

Using the UN Convention on the Rights of the Child to Implement Child Rights at the EU Level

Summary

In recent years, consideration by the EU institutions of children's issues has grown significantly. Some action has been targeted directly at children (eg. in relation to child protection, child poverty, and child migration), particularly where transnational issues are involved that cannot be resolved purely at Member State level. There is also increasing recognition that children may be negatively – and often disproportionately – affected by the impact of EU policies of which they are not the primary target (eg. in relation to employment, environmental policy).

Political commitment to addressing child rights at EU level has grown too and a first-ever Communication on Children was published in 2006. The Lisbon Treaty confirms the EU's obligation to promote the protection of children's rights in its internal and external action, emphasising children's rights in the context of EU activities. If the text of the Lisbon Treaty is ratified by the Member States, it will strengthen the legal basis for EU action in relation to children's rights in some areas, e.g. the possibility to adopt Directives in relation to combating the sexual abuse and exploitation of children. It should be noted that Article 6 of the Treaty of the European Union, which establishes an obligation to respect fundamental rights, encompasses child rights, and the European Court of Justice already has recognised that EU

measures must respect the rights of the child. While the Lisbon Treaty makes specific reference to the protection of children's rights in its objectives, it is thus not in and of itself the source of the obligation under EU law to respect children's rights.

Nevertheless a number of obstacles currently remain in developing a coherent EU approach: the legal bases for child policy within the existing EU Treaties are relatively limited; children's interests are fairly invisible at EU level; current action is fragmented and lacks co-ordination between directorates; opportunities for child participation are very restricted; and minimal resources are devoted to children directly from the EU budget.

The commitment to an EU Child Rights Strategy provides an opportunity to begin to address some of these obstacles. EURONET believes that guidelines produced by the Committee on the Rights of the Child on measures to implement the 1989 United Nations Convention on the Rights of the Child (UNCRC) provide a template which is relevant not only at Member State but also EU level. The Committee's Comment No.5 on 'General Measures of Implementation' (2003)¹ sets out the key cross-cutting measures required to implement all the rights in the

¹ General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), 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

Convention. Below we set out the components of this approach, and highlight some of the issues and core recommendations described in greater detail in the main paper:

Ratification of key human rights instruments and review of 'reservations'

The UNCRC has been ratified by all 27 EU Member States, however 18 have not as yet ratified the 'Optional Protocol on the sale of children, child prostitution and child pornography' and eight have not ratified the 'Optional Protocol on the involvement of children in armed conflict'. Many have also entered 'reservations' (unilateral statements by states limiting the domestic legal effect of certain provisions of the UNCRC) when ratifying or acceding to the Convention.

- *EU Member States should ratify both Optional Protocols to the UNCRC, and review and withdraw any reservations and declarations which they have entered into in relation to the UNCRC and/or its Optional Protocols.*
- *The EU should encourage universal ratification of the UNCRC and its optional protocol, as well as withdrawal from reservations as widely as possible in its external relations, and in relation to enlargement.*

Legislative measures

General Comment No. 5 sets out the need for a comprehensive review of legislation and administrative guidance to ensure full compliance with the Convention, recognizing both the importance of each article and the interdependence between articles. In 2005, the European Commission outlined its commitment to screening all Community proposals against fundamental rights, but it

is not clear that this process has been rigorously applied to the development of proposals that affect children – and when it has been applied, the analysis tends to underplay the child impact.

- *Existing and proposed EU legislation and policy affecting children should be reviewed on an ongoing basis, and should address both specific issues and the connections between them.*
- *When developing policy proposals, the European Commission should check compliance with the UNCRC as a priority, and also the Charter of Fundamental Rights and other relevant European and international human rights instruments*

Development of National Strategies or Action Plans

General Comment No. 5 urges governments to develop comprehensive national strategies rooted in the Convention. In 2008 the European Commission developed an 'Action Plan on Children in External Relations'. To date, no comparable overarching plan has been developed in relation to matters that are internal to the EU. Nevertheless, a range of EU policy initiatives exist which have a significant impact on children.

- *The EU Strategy on the Rights of the Child should be developed and adopted by the European Commission as soon as practically possible, and implementation scrutinized by the European Parliament.*
- *The development of an EU Strategy on the Rights of the Child should set out how the EU will address children's rights in a holistic manner and should be followed up with specific Action Plans for each Directorate General to implement it, identifying clear targets and monitoring their achievement. Child rights should also*

be addressed within the next work programme of the European Commission.

Policy coherence and mainstreaming

Government action should be co-ordinated to ensure effective implementation, and to make sure that children's issues are mainstreamed across all departments. At present at EU level, there are several existing structures within the European Commission to support development of child rights policy and strategy: a Child Rights Unit in DG JLS; a Commission Inter-Service Group on Children's Rights; an Inter-Institutional group; and the Commissioners Group on Fundamental Rights, Non-Discrimination and Equal Opportunities. In terms of linking with other stakeholders, there is also a European Forum on the Rights of the Child. Whilst it is important that these mechanisms are in place, their effectiveness needs to be improved. In the analogous area of gender equality there are some structures which mirror those on child rights, however they are better resourced and more visible.

