUST) under the Directorate for Fundamental Rights and Rights of the Child.

3.3.3 Focal Points and the Inter-Service Group on Children's Rights

In order to improve coordination of action and to increase consistency and effectiveness, the 2006 Communication committed the Commission to setting up "a formal inter-service group on the rights of the child composed of designated contacts, who will be responsible to follow up the strategy."⁷⁸

⁷⁷ Implementation Handbook for the UN Convention on the Rights of the Child, Rachel Hodgkin and Peter Newell, UNICEF 2007

⁷⁸ Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

Most DGs in the Commission now have a so-called “focal point” for children’s rights, who act as “experts” on the subject and assume responsibility for mainstreaming. These focal points often also cover other issues such as gender or an international forum and may well have a geographic portfolio as well.

The focal points for children’s rights meet approximately every 4-6 months in a format known as the “Inter-Service Group” (ISG). The ISG includes all DGs and is coordinated and chaired by the Children’s Rights Unit in DG JUST. Only DG JUST has convening rights for the meetings.

There is also a sub-group which includes only the external relations DGs⁷⁹. The external relations sub-group includes six DGs, with DG JUST also always invited and usually attending. At the time of interviews in 2010, this group met monthly on average, discussing both subjects that all DGs should be involved in and those issues which are just the responsibility of one DG but could be of interest to others. The meetings are informal and no minutes are kept. DG Relex generally led this group.

As well as meetings, the two groups use email to communicate.

3.3.4 Discussion

The Communication “Towards an EU Strategy on the Rights of the Child” has generated and/or institutionalised several mechanisms for coordination; however, in the absence of a comprehensive strategy for the Commission, there is no framework for coordinated action across DGs. The results of the interviews and analysis of documents confirm that there is a need to find a mechanism to address inconsistencies in policies, in particular between internal and external affairs. Such a mechanism should be clearly defined, ensure transparency and information exchange and be adequately resourced. Interestingly, the EU has played a role in promoting development of a national authority for the coordination of children’s rights in the context of Romania’s EU accession.

In general, respondents welcomed the establishment of a Children’s Rights Unit, at least in principle. The fact that the Children’s Rights Unit sits under the Commissioner for Fundamental Rights, who has a specific mandate on children’s rights was deemed important, however, this was not seen as a guarantee that children’s rights would be addressed across policy areas. One Commission official pointed out that in order to fully adapt to the EU’s policy structure and influence all internal and external DGs, the children’s rights unit would have to be placed in the Secretariat-General and report directly to the President of the Commission.⁸⁰

Whilst the Children’s Rights Unit plays a role in reviewing some legislation and policy, none of the respondents recognised it as a true coordinating body or an instance which screens policies across the DGs for *policy coherence*. Contact and information exchange is seen as sporadic and mainly on a bilateral basis over telephone and email, which according to some has led to a lack of transparency and consistency.

Similarly, the Inter- Service Group (ISG) was not identified by respondents as a place in which proper coordination and policy coherence can be ensured. There seemed to be a lack of clarity around the mandate and role ISG. Several respondents expressed disillusion and confirmed a general disengagement of focal points. It was felt that the full ISG meets too infrequently and that it only serves as “an occasional point

⁷⁹ This information is drawn on interviews made before the restructuring of the Commission and the creation of EEAS and DEVCO.

⁸⁰ There is a high-level means to ensure policy coherence, or to object if there is significant policy incoherence, through the College of Commissioners’ approval process, which many of the more important policies go through. This involves all DGs via an Inter-Service consultation. A meeting may be called but at a minimum this involves the proposed policy being posted on a common internal website and an email being sent with the link to inform that a new policy has been posted there for feedback. It is the Commissioner that ultimately gives the DG’s position: OK; OK with comments, which lead to a discussion in College; or blocking if in disagreement – which also necessitates a meeting to resolve outstanding issues. If no solution is found, the proposal is dropped.

for exchange of information.” In meetings, there is little time to share information about interesting initiatives and action within the respective DGs. Another criticism is that the formality of the meetings is not conducive to a profitable exchange of information and ideas. Some respondents felt that the agenda was driven by the specific interests of DG JUST, rather than a holistic and comprehensive outlook on children’s rights. In order to fully capitalise on what could be an effective tool for coordination and information exchange, meetings should be **regular, inclusive and geared towards ensuring consistency and coherence in the implementation** of the EU’s children’s rights commitments.

On the other hand, many of the Commission officials confirmed that they had good bilateral contacts with other DGs, for example DG Home and DG INFSO on issues relating to child sexual abuse. Policy coherence on children’s rights within the Relex Human Rights unit is carried out via a bi-monthly meeting where information is exchanged.

The Commission recognises, in its Agenda for the Rights of the Child that the EU’s commitment to children’s rights demands a coherent approach across all action and refers to the Treaties, the Charter of Fundamental Rights and UNCRC as the common basis for all EU action. However, the Agenda is silent on coordination mechanisms and does not address concerns and criticism by stakeholders inside or outside the Commission.

3.4 Making children visible in budgets

3.4.1 Introduction

UNCRC Article 4 obliges signatory States to fulfill children’s economic, social and cultural rights to “the maximum extent... of available resources and where needed, within the framework of international co-operation.” General Comment No.5 states that “No State can tell whether it is fulfilling children’s economic, social and cultural rights ‘to the maximum extent of ... available resources’ ... unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly.”⁸¹

The EU spends considerable amounts of money in Europe and its neighbourhood and is the largest international donor in the world. Under the current Financial Perspectives⁸², the budget is allocated to five key areas, or “headings”: growth and employment; preservation and management of natural resources; freedom, security and justice and citizenship; EU as a global player; and administration.

These headings include funding for areas such as agriculture, fisheries, infrastructure (construction of roads, bridges and railways), education and training, culture, employment and social policy, environmental policy and health and consumer protection, which all have a direct or indirect impact on children. Under the heading 4 “EU as a global player”, resources are allocated to funding development around the world and to humanitarian aid in order to help non-EU countries afflicted by natural disasters and other crisis situations. Resources are also allocated to accession countries and the EU’s near neighbourhood.

