

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



# EU Framework of Law for Children's Rights

NOTE





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

# **EU Framework of Law for Children's Rights**

## **NOTE**

### **Abstract**

The briefing paper presents an overview of international and regional instruments for the rights of the child and of the European legal framework before and after the Lisbon Treaty. It provides an assessment of their impact for children's rights and puts forward key recommendations to consolidate the EU legal framework in this field.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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## LIST OF ABBREVIATIONS

<b>Charter</b>	The Charter of Fundamental Rights of the European Union
<b>CDDH</b>	Council of Europe Steering Committee for Human Rights ( <i>Comité Directeur pour les Droits de l'Homme</i> )
<b>CJEU</b>	Court of Justice of the European Union
<b>ECHR</b>	Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
<b>EU</b>	The European Union
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>ILO</b>	International Labour Organisation
<b>TEU</b>	Treaty on the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNICEF</b>	United Nations Children's Fund

## 1. EXECUTIVE SUMMARY

The aim of the present paper is to provide an overview of the EU situation with respect to the rights of the child. In recent years, the EU has adopted a number of important measures, with the Lisbon Treaty allowing for a major step forward. Article 24 of the Charter of Fundamental Rights of the European Union (the Charter) is now EU law. At the same time various EU policies and programmes on children's rights have been introduced, both within and outside the EU. These cover a wide spectrum of issues ranging from anti-discrimination, to health and safety of a child, and countering of child labour, trafficking and prostitution.

This analysis covers the possible effects of the new legal provisions introduced by the Lisbon Treaty regarding the realisation of these rights. In particular, the briefing paper explores which articles of the Lisbon Treaty could provide a legal foundation to adopt further legislative initiatives in favour of the realisation of the rights of the child.

Chapter 2 provides a brief overview of the legislation at the international and regional level. It finds that EU Member States have widely ratified international and regional conventions covering an extensive range of rights dedicated to the protection of children's rights and providing, as a result, strong protection at the national level. On the other hand, as the EU is not a party to those conventions, the EU institutions have not been legally bound to apply those instruments in their decision-making. Chapter 3 reviews initiatives at the European Union level geared at promoting children's rights before the entry into force of the Lisbon Treaty. Chapter 3 also provides an analysis of the new legal provisions relevant for the rights of the child due to the Lisbon Treaty, including the instruments and initiatives made on the basis of the Lisbon Treaty and the Charter of Fundamental Rights and their impact in the field. The entry into force of the Lisbon Treaty has integrated the protection of children's rights as an objective of the EU, requiring the EU institutions to take children's rights into consideration while adopting measures affecting them.

In Chapter 4, the paper provides an analysis comparing children's rights guaranteed by international instruments to EU legal instruments on the rights of the child, finding that the EU legal framework remains limited in scope compared to international standards. Finally, Chapter 5 recommends to step up efforts to mainstream children's rights into EU policy-making and to enhance the Parliament's role as advocate for the rights and best interests of children. It also recommends adopting measures such as impact assessment, monitoring, reporting, allocation of resources and better coordination between EU institutions and Member States. Other key recommendations to reinforce the rights of children in Europe include for the EU to apply the ordinary legislative procedure on matters related to the protection and promotion of children's rights; to propose new legislation reflecting recent developments in the field; to declare its commitment to the United Nations Convention on the Rights of the Child; and to use impact assessment to help ensure that EU actions positively affect children.



## 2. INTRODUCTION

The European Union's (EU) approach towards children's rights protection has evolved throughout the years, influenced by the pace of European integration, the development of the concept of European citizenship, demographic change and the EU enlargement. Until the 1990s, the issue of children's rights was less relevant for the EU agenda and the EU had a rather limited competence in the field of fundamental rights. For the past decade, children's rights have gradually taken on increased importance thanks to new competences acquired by the EU in this field.

Today, with the emergence of the social agenda, the growing concern for poverty and the particular risks that children face as well as the awareness of the overriding importance of robust fundamental rights protection, the rights of the child have arrived at the forefront of European policies in the last decade. The Lisbon Treaty has incorporated children's rights in the Treaty on the European Union (TEU). As a result all EU policies must be designed and implemented in line with the child's best interests. Thus, the rights of the child now constitute an integral part of fundamental rights which the EU and Member States are bound to respect by virtue of European and international law.