- *The equivalent of the 'road maps' that exist in other policy areas, setting out commonly agreed objectives and targets to be implemented over a specified period should be developed for children's rights;*
- *The Inter-Service Group on Children's Rights should be properly resourced and co-ordinated, and should meet on a regular basis;*
- *The Commissioners Group on Fundamental Rights, Non-Discrimination and Equal Opportunities should be revitalized and should provide political impetus and support at a high level.*

Monitoring and reporting

Monitoring and reporting are essential

processes to ensure the accountability of EU actions for and to children. In order to ensure that all the provisions of the UNCRC – and in particular the 'best interests' of the child and non-discrimination – are respected in legislation, policy development and delivery, a continuous process of child impact assessment and evaluation is required. This should be built into government at all levels and as early as possible in the development of policy

- *The Commission should report on an annual basis to the European Parliament on progress in relation to children's rights; such reports should be debated in the Parliament and made widely available to the public. Conclusions should be forwarded to the EU institutions, EU Member States, the Council of Europe and UN bodies (including the Committee on the Rights of the Child). Child-friendly versions should be made available.*

Data-collection and indicators

The collection of disaggregated data on children is an essential part of implementation. Child participation is also important in identifying the issues that are most relevant to them and the data that should be collected. At EU level, the 2006 Communication on Children highlights that comparable data on child rights should be collected. Member States should facilitate collection of sufficient and accurate data in order to feed into comparative statistics.

- *The European Commission should seek to extend the mandate of Eurostat (the Statistical Office of the European Communities) to include a wider range of basic data regarding children (up to age 18), working with statistical offices in the Member States, and international partners*

Human and financial resources

Children should be visible in the economic and financial policies of the EU, through tracking the proportion of the budget spent on children, analyzing the impact of EU expenditure on children, and allocating specific resources for child rights.

- *The European Commission should make child rights a priority objective within relevant budgetlines, both those specifically targeted at children and other general budgetlines and programmes.*
- *The European Commission should carry out a child impact assessment each year of the proportion of the EU budget to be devoted to direct and indirect expenditure on children, and seek to increase this 'to the maximum extent of available resources' (Article 4, UNCRC)*
- *The European Commission should present a progress report every year on the human and financial resources available to implement the forthcoming EU child rights strategy, as set out in the 2006 Communication on Children.*

Training and capacity-building

The UNCRC Committee has emphasized the necessity of training and capacity-building for all those involved in the process of implementing child rights. Some training has been provided in recent years for Commission staff through a programme run by UNICEF and Save the Children.

- *The European Commission should identify the capacity and training needs of staff working on children's issues;*
- *The European Commission should ensure that systematic training in child rights is made available to all relevant officials on an ongoing basis, as stated in the 2006 Communication on Children. Training on child rights should also be made available to staff in the European Parliament and the Secretariat of the Council of Ministers.*

Co-operation with civil society

UNCRC implementation is an obligation for State Parties, but needs to engage all sectors of society (including professionals, families, communities, NGOs, and the private sector). It also needs to give due weight to children's views, in line with Article 12 of the UNCRC, and work with child- and youth-led organizations. The establishment of a 'European Forum for the Rights of the Child', including key stakeholders (including the Member States, UN agencies, the Council of Europe, the European Network of Ombudspeople for Children, and civil society) is a positive achievement. However experience so far suggests that the organisation and effectiveness of the Forum needs strengthening.

- *The European Forum on the Rights of the Child should involve children in an appropriate manner, taking into account recommendations from the Steering Group, the ad hoc child participation group and the views of children themselves*
- *The themes of the Forum on the Rights of the Child should reflect the outcomes of the Steering Group discussions, current issues on the EU/international agenda and have an appropriate balance between external and internal issues. The themes should take a rights-based approach, possibly adopting the UNCRC 'clusters of rights' in order to help determine the themes.*

International co-operation

The UNCRC emphasizes the importance of international co-operation in implementing the Convention. In recent years, progress has been made in mainstreaming child rights in the external policy of the EU.

- *The European Commission should continue to play an active role in promoting child rights in countries that are*

acceding (or are candidates to accede) to the EU, through the European neighbourhood policy, and in its wider external relations.

- *The EU institutions should further develop partnerships with international bodies (including UN organizations, the Council of Europe, academic institutions and civil society) to promote children's rights widely*

Child rights monitoring by independent institutions

There is a need for independent human rights institutions to monitor compliance and progress towards implementation of the UNCRC. There are a range of models of 'Ombudspersons' or 'Commissioners for Children' in different European countries. Their functions may include: publishing opinions, recommendations and reports on child rights issues; making recommendations on existing and proposed legislation; taking up violations of child rights and drawing the attention of governments to these; promoting harmonization of national law with the UNCRC and other international human rights instruments; contributing to monitoring and reporting processes; and giving a voice to children.

- *All Member States that have not yet established a national office of Ombudsperson or Commissioner for Children's Rights to do so.*

Information and awareness-raising about children's rights

The UNCRC requires State Parties to make the principles and provisions of the Convention widely known to adults and children, and this is recognized in the 2006 Communication on Children.

- *Key aspects of a European Commission communication strategy on*

the rights of the child should include the promotion of awareness raising activities and public information about what the EU's role in relation to child rights is, and what it is doing.

- *The European Commission should support efforts at Member State level to incorporate learning about the UNCRC and other human rights instruments into the school curriculum at all stages, and into the training of all those working with and for children.*

Conclusion

What is needed to take forward a 'child rights based approach' at EU level is an overarching, holistic EU Strategy on Children's Rights to bring all the disparate initiatives together and guide all the EU's efforts, both internally and externally, and across all institutions. Critically, this requires the full support of the Member States. There remains a long way to go if the EU is to develop and implement a child rights strategy effectively, nevertheless with sufficient political will and dedicated human and financial resources, the organizations endorsing this paper believe it is an attainable goal.