The EU’s Open Method of Coordination on social protection and social inclusion has a thematic focus on child poverty. This particular study does not explore the Member States’ allocations to children in the social sector or implementation of national action plans on child poverty. However, the results of our regional research on five EU Member States show that few States publish specific figures for the funding available to children through the national budget – and even when such information is available, government

81 General Comment No.5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

82 The current Multiannual Financial Framework, also known as the “Financial Perspectives” runs over 2007-2013. The Multiannual Financial Framework covers the budget process and the distribution of the budget.

commitment to setting out an accompanying analysis or commentary is often extremely weak.⁸³ However, some positive progress has been made in for example, Wales in the UK, demonstrating that it is possible to develop child budget analysis.⁸⁴ In many EU Member States there is concern about severe cuts to the budgets in services directly affecting children - health and education in particular - as a result of the global economic recession.⁸⁵

The EU has committed to promoting children's rights in internal and external affairs, and has, in several policy documents, including the 2006 Communication "Towards an EU Strategy on the Rights of the Child" connected the commitment to financing particular activities.⁸⁶ The European Parliament has also expressed support for specific budget lines on children, including the 2008 call for a budget to implement the 2006 Communication on children's rights.

In this chapter, we explore the visibility of children in the EU's budget for growth and employment, freedom, security and justice and citizenship, and the EU as a global player.

3.4.2 Children in the EU Budget

The EU budget does not contain a specific "children's budget" for internal or external affairs and there is nothing that suggests that budget decisions consider children or are guided by the best interest of the child.

Furthermore, the research suggests that there are no specific processes or tools in place to identify the amount and proportion of money spent on children in any of the budget headings. Whilst there is information available on expenditure for areas that potentially benefit children such as health and education, there is no data that supports analysis of the proportion of funding devoted to or reaching children from all the different budget headings.

The EU's heading on sustainable growth is divided into separate, but interlinked components. The first component includes a focus on education and training and social policy. There is no specific budget line for children under this heading and no disaggregated data is available to assess how much of the spending is allocated to children.

While the EU does not have a general competence on children's rights, there are numerous possibilities to draw on the existing legal basis to ensure that obligations and commitments are matched with an allocation of funds to children.

There are programmes that allocate funds to action addressing "child-specific" issues under EU internal affairs, for example by supporting studies and research, networks, awareness-raising activities, training etc. The PROGRESS programme⁸⁷, which is the EU's employment and social solidarity programme, has a focus on child poverty under the area of poverty and social inclusion and has allocated funds, for example, to the completion of a study on child poverty in Europe and for the financing of a children's rights network

83 "Governance fit for Children – To what extent have the general measures of implementation of the UNCRC been realized in five European countries?", Save the Children Sweden 2011

84 "Governance Fit for Children: To what extent have the general measures of implementation of the CRC been realised in the UK", Save the Children UK 2011.

85 http://www.eurochild.org/fileadmin/user_upload/Policy/Financial_Crisis/Eurochild_report_on_crisis_impact_-_9October09.pdf

86 The Commission "is committed to allocating the necessary human and financial resources to implement this strategy. Efforts will be made to secure the financial resources necessary to fund the actions proposed in this communication and the future strategy". The European Parliament has showed support for a specific budget line for children's rights to ensure implementation of the 2006 Communication and other child-specific projects. (European Parliament Resolution "Towards an EU Strategy on the Rights of the Child", P6_TA(2008)0012) See also for example EC SWD - The European Union's Action Plan on Children's Rights in External Action (05.02.08), which mentions financial allocation to its four priority areas, and EC Communication: Action Plan on Unaccompanied Minors (2010 – 2014) COM (2010) 213/3{SEC (2010) 534}, which mentions funding projects that provide "alternatives in the country/region of origin that aim to benefit children".

87 <http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

in Europe (Eurochild). The Daphne III programme (2007-2013), co-finances projects to prevent and combat violence against children, young people and women and to protect victims and groups at risk. The total amount earmarked for the 2007-2013 period is 114.4 million EUR.⁸⁸ “Children’s rights” is also one of the priorities under the Fundamental Rights and Citizenship Programme. The total amount earmarked for the 2007-2013 period is 93.8 million EUR.⁸⁹ The Safer Internet Programme 2009-2013 allocates 55 million EURO to improve safety for children online.⁹⁰ The Youth in Action programme (2007-2013) with a budget of 885 million EURO for seven years, aims to “inspire active European citizenship and tolerance among young Europeans and to involve them in shaping the Union’s future by promoting their participation in democratic life.” The programme targets young people in the age group 13-30 years.⁹¹

In external affairs, children are not prioritised in geographical funding and there is no budget line for children in geographic instruments. The former is partly owing to the fact that the EC is not the sole master of how the money is spent at country level: the partner country concerned co-decides where it wants to spend the money. However, similar to internal affairs, there are instruments which allocate funds to children’s rights issues. For instance, a specific envelope of 90 million EUR (2007-2013), has been allocated under the thematic programme “Investing in People” to complement country programmes by addressing various aspects of the protection and participation of children and youth. The 2008 call addressed two issues of relevance to children: children in armed conflict and child trafficking. The 2009 call was launched for projects aiming at meaningful child participation. The EU also funds projects on children’s rights under geographic allocations for third countries and regions, including under the Development Cooperation Instrument, the European Fund for Development (EDF) and the pre-accession financial assistance. Under the European Instrument for Democracy and Human Rights (EIDHR), the European Commission has provided approximately 10 million EUR since 2007 aimed at supporting projects implementing the EU Guidelines on Children and Armed Conflict and the EU Guidelines on the Rights of the Child.⁹²

3.4.3 Discussion

The UN Committee on the Rights of the Child has expressed concerns about the negative impact on children of world recession, economic adjustments and cutbacks, emphasising that “economic policies are never child-rights neutral”. It regularly examines if State parties take measures to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.⁹³

Producing ‘Children’s Budgets’ provides a mechanism to examine resource allocation with a view to ascertaining how well children’s rights commitments are being implemented. Without disaggregated data that shows how much of the EU’s spending actually reaches children or affects the implementation of children’s rights, it is difficult to assess how successful the EU has been in terms of implementing its commitments. Results from the interviews also suggest that there is a recognition that child budgeting would be useful but that it would be “close to impossible” to achieve for legal and practical reasons.