Legally, the most significant recent development at European level is the entry into force of the Lisbon Treaty which establishes among the aims of the Union the 'protection of the rights of the child' (Article 3) and whereby the European Charter of Fundamental Rights (the Charter) became binding. In accordance with Article 24 of the Charter, children now 'have the right to such protection and care as is necessary for their well-being'; their best interests must be a primary consideration in 'all actions relating to children, whether taken by public authorities or private institutions'; and every child has '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'.

From a policy perspective, the 2011 Commission Communication 'An EU Agenda for the Rights of the Child' points to 11 actions 'to step up efforts in protecting and promoting the rights of children' including for a child-friendly justice.<sup>1</sup>

Finally, steps have also been undertaken from an operational point of view with initiatives such as the creation of an Alliance for Children to promote the mainstreaming of children's rights in the European Parliament legislative procedures. The European Union institutions have also joined in the battle against sexual abuse of children and child pornography with a legislative proposal on sexual abuse and exploitation of children, and the launch of 'operation Icarus', a crackdown action targeting online child sex abuse file-sharing networks. The operation carried out in 2011 by law enforcement agencies from 26 Member States and coordinated by Europol, led to the arrest of 112 suspects across 22 European countries.

This briefing paper reviews the rights of the child at the international level and within the EU before and after the Lisbon Treaty. It then looks at the capacity of the existing instruments to facilitate children's rights and makes a number of recommendations for future EU actions. The Annex provides a brief guide to the relevant international and EU instruments and their provisions for the protection of children's rights.

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<sup>1</sup> European Commission (2011), *Communication from the Commission to 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, 14.

## 3. THE RIGHTS OF THE CHILD AT INTERNATIONAL LEVEL

### KEY FINDINGS

- The United Nations Convention on the Rights of the Child (UNCRC) covers a wide range of rights for children, from civil rights to socio-economic rights.
- The EU is not a party to UNCRC.
- The International Labour Organisation (ILO) Conventions aim towards the effective abolition of child labour and the setting of a minimum age for employment.
- The Council of Europe's European Social Charter guarantees social and economic rights including for children.
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) protects and promotes key fundamental rights applicable to children.
- The EU Member States have ratified the key international conventions on the rights of the child.
- Future accession of the EU to the ECHR could reinforce the legal framework for the protection of the rights of children in the EU.

### 3.1. The United Nations System

Within the United Nations (UN) system, a number of measures address the rights of children.<sup>2</sup>

The **United Nations Convention on the Rights of the Child** (UNCRC)<sup>3</sup> with its two Optional Protocols is the cornerstone instrument promoting children's rights at the international level. The Convention lays down social, civil, economic, and political standards for the protection of children's rights. It contains a set of rules and principles that guide its signatories to develop a comprehensive and coherent framework reflecting child-specific rights. It also provides for a general definition of a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.

The Convention requires **policy and law makers to ensure that the best interests of children are the primary consideration in all actions that may affect them**. It covers aspects related to the promotion and protection of children such as:

- non-discrimination (Article 2)
- consideration of the best interests of the child in policy-making (Article 3)
- right to life (Article 6)
- right to grow up in a family context (Articles 5, 9 and 18)
- right to be heard (Article 12)
- protection from abuse and neglect (Article 19)
- right to alternative care for out-of-home children and adoption (Articles 20 and 21)

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<sup>2</sup> The UN specialised agency for children is UNICEF, mandated by the United Nations General Assembly 'to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential'. For further information see the UNICEF website at <http://www.unicef.org>.

<sup>3</sup> United Nations Convention on the Rights of the Child adopted by UN General Assembly Resolution 44/25 of 20 November 1989, available at <http://www2.ohchr.org/english/law/crc.htm>, (15 February 2012).