Some interviewees expressed concerns that the lack of EU competence on children’s rights presents a legal challenge in creating specific budget lines on children. Specific budget lines on children have been included by the European Parliament in the budget but have been removed due to legal obstacles⁹⁴. And, whilst there is a recognition that the EU can, and should, **draw on the existing legal basis to allocate funds for children,**

88 http://ec.europa.eu/justice_home/funding/daphne3/funding_daphne3_en.htm

89 http://ec.europa.eu/justice_home/funding/rights/funding_rights_en.htm

90 http://ec.europa.eu/information_society/activities/sip/policy/programme/index_en.htm

91 http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_327/l_32720061124en00300044.pdf

92 http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm

93 Implementation Handbook for the UN Convention on the Rights of the Child, Rachel Hodgkin and Peter Newell, UNICEF 2007

94 Measures to support families and children (DG Social Affairs), B7-624 Integration of Children’s Rights (2003)

some interviewees pointed to rigid budget structures, which limit flexibility in terms of allocating funds directly to projects for children as well as lack of political prioritisation.

One interviewee compared child budgeting to gender budgeting in social affairs, but drew the conclusion that it would be difficult to achieve since children are considered through the lens of their working parents. The interviewee also noted that in Europe investment in children has been recognised as an important investment in the future workforce and basis for pensions.

In one interview regarding child budgeting in external affairs, the comment was made that the EC is not master of the 'budget' issue as this is largely up to the partner country concerned to decide where it wants to spend the money. While true up to a point, it still is the EC that determines how much money goes into thematic versus geographic instruments, how its financial instruments are structured, how the Country Strategy Papers (CSPs) are written, how Calls for Proposals operate and so on. Furthermore, the EU Delegation, in its discussions with the partner government, can and should play a persuasive role. Put simply, if human rights are not chosen as a focal sector in the CSP, little money will ever be allocated to children. Human rights will not be chosen as a focal sector if they are not dealt with adequately and in line with guidance from Brussels regarding mainstreaming cross-cutting issues. The Parliament has called on the Commission "to help partner countries adopt child-friendly budgeting, especially when the European Union is providing budget support..."⁹⁵.

The EU must find innovative ways to challenge assumed and "real" legal and practical obstacles, and fully explore opportunities and flexible solutions to ensure that spending on children is secured using the existing legal basis. Mechanisms to analyse expenditure must be developed with a view to ascertaining how effectively commitments to children's rights are being implemented. This is important for a proper monitoring of UNCRC implementation, quality decision making and to ensure non-discrimination.

In order to ensure better visibility of children in the EU budget, **opportunities should be developed to exchange experience around child budgeting, both within the EU institutions and with Member States.** Tools that have been developed for budgetary analysis can serve as inspiration for practical models for making children more visible in budgets, and should be explored by the EU. There is, for example, a section on child-friendly budgeting in the EC/UNICEF children's rights Toolkit.

The African Union, a major receiver of EU support and funding, has shown considerable political will to overcome obstacles due to rigid budget mechanisms. In 1999, the AU adopted the African Charter on the Rights and Welfare of the Child, which is monitored by the African Committee on the Rights and Welfare of the Child (ACERWC) under the Social Affairs Department of the AU. The ACERWC dedicated the year 2010 to child budgeting.

The next Multiannual Financial Framework may well provide an opportunity to ensure the necessary flexibility to include a children's budget in the forthcoming EU budget headings. It will also be the occasion to take a new look at CSPs in order to ensure that all the cross-cutting issues are properly mainstreamed and that financial allocations are set against them.

95 European Parliament Resolution on the EC SWD 'The European Union's Action Plan on Children's Rights in External Action' – P6_TA(2009)0060 - by Glenys Kinnock (19.02.09)

3.5 Monitoring and data-collection

3.5.1 Introduction

The UN Committee on the Rights of the Child has highlighted that it is impossible to assess implementation of the UNCRC without sufficient data-collection, including disaggregated data. Governments are obliged to ensure proper monitoring and evaluation, including through self-monitoring and taking into account independent monitoring by, for example, parliamentary committees, academic institutions, youth groups, NGOs and human rights institutions.⁹⁶

General Comment No. 5 states that “collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation...”. Data collection should cover all areas of the Convention and extend over the whole period of childhood (0-18 years).⁹⁷

The Commission has recognised the urgent need for improved data collection and the development of indicators relevant to the EU. For example, the EU Agenda for the Rights of the Child states that the lack of reliable, comparable and official data “is a serious obstacle for the development and implementation of genuine evidence-based policies. Improving the existing monitoring systems, establishing child rights-related policy targets, and monitoring their impact are one of the key challenges. Gaps in knowledge about the situation and needs of the most vulnerable groups of children should be addressed as a matter of priority.”⁹⁸

This chapter looks at initiatives taken by the Commission in relation to data-collection and the development of indicators on children’s rights.

3.5.2 Data-collection and Child Rights Indicators

In March 2009, the Fundamental Rights Agency (FRA) published a report, on the request of the Commission, with indicators to measure how the rights of the child are implemented, protected, respected and promoted across the EU.⁹⁹ The indicators fall under four core areas that “capture a significant part of existing EU provisions of direct relevance to children: Family Environment and Alternative Care; Protection from Exploitation and Violence; Education, Citizenship and Cultural Activities and; Adequate standard of living. The indicators are disaggregated by gender, age group, ethnicity (Roma children), location (urban/rural), as well as in relation to children with disabilities and asylum-seeking children.”¹⁰⁰

According to the EU Agenda for the Rights of the Child, the indicators are intended to “guide the Agency’s data collection and research, allowing it to develop evidence-based opinions and support the EU institutions and Member States when they take measures or formulate actions.”¹⁰¹ The FRA report states: “By adopting a child rights-based approach based on the UNCRC the indicators will be able to measure the extent to which EU law and policy affects children’s social experiences, their legal status and their life opportunities, whether EU law and policy espouse and reinforce the children’s rights principles and practices of the UN CRC, and how this provision is implemented at the national level. The indicators measure the impact of EU provision on children ‘on the ground’ making reference to the relevant UNCRC provisions.”¹⁰²

96 Implementation Handbook for the UN Convention on the Rights of the Child, Rachel Hodgkin and Peter Newell, UNICEF 2007

97 General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

98 Communication from the Commission: An EU Agenda on the Rights of the Child COM (2011) 60 Final

99 Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, SUMMARY REPORT, Fundamental Rights Agency, 2007. The indicator study was commissioned by the Commission as a result of the 2006 child rights communication.

100 European Union Agency for Fundamental Rights, ‘Developing indicators for the protection, respect and promotion of the rights of the child in the European Union’, Summary Report, page 16, March 2009.

101 Communication from the Commission: An EU Agenda on the Rights of the Child COM (2011) 60 Final

102 Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, SUMMARY REPORT, Fundamental Rights Agency, 2007

The FRA has organised meetings in order to follow up on the indicator study, to exchange information on the EU's child protection umbrella with a view to helping the FRA identify and prioritise the issues within child protection, to make the Agency's indicators more operational and accessible (for example at the local level), to provide information on current data availability at the European and international level and to highlight which research and data collection would be useful to fill the gaps identified.¹⁰³

The EU Agenda for the Rights of the Child includes a short section on developing evidence-based policy-making, stating that the Commission will take action to produce basic data and information to guide decision-making, taking stock of existing work, including the outcome of the FRA indicators. The Child Rights Unit in DG Justice has recently confirmed that it is carrying out work on developing indicators and data collection linked to EU policy, in particular for its justice policy. According to the Unit, these indicators are developed in close collaboration with the Fundamental Rights Agency and Eurostat.

Progress has also been made in the area of child poverty, social exclusion and child well-being in the framework of the Social Open Method of Coordination (OMC). The Social Protection Committee Indicator Sub-group (ISG) has defined indicators to monitor the EU Member States' progress towards the objectives agreed under the OMC. A number of indicators are disaggregated by age. The ISG is involved in the development of the EU Survey on Income and Living Conditions (EU-SILC) – managed by Eurostat. Data collected was used in an EU funded study on child poverty and well-being carried out in 2008 and follow-up report published January 2010.

The ISG has committed to identify a couple of indicators to reinforce the child dimension of social inclusion and to define separately a minimum set of indicators that could be used in future in-depth reviews of child poverty and well-being. The social inclusion indicators (so-called Laeken indicators) foresee a section on child well-being indicators, however these have not yet been completed.

A number of external affairs documents make reference to the need to develop indicators. For instance, the European Consensus on Development states that “(p)rogress indicators and regular evaluation of assistance are of key importance to better focus EU assistance”. The Consensus also commits to strengthening MDG-related performance indicators in order “to better link sector and budget support to MDG progress and to ensure adequate funding for health and education.”¹⁰⁴ The EU uses the same indicators as the World Bank and the African Development Bank for measuring performance and progress at the country level, including, for example, the prevalence of underweight children in the population, under-5 mortality rates, the percentage of one-year olds immunised against measles and the ratio of girls/boys in primary and secondary education.

In the Action Plan on Children's Rights in External Action, a logical framework towards the end of the document offers a series of indicators. These include, for example, the goal “(t)o progress on the protection and promotion of children's rights globally”, for which the indicators are under-five mortality, net enrolment rates in primary education, teen-pregnancy rates and Orphans and Vulnerable Children coverage of basic social protection.¹⁰⁵

¹⁰³ These meetings were held after the research was completed and the results are not taken into account in this study.

¹⁰⁴ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', November 2005

¹⁰⁵ European Commission Staff Working Document - The European Union's Action Plan on Children's Rights in External Action, SEC(2008) 136, February 2008

3.5.3 Discussion

There is currently no systematic and/or comprehensive data-collection on children's rights in the Commission. The Commission has recognised the urgent need to collect data and develop indicators to support development of EU action in internal and external affairs. Progress has been made in several areas, and there is a commitment to further develop tools to ensure evidence-based policy-making. However, there are still important obstacles that need to be addressed in order to ensure that relevant data is systematically collected, analysed and fed into policy, programming and legislation.

The Commission's work to further develop indicators in cooperation with EUROSTAT and the FRA on the basis of existing work in this area will be crucial to ensure successful data collection. Ideally, the indicators should expand beyond Justice policy and be made relevant to the Commission more broadly. At a minimum, the exercise should serve as inspiration and a basis for **development of indicators relevant to other policy areas where there is limited progress.**

The EU-SILC was mentioned by several interviewees as important progress, which has led to improvements in relation to data collection at Member State level. However, overall analysis and evaluation remain inadequate, particularly in terms of comparative information, and outcomes are not necessarily linked to policy-development. Moreover, there is scope to improve participatory monitoring by external actors, including children.

In external affairs, some data is collected and archived, but owing to the nature of the current database, specific information relating to spending on children cannot be retrieved easily and therefore cannot be used or translated into policy and programming improvements. Any changes to policy or programming are apparently not evidence-based, or at least not based on evidence gathered by the EC. The EC/EU does not have the necessary tools to measure progress or gather success stories which result from its policies and funding.

The indicators related to the MDGs are used to measure progress at country level (country annual reports), but were not designed by the Commission. Nor do they measure progress relating to EU funding specifically, only overall country progress towards the MDGs. This implies that the quantity of data pertaining to children is inevitably limited to a few areas.

In order to ensure real progress, it will be important to ensure that there are **clearly defined responsibilities and systems for collecting data on all children (0-18 years old) across policies.** The Commission should take steps to **explore how child-specific, disaggregated data can be made available.** It will then be crucial for the Commission to **put in place tools which will allow it to store and use this data for subsequent analysis** of its policies, legislation and funding specifically relating to children. In this way, the Commission can **evaluate the efficacy of its initiatives, assess progress in a country and identify gaps** that it could usefully address in the future. This information would therefore serve as a basis for evaluation of current policy and programming and for the development of future policy, legislation and programming.

The Commission has in several cases invited experts to contribute with data (see chapter 3.5.4), but, it is not always clear how input is channelled into policy-making, programming and development of legislation. The Commission should ensure that it **develops tools to integrate data and studies from external actors,** including research institutes, children's and youth organisations, NGOs etc. The Commission should ensure **systematic use of the UN Committee on the Rights of the Child Concluding Observations as well as the outcomes of the Universal Periodic Review (UPR) under the auspices of the Human Rights Council (HRC) across policy areas.**

3.6 Cooperation with civil society

3.6.1 Introduction

General Comment No.5 stresses that implementation of the UNCRC needs to engage all sectors of society and that states need to work closely with NGOs in the widest sense. The Committee further urges governments to “develop positive formal as well as informal relationships” with NGOs. Due weight needs to be given to children’s views, in line with Article 12 of the UNCRC.¹⁰⁶

The gap between the EU and its citizens is widely recognised and discussed. There are a number of documents that refer to the need for the EU to consult with civil society, and/or that remind the EU to promote consultation between third party governments and civil society.