- protection from torture and exploitation (Articles 36 and 37)
- right to a fair trial in the judicial context (Article 40)
- freedom of expression, thought, conscience and religion (Articles 13 and 14)
- right to the enjoyment of the highest attainable standard of health (Article 24)
- right to education (Articles 28 and 29)

All EU Member States have ratified the Convention; however the EU is not a party.<sup>4</sup> The European Commission recently stated that the 'standards and principles of the UNCRC must continue to guide EU policies and actions that have an impact on the rights of the child'.<sup>5</sup> In addition, the Court of Justice of the European Union (CJEU) has expressly recognised the need to respect children's rights and requires EU law to take due account of the UNCRC.<sup>6</sup> All the Member States have signed the Convention's two additional Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, but the EU has not.<sup>7</sup>

The UN General Assembly recently adopted a third Optional Protocol to the Convention on the Rights of the Child on a communications procedure which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two Optional Protocols.<sup>8</sup> The new Optional Protocol opened for signature on 28 February 2012.<sup>9</sup>

Other UN Conventions also contain provisions relevant to the protection of children's rights. For example, Article 7 of the **Convention on the Rights of Persons with Disabilities** refers specifically to children with disabilities; requiring States (1) to adopt measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children, (2) to have the best interests of the child as a primary consideration in all actions concerning children with disabilities, and (3) to ensure that children with disabilities have the right to express their views freely on all matters affecting them, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. The **Convention on the Elimination of All Forms of Discrimination Against Women** also explicitly takes into account the rights of children in a number of provisions related to family rights and child-care. For example, Article 16 provides for the rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, taking into account the interests of the children.

<sup>4</sup> The UNCRC is open for signature and accession to States only, although the EU could bind itself to its provisions through unilateral declaration or the conclusion of an accession Protocol.

<sup>5</sup> European Commission (2011), *Communication from the Commission to 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, 3.

<sup>6</sup> E.g., case C-540/03, *European Parliament v Council of the European Union* [2006] ECR 5769, 37.

<sup>7</sup> The Czech Republic, Ireland and Finland have signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography but they have not yet ratified it. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict has been signed and ratified by all 27 EU Member States.

<sup>8</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure adopted at the sixty-sixth session of the United Nations by resolution 66/138 of 19 December 2011 and open to signature. For more information see Office of the High Commissioner for Human Rights, *Children empowered to complain about rights violation under new UN protocol*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11732&LangID=E>, (21 February 2012) and UN Treaty Section announcements and events available at <http://treaties.un.org>, (21 February 2012).

<sup>9</sup> According to Article 19, the Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

The **Universal Declaration of Human Rights**<sup>10</sup> (UDHR) and the **two International Covenants**<sup>11</sup> cover rights that are directly relevant to children. For example, Article 25 of the UCHR declares that motherhood and childhood are entitled to special care and assistance. Article 10 of the International Covenant on Economic, Social and Cultural Rights guarantees the right to protection and assistance to the family and to all children and young persons without any discrimination, and the right of children and young persons to be protected from economic and social exploitation. Article 24 of the International Covenant on Civil and Political Rights provides for the right of every child to protection without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth; the right to be registered immediately after birth and to have a name; and the right to acquire a nationality.

Another relevant UN instrument is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (so called **Palermo Protocol**), supplementing the United Nations Convention against Transnational Organized Crime. The Convention establishes a definition on trafficking in persons, adding that 'the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons'.<sup>12</sup> The Convention aims to facilitate the establishment of domestic criminal offences, international cooperation in investigating and prosecuting human trafficking cases, as well as to ensure the protection of rights of victims of trafficking, with a special focus on women and children. The EU and all its Member States are parties to the Protocol.

Still in the context of the UN system, the **International Labour Organisation** (ILO) is another forum that has contributed to the development of the legal framework for children's rights. It is important to note that all EU Member States are also ILO members and that all ILO members have an obligation arising from the very fact of membership in the Organisation to respect, promote and realise the principles concerning such fundamental rights. The ILO was the first international organisation to enact international legal provisions for the protection of children in the working context, in 1919.<sup>13</sup> However, the most notable ILO effort relating to children's rights is the adoption of two 'core' Conventions aimed at abolishing child labour. These are the 1973 Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182) adopted in 1999.<sup>14</sup> All EU Member States have ratified these instruments. The Conventions prohibit the employment of a child below a certain 'minimum age' and the worst forms of labour for all persons under 18 years of age, including:

- all forms of slavery or similar practices, such as the sale and trafficking of children
- the use, procuring or offering of a child for prostitution or for the production of pornography

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<sup>10</sup> Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on 10 December 1948 (General Assembly resolution 217 A (III)).

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 3 January 1976; International Covenant on Civil and Political Rights adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976.

<sup>12</sup> Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; more information on the Convention against Transnational Organized Crime and its Protocols available at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>, (29 February 2012).