In its “White Paper on European Governance” (25.07.01), the Commission undertook to help reinforce the culture of consultation and dialogue in the EU. It took this further in the 2002 Communication ‘Towards a reinforced culture of consultation and dialogue’ where it lays out certain principles and minimum standards that should be met. The Communication covers the following areas: content of the consultation process; consultation target groups; publication (where, including any awareness-raising that should be undertaken); time limits for participation (eg. 20 working days’ notice for meetings); acknowledgement and feedback.

In 2006, the Commission adopted a “White Paper on a European Communication Policy”, which aims at “closing the communication gap” and finding innovative ways to ensure dialogue between “Brussels” and EU citizens. The White Paper addressed a number of issues, such as defining common principles including the right to information and freedom of expression, “empowering citizens”, including ensuring that as many people as possible have access to information and the opportunity to make their voices heard, working with the media and new technologies, understanding European public opinion, and aiming to ensure that partnership is created between all key actors in EU institutions, member countries, regional and local authorities, political parties and civil society organisations to ensure “a robust European debate”.¹⁰⁷

The Commission is also involved in, and sometime leads, consultations around human rights dialogues with partner countries. The EU Guidelines for Human Rights dialogue state: *“As far as possible, the European Union will ask the authorities of countries involved in the human rights dialogue to include in their delegations Likewise, civil society could become involved under the most suitable arrangement in the preliminary assessment of the human rights situation, in the conduct of the dialogue itself (particularly by organising meetings with civil society at local level in parallel with the formal dialogue), and in following up and assessing the dialogue.”*

There is a variety of formal and informal means available to engage with the Commission, ranging from public consultation to acting as an implementing partner. In this chapter we focus mainly on the opportunities for civil society to influence *child specific policy-making*.

3.6.2 Commitments to engage with civil society, including children, on children’s rights

The 2006 Communication committed the Commission to “*strengthening cooperation among the main stakeholders making optimal use of existing networks and international organisations or bodies involved in children’s rights*”.¹⁰⁸ Besides setting up a “European Forum on the Rights of the Child” (see next section),

¹⁰⁶ General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

¹⁰⁷ http://ec.europa.eu/archives/commission_2004-2009/wallstrom/communicating/white-paper_en.htm

¹⁰⁸ Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

the Commission has also committed to setting up a web-based discussion and work platform.¹⁰⁹

In external relations, there are several key documents specifically on children's rights that emphasise consultation with civil society. The EU's Action Plan on Children's Rights in External Action reminds the EU, in the section on political and policy dialogues, to "regularly liaise with children's representatives, children's Ombudsmen where present, relevant UN representatives, other international organisations dealing with children's rights, social partners, independent national institutions dealing with children's rights and NGO representatives (including child-protection networks)". It also states that the Commission will seek to ensure appropriate child participation as well as that of other stakeholders, including civil society organisations, in the informal EU Member State experts working group on children's rights that was to be set up under the Plan, "depending on the items to be discussed".¹¹⁰ Moreover, the "Guidelines on the Promotion and Protection of Children's Rights" call on EU Delegations to promote "the involvement of civil society and child participation" under bi- and multi-lateral cooperation, while under the section on 'intensifying coordination with international stakeholders', civil society is given as one example of those stakeholders.

As stated above, the EU Guidelines for Human Rights Dialogue also emphasises civil society dialogue and that "The EU will as far as possible give the human rights dialogues a degree of genuine transparency vis-à-vis civil society."

When it comes to involving children, the 2006 Communication makes specific reference to Article 12 of the UNCRC, stating that the Commission will "strengthen networking and children's representation in the EU and globally, and it will gradually and formally include them in all consultations and actions related to their rights and needs".¹¹¹

The EU Agenda for the Rights of the Child confirms that the EU shall take children's views into consideration on matters that concern them. Reference is made to the Eurobarometer on the Rights of the Child 2010 (see below) as a starting point, and a commitment is made to continue work with Ombudspersons for children and "other relevant partners in this area". The proposed action under this heading is however limited to setting up a single entry point on the EUROPA website with information for children on the EU and on the rights of the child.¹¹²

Consultation with children is also foreseen in the "Programming Guide for Strategy Papers – Rights of Children", where it reminds EC officials writing country situational analyses that "*it is important to also see children as stakeholders who should be consulted, to ensure a complete picture of the situation. Child participation can often be channelled through existing mechanisms such as youth clubs or child parliaments...*". It also recommends that children be included in the planning process of a project or programme.

In internal affairs, the Safer Internet Programme, for instance, aims at stimulating the involvement of children in creating a safer online environment: "*Actions will aim to involve children, ensuring equal participation of girls and boys, with the aim of better understanding their views and experiences concerning the use of online technologies and, with the support of specialists, of promoting a safer online environment for*

109 The Communication states that "This platform will be a tool to promote and encourage the effective exchange of information using the available expertise in a given area. The members of the platform will have access to a library of documents and be able to launch discussions or surveys among members". The platform has not been set up to date.

110 EC Communication - A Special Place for Children in EU External Action (05.02.08)

111 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

112 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child COM (2011) 60 Final

children. This involvement shall be regularly exercised within the framework of activities such as the European Forum on the Rights of the Child, the Safer Internet Forum and others.”¹¹³

3.6.3 The European Forum on the Rights of the Child and the Steering Group

In the 2006 Communication, the Commission committed to strengthening cooperation among key stakeholders by establishing a European Forum on the Rights of the Child. The Forum will include “all the relevant stakeholders”¹¹⁴, and will “contribute to the design and monitoring of EU actions and act as an arena for exchange of good practice”.¹¹⁵

The Communication also states that “the Commission will consider how it can replicate this mechanism in third countries where the EC Delegations could initiate systematic dialogue with international and national partners active in the field of children’s rights”.¹¹⁶

The Forum includes Member States representatives, Ombudspersons for children, representatives of the European Parliament, the European Economic and Social Committee, the Council of Europe, UNICEF and NGOs, and is chaired by the Children’s Rights Unit.

The Communication stated that children also would be represented in the Forum; however, this has not been done in a systematic or meaningful way to date. A specific working group was set up to discuss how children could be involved in a meaningful way, and the Commission has made attempts to gather information and good practice examples. It is not clear whether or how this material had been used.

In order to prepare the Forum, a Steering Group was set up. This Steering Group includes key stakeholders in the children’s rights arena, including the Council of Europe, UNICEF, ENOC, three children’s rights NGOs, one MEP and representatives from the Member States (Troika).¹¹⁷ The group is coordinated and chaired by the Children’s Rights Unit.

There have been five meetings of the Forum so far, covering issues including child participation, child sexual abuse, child poverty and social exclusion, violence, and child labour.¹¹⁸

The EU Agenda for the Rights of the Child commits the Commission to continue dialogue with all stakeholders through the European Forum on the Rights of the Child.¹¹⁹

3.6.4 Expert meetings and public consultations

Representatives of civil society are regularly invited by the Commission to participate in expert meetings and structured consultations to inform development of policy and/or legislation.¹²⁰

113 Decision No 1351/2008/EC of the European Parliament and of the Council of 16 December 2008, establishing a multiannual Community programme on protecting children using the Internet and other communication technologies

114 Including the Member States, UN agencies, the Council of Europe, civil society and children themselves.

115 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

116 Communication from the Commission - Towards an EU strategy on the rights of the child {SEC(2006) 888} {SEC(2006) 889} /* COM/2006/0367 final */

117 Terms of Reference for the European Forum on the Rights of the Child, 2008

118 http://ec.europa.eu/justice/policies/children/forum/policies_children_forum_en.htm

119 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child COM (2011) 60 Final

120 Recent consultations on internal affairs issues include child sexual abuse, trafficking and victim protection. In external affairs, The EU-NGO Human Rights Forum (external affairs) is an annual event and the subject varies every year; but has quite often taken a topic of relevance to children, such as one of the sets of EU Guidelines. Another example of in the area of Employment and Social Affairs, are bi-annual meeting with NGOs where ongoing and new initiatives are discussed, sometimes with focus on children. This research does not cover the Safer Internet Programme in which consultation and information sharing are important components, e.g. through the Safer Internet Forum.

In 2010, the Children's Rights Unit invited a number of key experts, including representatives from civil society, to two expert meetings with the aim of informing the Commission about bullying/cyber-bullying and "invisible children" respectively. Experts were asked to provide the latest research in these areas and make suggestions for EU action that could be fed into the drafting of a child rights strategy for 2011-2014.

The Commission regularly organises public consultations. A variety of consultations on selected policy initiatives from both internal and external relations are published on the Commission's website "Your Voice in Europe".¹²¹ Three examples specific to children include the public consultation on the Commission's Communication on the Rights of the Child (2011–2014) in 2010; the "Freedom, Security and Justice: What will be the Future?" in 2008, which included child specific questions on e.g. violence, and "Creating a safer online environment for children in 2007. In external affairs, recent consultations relevant to children include those on the Millennium Development Goals and the Global Health Communication.

There have been various sporadic attempts to involve, consult and inform children in Europe; however, despite commitments made, there is no systematic approach. Examples include drawing contests¹²², the Flash Eurobarometer 235: The Rights of the Child¹²³, and participation in meetings, e.g. the third European Forum on the Rights of the Child.¹²⁴

The Commission has also committed to "translating" key EU documents into child-friendly versions, using an external consultant. These will include both internal and external policies and Council Conclusions.

In 2010, a Eurobarometer study was carried out on behalf of DG Justice. This study aimed at exploring what children's rights issues children prioritise and the challenges they face in exercising their rights. It also aimed at exploring how these challenges could be addressed and what the "adult world" could do to help them. The study was carried out in all 27 Member States of the EU with 15-17 year olds from different socio-economic and ethnic backgrounds.¹²⁵

3.6.5 Discussion

The research made confirms that the Commission consults with civil society when *formulating some policies* relating to children of the areas covered by this study. Delegations on the ground, on the other hand, need to make a much greater effort to involve civil society, as do officials when visiting partner countries from Brussels. Civil society is also an implementing partner to the Commission in both internal and external affairs. The interviews and research do not suggest that there is regular consultation with civil society regarding implementation of the UNCRC once a policy has been formulated.

In many cases, the relations between the EU institutions and NGOs are constructive and mutually beneficial, especially when relations are of an informal character and occur on a regular basis. Ongoing informal dialogue was in many cases the most preferred option from the perspective of building partnership and achieving concrete results. However, such informal dialogue is not always carried out systematically; it depends highly on the openness and transparency of the DG, Unit and official. The Children's Rights Unit

¹²¹ http://ec.europa.eu/yourvoice/index_en.htm

¹²² See for example: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1911&format=HTML&aged=0&language=EN&guiLanguage=en>

¹²³ The Flash Eurobarometer 235 (2008): The Rights of the Child survey was conducted for the very first time among adolescents only, to determine how much young people (15-18 years old) know about the Rights of the Child, the extent to which these rights are protected, and which actions should be taken as a priority to improve them. http://ec.europa.eu/public_opinion/flash/fl_235_en.pdf

¹²⁴ http://ec.europa.eu/justice/policies/children/forum/policies_children_forum_en.htm

¹²⁵ http://ec.europa.eu/public_opinion/archives/quali/ql_right_child_sum_en.pdf

was criticised for its lack of transparency by Commission officials, Member States, MEPs and NGOs.¹²⁶ However, a presence in Brussels is crucial in order to have any real influence.

The format, frequency and quality of the Commission's consultations vary substantially. Civil society's ability to influence the content of policy documents varies according to the document (including the nature of the document) and according to the openness of the official leading the elaboration of the document. Despite there being guidance and rules shaping consultation with civil society, in practice several variable factors exist, including the degree to which civil society actors might be aware of a policy being elaborated, the stage at which civil society is consulted, the timeframe allowed for input, the notice given for meetings at which the policy will be discussed and, still more importantly, the degree to which comments are taken into consideration.

The stated objective of the consultation on the communication on children's rights in 2010 was to give an opportunity to stakeholders to "present their views to the Commission about which concrete actions they think should be developed at EU level that would bring real added value".¹²⁷ However, stakeholders have expressed concern that the method, scope and duration of the public consultation were inadequate and stood in sharp contrast with the more participatory consultation and process on the EU strategy for youth¹²⁸, which provided several opportunities for stakeholders, including children and youth to provide input and ideas. The consultation was also criticised for its narrow scope and defined thematic focus on a pre-selected set of priorities, rather than providing a framework for strategic input and new ideas for action.¹²⁹

Interviews confirm that the Forum does not operate according to the role it originally was given, that is, to "advise and assist the Commission and other European Institutions, in particular as regards mainstreaming of children's rights, and exchange information and good practice"¹³⁰. The Forum is not a sounding board for the design of EU actions or to collect examples of good practice. It was mentioned that the format is too large, formal and rigid and too focused on producing a high level political statement to generate genuine discussion. Whilst the DG Justice website lists documents and presentations from the respective Forum, it is extremely rare that any changes are made or action is generated as a result of the Forum discussions. No feedback is given on ideas put forward. As for the possibility of organising similar fora in third countries, nothing has thus far been envisaged.