<sup>13</sup> E.g. ILO Convention on the Hours of Work in Industry, 1919; Convention on Night Work, 1919; Convention on Minimum Age in Industry, 1919; Convention on Night Work of Young Persons in the Industry, 1919; Convention on Minimum Age in the Sea, 1920; Convention on Minimum Age in Agriculture, 1921; and so on.

- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children
- forced recruitment of children in armed conflict and
- the use, procuring or offering of a child for illicit activities

Lastly, the ILO Declaration on Fundamental Principles and Rights at Work, which expresses the commitment by governments, employers and workers' organisations to uphold basic fundamental rights, includes the effective abolition of child labour among its aims.<sup>15</sup>

The UN level measures play a major role in protecting the rights of children and have influenced the development of EU and national measures geared towards that purpose.

### 3.2. The Council of Europe

Various instruments have been developed to protect children's economic and social rights under the auspices of the Council of Europe.<sup>16</sup>

The revised **European Social Charter**<sup>17</sup> contains specific provisions related to children, including Article 7 on the right of children and young persons to protection and Article 17 on their right to social, legal and economic protection. Other provisions of the European Social Charter guarantee rights relevant to children, such as:

- the right of the family to social, legal and economic protection
- the right of migrant workers and their families to protection and assistance
- the right to education
- the right to protection of health<sup>18</sup>

Moreover, the Council of Europe has drafted and/or supported the signature of several other binding instruments relevant to children's rights which are mentioned below.

The **European Convention on the Exercise of Children's Rights**<sup>19</sup> is a major instrument containing provisions aimed at protecting the best interests of children and promoting their rights, in particular in family proceedings before judicial authorities. It provides a number of measures to allow children to exercise their procedural rights.<sup>20</sup>

Furthermore, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,<sup>21</sup> the European Convention on the Repatriation of Minors<sup>22</sup> and various

<sup>14</sup> ILO Convention No. 182 on the worst forms of child labour, adopted on 17 June 1999 and ILO Convention No. 138 on the minimum age for admission to employment and work, adopted on 26 June 1973.

<sup>15</sup> ILO Declaration on Fundamental Principles and Rights at Work, June 1988, available at: <http://www.unhcr.org/refworld/docid/425bbdf72.html>, (21 February 2012).

<sup>16</sup> The Council of Europe consists of 47 members including all the 27 EU Member States, more information available at <http://www.coe.int/aboutcoe/index.asp?page=47pays1europe>, (15 February 2012).

<sup>17</sup> Council of Europe, European Social Charter (revised), CETS No. 163, adopted on 3 May 1996.

<sup>18</sup> All EU Member States have signed the European Social Charter. However, the Czech Republic, Denmark, Germany, Greece, Latvia, Luxembourg, Poland, Spain and the United Kingdom have not yet ratified it.

<sup>19</sup> Council of Europe, European Convention on the Exercise of Children's Rights, CETS No. 160, adopted on 25 January 1996.

<sup>20</sup> Only Austria, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Latvia, Poland and Slovenia have ratified the Convention on the Exercise of Children's Rights.

<sup>21</sup> Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No. 201, adopted on 25 November 2007.

conventions regarding family life, in particular on the adoption and custody of children, have been adopted under the Council of Europe's leadership to promote and protect children's well-being.<sup>23</sup> Finally, the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, seeks to enhance children's access to and treatment in justice.<sup>24</sup>

Further to the Council of Europe Third Summit of Heads of State, the programme "**Building a Europe for and with children**" has been established to ensure the promotion of children's rights and the protection of children from violence.<sup>25</sup> The programme set a strategy aimed at promoting the mainstreaming of children's rights focused on specific objectives including children's access to justice, the eradication of all forms of violence against them, the participation of children and their influence in society, as well as a special focus on vulnerable children such as children with disabilities or without parental care.<sup>26</sup>

The **Convention for the Protection of Human Rights and Fundamental Freedoms**, most commonly known as the European Convention on Human Rights (ECHR), is the Council of Europe's cornerstone fundamental rights instrument. While it does not make explicit reference to children's rights, its provisions apply to children and several rights guaranteed by the convention are relevant to children:

- right to life (Article 2)
- prohibition of torture (Article 3)
- prohibition of slavery and forced labour (Article 4)
- right to liberty and security (Article 5)
- right to a fair trial (Article 6)
- respect for private and family life (Article 8)