Respondents recognised that the Forum Steering group, with its extensive collective expertise, could play a significant role, however, there was a general feeling that its potential had not been capitalised on. One respondent described the Steering Group meetings as "missed opportunities". Several Commission officials referred to the steering group meetings as having little or no impact since outcomes seemed pre-determined.

The concerns expressed by stakeholders regarding the Forum are not addressed in the EU Agenda for the Rights of the Child. This is unfortunate since the Forum is the only mechanism mentioned for cooperation with stakeholders in the Agenda.¹³¹ In order to regain credibility and ensure continued engagement of stakeholders, steps will need to be taken to **ensure that the Forum Steering Group is granted a serious role in shaping and following up on the Forum**. The Commission will also have to **resist organising "one-**

126 Save the Children was not granted an interview with Children's Rights Unit, or any other official in DG Justice in relation to this study, even though the study is funded by DG Justice programme for Fundamental Rights and Citizenship.

127 http://ec.europa.eu/justice/news/consulting_public/news_consulting_0009_en.htm

128 "An EU Strategy for Youth: A renewed an open method of coordination to address youth and challenges and opportunities"

129 MEP Letter to Commissioner Reding regarding the EU Strategy on the Rights of the Child, January 2011 and CRAG Response to the EU Agenda, March 2011

130 http://ec.europa.eu/justice/policies/children/forum/policies_children_forum_en.htm

131 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child COM (2011) 60 Final

off” and politically driven events and go back to the Terms of Reference of the Forum, to “*advise and assist the Commission and other European Institutions, in particular as regards to mainstreaming of children’s rights in EU legislation, policies and programmes*”; and to “*exchange information and good practice between stakeholders*”.¹³² The Steering Group and Forum could also serve as a platform for to **further discuss and design appropriate forms for continued cooperation and dialogue between stakeholders.**

Other fora, such as meetings with civil society in advance of a Human Rights Dialogue with a partner country or with regional bodies such as the African Union, also provide an opportunity to raise children’s rights issues and to get feedback subsequently about what was said during the meeting.

Several initiatives have been taken by the Commission to engage with children in Europe; however these were mostly described by respondents as “tokenistic” and in some cases “harmful to the cause”. In general, child participation as carried out by the Commission was not considered meaningful in terms of how it carried out and/or in terms of the impact the results had on policy development.¹³³

No child participation or consultation of any kind with children has occurred in the context of the EU Action Plan on Children in External Action, the EU Guidelines or any other policy or programming context, despite the promises made in several documents. As in the case with internal affairs, this is partly for the very real concerns of limited human resources and expertise in the matter.

Stakeholders have engaged heavily with the Commission on the issue of child participation, providing substantive recommendations and input, including offering a one-day child led training. The lack of systematic and meaningful efforts from the Commission has also generated several initiatives from civil society¹³⁴. The Commission has in some cases “bought in to” or lent its support to these initiatives. However, in spite of continuous efforts, there has been little progress in moving from commitment to real capacity to integrate children’s views into policy- and decision-making.

The EU Agenda for the Rights of the Child includes a section on child participation; however, action is limited to setting up a website with information. This is a welcome step but it does not address the lack of an adequate process for engaging with children or taking their views into account.

Engaging meaningfully with children and integrating their views in policy-making is a challenge. Genuine efforts must be made to ensure continued and intensified dialogue with stakeholders so that appropriate forms for child participation, relevant to both EU institutions and to children, can be defined. The Commission will also need to create channels for children to influence EU decision-making. To do so, the Commission is dependent on regular and positive relations with stakeholders, such as NGOs (both those at national and EU level), Ombudsmen, Children’s Parliaments etc. so that gathering children’s voices on EU matters become a natural aspect of work carried out at local and national level. Mechanisms and processes need to be put in place to ensure that the result of this work ends up with relevant EU policy and decision makers and that adequate feedback to stakeholders is ensured.

The forthcoming UNICEF Toolkit includes a section on child participation, which hopefully can play an important role in raising awareness, building competence and offering concrete tools to support child participation.

¹³² Terms of Reference for the EU Forum on the Rights of the Child (2008)

¹³³ The interviews were held before the Eurobarometer on Children’s Rights and results do therefore not include opinions on the Eurobarometer.

¹³⁴ See e.g. <http://www.ihaveavoice.eu>, http://www.savethechildren.net/alliance/europegroup/europegroup_haveyoursay.html

4. Summary of key findings and recommendations

In recent years, the EU has made substantial progress towards recognizing and acting on its children's rights obligations. In the following sections, we highlight some of the key achievements made so far and provide recommendations on measures that the EU should explore to ensure further progress.

4.1 Legislative Review

The EU has an obligation, as set out in the UN Convention on the Rights of the Child, to respect and promote children's rights in EU internal and external affairs. The increasing recognition of the EU's obligations to respect and promote children's rights has had a positive impact on the development of legislation, policy and mechanisms in support of implementation.

However, the EU must ensure that a coherent and comprehensive approach is taken in order to fully capitalise on its potential and competence. The EU should refer to General Comment No. 5, which sets out a valuable framework in order to ensure that mechanisms are in place to support the Commission in fulfilling the EU's obligations vis-à-vis children's rights.

The Lisbon Treaty provides the legal basis for accession to the UNCRC. EU accession to the UNCRC is likely to strengthen the EU's approach and action to respect, protect and promote children's rights.

Recommendation:

- Explore accession to the UNCRC and its Optional Protocols as a priority and continue to promote universal ratification and implementation of the UNCRC and its Optional Protocols.

The EU has committed to ensuring that EU legislation, policy and action conforms to the UNCRC, however a comprehensive review has not been carried out to date.

Recommendation:

- Ensure comprehensive review against the UNCRC as a whole, to identify gaps and ensure conformity of EU legislation and policy with the UNCRC. The EU should in particular take into account the four General Principles of the UNCRC.

The EU has committed to mainstreaming children's rights; however, there are still gaps that need to be closed in terms of tools, training and mandate.

Recommendation:

- Ensure that children's rights are part of all officials' mandates and provide the necessary training and support to officials to enable them to fulfil their mandates.