**The European Court of Human Rights** has also participated in developing legal protection for children. In particular, it has issued a number of judgments on the interpretation of the ECHR, in which it has condemned violence against children on the basis of the right to life, prohibited torture, slavery and forced labour, and upheld the obligation to ensure the right to liberty and security, the right to a fair trial, and respect for private and family life.<sup>27</sup>

The impetus on children rights has largely come from these internationally led measures and legal instruments. At the level of the EU, the entry into force of the Lisbon Treaty recognises the importance of fundamental rights, including children's rights, on the EU agenda. Of particular importance is the requirement of Article 6 of the Treaty on the

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<sup>22</sup> European Convention on the Repatriation of Minors CETS No. 071, adopted on 28 May 1970.

<sup>23</sup> European Convention on the Legal Status of Children born out of Wedlock CETS No. 085, adopted on 15 November 1975; European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children CETS No. 105, adopted pm 20 May 1980; the revised European Convention on the Adoption of Children CETS No. 202 adopted on 27 November 2008.

<sup>24</sup> Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*, 17 November 2010, 1098<sup>th</sup> meeting.

<sup>25</sup> Council of Europe programme Building a Europe for and with children, available at [http://www.coe.int/t/dg3/children/BriefDescription/Default\\_en.asp](http://www.coe.int/t/dg3/children/BriefDescription/Default_en.asp), (1 March 2012).

<sup>26</sup> Council of Europe (2008), *Building a Europe for and with children – 2009-2011 strategy*, available at [http://www.coe.int/t/dg3/children/News/200911Strategy\\_en.asp](http://www.coe.int/t/dg3/children/News/200911Strategy_en.asp), (1 March 2012).

<sup>27</sup> E.g. *E.B. v France* [2008] ECHR 43546/02 (22 January 2008); *Siliadin v France*, Judgment, merits and just satisfaction, App. No. 73316/01; IHRL 2866 (ECHR 2005); *Sahin v Germany*, (30943/96) [2003] ECHR 340; *T and V v UK* [1999] ECHR 171 (16 December 1999).



European Union (TEU) for the **EU to accede to the ECHR**. In 2010, the EU Justice Ministers gave the European Commission the mandate to negotiate with the Council of Europe Steering Committee for Human Rights (CDDH) to elaborate the necessary legal instrument. Official talks started on 7 July 2010 and will lead to an accession agreement.<sup>28</sup> The accession of the EU to the ECHR will enter into force only with the ratification of the agreement by all State Parties of the ECHR and the EU itself.<sup>29</sup>

## 4. THE RIGHTS OF THE CHILD IN THE EU BEFORE AND AFTER THE LISBON TREATY

### KEY FINDINGS

- Before the entry into force of the Lisbon Treaty, children's rights were only addressed as part of the general Treaty obligation to respect fundamental rights.
- Furthermore, the EU had already adopted a number of measures aiming at children's protection as well as a targeted EU policy strategy.
- The entry into force of the Lisbon Treaty explicitly provides for the protection of children's rights as an objective of the EU (Article 3 TEU) and integrates the Charter into the EU legal framework.

### 4.1. The Rights of the Child in the EU before Lisbon

The EU's approach towards the protection of children's rights has evolved through the years from an economic integration approach towards the development of the concept of a shared area of freedom, security and justice. The EU has a long-standing tradition of promoting human rights. The Maastricht Treaty, in 1992, introduced **the obligation for the EU to respect fundamental rights in its policies and actions**.<sup>30</sup>

Independently of its legal status before the Lisbon Treaty, the EU has developed various tools on the protection of children based on Article 6(2) of the TEU, the ECHR, and the provisions of the UNCRC and, since its proclamation in 2000, the Charter of Fundamental Rights. These tools include legal instruments, best practices, guidance documents, policy actions and financial assistance to political dialogue within and outside the EU covering issues such as violence, human trafficking, discrimination, poverty, labour, health and education.<sup>31</sup>

Before the Lisbon Treaty, EU actions in the field depended on a three pillars division where children protection fell predominantly under the so-called third pillar relating to police and judicial cooperation in criminal matters.<sup>32</sup> As a result, EU competence was of lesser extent,

<sup>28</sup> Both the European Court of Justice (the EU institutions which rules on preliminary rulings references, actions for failures to fulfil obligations under EU law, actions for annulment and failure to act) and the European Court of Human Rights (the Council of Europe body which settles on individual or State applications for violations of rights set in the ECHR) will be given the opportunity to submit an opinion on the agreement, which must then be adopted unanimously by the Council after approval by the European Parliament, and the Council of Europe Committee of Ministers.