4.2 Strategies and Action Plans

The Commission, in particular the Relex family, has made substantial progress in terms of defining its approach, mechanisms and plans to implement its children's rights commitments. However, whilst important steps have been taken, the Commission is yet to deliver a holistic strategy that provides a framework for coherent EU action along the lines of General Comment No.5.

Recommendations:

- Adopt a strategy on the rights of the child, focusing on the full spectrum of children's rights, including the General Measures of Implementation. The strategy should provide a framework that generates action, ownership and responsibility across all policy areas in external and internal EU affairs. The strategy should include mechanisms to ensure policy coherence and consistency across the EU and to deal with any incoherencies that may arise. They should include not only structures in Brussels, but also in-country, such as EU Delegations.
- Draw up specific action plans for each policy area on the basis of the common strategy. They should include measurable objectives, clearly defined roles and responsibilities, timelines, monitoring and evaluation mechanisms, which feed into the achievement of the overall strategy through an integrated approach.
- Allocate adequate financial and human resources to the implementation of the strategy and the action plans, across the whole EU, including in EU Delegations in partner countries. EU Delegations in particular need to receive increased resources in order to address Child Rights adequately.
- The EU should set up a true coordinating body and mechanisms such that regular meetings are held and discussions ensured on all key new legislation, policy, strategies and Action Plans to ensure policy cohesion between DGs, especially on the policy of "do no harm".

4.3 Co-ordination of implementation

The 2006 Communication "Towards an EU Strategy on the Rights of the Child" has generated and/or institutionalised several mechanisms for coordination such as a Children's Rights Unit and an Inter-Service Group on children's rights (ISG). However, these mechanisms are not anchored in an overall framework for coordinated and coherent action and are criticised for failing to achieve the objective of ensuring consistency, transparency and regular exchange of information.

Recommendations:

- Dedicate resources and time to put in place and sustain mechanisms with clearly defined objectives, ensuring full transparency and involvement and ownership across policy areas.
- Hold regular meetings of the ISG. These should, furthermore, be inclusive and geared towards ensuring consistency, coherence and a full and open exchange of information between officials.
- Address inconsistencies in policies across the EU and ensure that the principle of 'do no harm' rules.
- Consider developing a database of information on all children-related projects and initiatives in order to facilitate sharing good practice.
- Ensure that Council Working Groups cooperate more closely together and create synergies between their work.

4.4 Making children visible in budgets

Several funding instruments for internal and external affairs allocate funds towards child-specific action; however, the EU budget does not contain a "children's budget". Budget decisions do not consider children or the best interest of the child. There are no tools or mechanisms in place to identify how much money is spent on children.

Recommendations:

- Explore opportunities and flexible solutions to ensure that spending on children is secured, drawing on its wide-ranging commitments and the existing legal basis.
- Mainstream human and children's rights in the EU budget and set financial allocations against the identified priority areas for action. In external relations, in reflect mainstreaming of children in Country

Strategy Papers with appropriate financial allocations and ensure that geographical, as well as thematic, instruments enable this.

- Establish mechanisms to analyse and monitor expenditure on children. The Commission can draw on examples in Member States, third countries and tools that have been developed for budgetary analysis.

4.5 Data-collection and development of Indicators

The Commission has recognised the urgent need to collect data and develop indicators to support development of EU action in internal and external affairs. Progress has been made in several areas, and there is a commitment to further develop tools to ensure evidence-based policy-making.

However, there are still important obstacles that need to be addressed in order to ensure that relevant child-specific data is systematically collected, analysed and fed back into legislation, policy and programming, particularly in external relations.

Recommendations:

- Establish clearly defined responsibilities and systems for collecting data on all children across all policy areas.
- Define indicators relevant to the different policy areas in order to collect child-specific, disaggregated data.
- Develop tools to analyse data in order to assess progress and identify gaps in policy and programming, which can serve as a basis for modifications to policy or for the development of future legislation, policy or programming.
- Integrate data and studies from external actors.
- Ensure systematic use of the UN Committee on the Rights of the Child Concluding Observations as well as the outcomes of the UN HRC UPR process when developing new policy and programming.
- Consider publishing an annual report on the state of children's rights in relation to EU internal and external action to promote and implement the UN Convention on the Rights of the Child, expanding on its current commitment to report on Article 24 of the Charter of Fundamental Rights.

4.6 Cooperation with civil society

The EU has committed to cooperate and consult with civil society. Indeed, civil society is consulted in formulating some policies and is also an implementing partner in both internal and external affairs. In many cases, the relation between the EU institutions and NGOs are constructive and mutually beneficial.

However, there is still a need to further develop and improve forms and mechanisms for cooperation with stakeholders.

Recommendations:

- Respect the original ToR of the Steering Group of the Forum on the Rights of the Child so that it can play a serious role in shaping and following up on the Forum. Stakeholders in the Forum should be provided with a genuine opportunity to engage in meaningful dialogue and to advice and assist the Commission in matters concerning children's rights.
- Intensify dialogue with stakeholders and ensure that civil society is consulted sufficiently early in the process to be able to play a meaningful role and contribute constructively to policy formulation and evaluation. They should provide feedback on civil society's input.
- Introduce regular consultation with civil society in third countries on children's rights issues.

As regards the Commission's engagement with children in Europe, several initiatives have been taken. However in general, it is not considered meaningful in terms of how it is carried out and/or in terms of the impact the results have on policy development. No engagement with children has been undertaken in partner countries.

Recommendation:

- Ensure continued and intensified dialogue with stakeholders so that appropriate forms for child participation, relevant to both EU institutions and to children, can be defined, including identifying channels for children to influence EU decision-making. Mechanisms have to be put in place to ensure that children's input ends up with relevant EU policy and decision-makers and that adequate feedback is provided.

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The Project Governance fit for Children

This report is part of an overarching project across five European countries and the EU institutions. Save the Children has received financial support from the European Commission's Fundamental Rights and Citizenship Programme to carry out the project Governance fit for Children to assess how far the general measures of implementation of the UN Convention on the Rights of the Child (CRC) have been realised at European, national and community level.



The general measures of implementation of the Convention on the Rights of the Child (articles 4, 42 and 44.6) concern the structures and mechanisms which need to be in place if the whole of the CRC is to be implemented holistically.

The project focuses on the EU institutions and five European countries: Italy, Lithuania, Romania, Sweden and the United Kingdom.