<sup>29</sup> More information on the EU accession to the European Convention on Human Rights available at <http://www.coe.int/lportal/web/coe-portal/what-we-do/human-rights/eu-accession-to-the-convention>, (7 February 2012); 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).

<sup>30</sup> Article F.2 of the TEU (Maastricht numeration).

<sup>31</sup> For a full overview of measures adopted at EU level: European Commission, *Communication from the Commission: Towards an EU Strategy on the Rights of the Child*, COM(2006) 367 and European Commission (2006) *Staff Working Document Accompanying the Communication from the Commission 'Towards an EU Strategy on the Rights of the Child'*, SEC(2006) 889.

<sup>32</sup> More information on the three pillars system available at:

with the ability to act only based on intergovernmental cooperation, which had a lower legally binding force on Member States than regulations based on the former first pillar.

EU legislation in other sectors has also had a major impact on the protection of children. Such is the case of **Directive 2009/48/EC (Toys Directive)** on the safety of toys. While drafted in the field of consumer protection, the Directive aims to ensure a high degree of protection for all children playing with toys. The Directive sets out harmonised safety requirements for all toys on sale and significantly improves the protection afforded to their users, by taking account of the latest developments in international standards that are crucial for children's well-being.

Another example is **Directive 2004/38/EC (Citizenship Directive)** on the rights of citizens of the Union, which grants EU citizens and their family members a fundamental right to move and reside freely within the territory of the Union. The Directive also affects the rights of the child in that it contains, *inter alia*, specific provisions aimed at ensuring a greater degree of integration of the Union's citizens and their family members (including children). In this respect, it provides a better definition of the status of family members and limits the scope for refusing entry and grants greater protection against expulsion.<sup>33</sup>

Similarly, **Directive 2002/22/EC (Universal Service Directive)** has been amended to introduce an obligation for Member States to reserve the number '116000' and to ensure the availability on their territory of a service for reporting missing children as well as to provide adequate information to the public on the existence and use of services provided by the missing children hotline number.<sup>34</sup> Consumer protection and EU citizenship fell under the former 'European Communities' first pillar. As a result, the Directives were adopted in accordance with the EU's legislative procedures and have legally binding force.

Children's rights have also been the focus of the **EU's external action**.<sup>35</sup> The EU Guidelines for the Promotion and Protection of the Rights of the Child and the EU Guidelines on Children and Armed Conflict serve as a basis for the EU commitments relating to children in the framework of EU relations with non-EU countries and international and regional organisations. The promotion and protection of fundamental rights is also an important element of the pre-accession assistance and the European Neighbourhood Policy Actions Plans.<sup>36</sup> On the basis of EU guidelines, the Union engages in human rights dialogues with about 30 countries, including neighbourhood and accession countries.<sup>37</sup> For example, research has shown that, in Romania, where child protection was a key issue on the negotiation agenda, the EU accession process led to positive change for children.<sup>38</sup>

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[http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/lisbon\\_treaty/ai0020\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm), (1 March 2012).

<sup>33</sup> Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU countries of 29 April 2004 (Citizenship Directive) OJ L 120, 24 April 2004; Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (Toy Directive) OJ L 170, 30 June 2009.

<sup>34</sup> Directive 2002/22/EC has been amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 to incorporate the obligation to set the '116000' number.

<sup>35</sup> European Commission (2008), *A Special Place for Children in EU External Action*, COM(2008) 55.

<sup>36</sup> See Council of the European Union Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance; European Commission (2011), *Joint Communication by the High Representative of the Union For Foreign Affairs And Security Policy and the European Commission: A New Response to a Changing Neighbourhood A review of European Neighbourhood Policy*, COM(2011) 30.

<sup>37</sup> EU guidelines on human rights dialogues with third countries (2009), initially adopted by the Council in 2001 and its update adopted on 19 January 2009, available at:

[http://europa.eu/legislation\\_summaries/human\\_rights/human\\_rights\\_in\\_third\\_countries/r10115\\_en.htm](http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/r10115_en.htm).

<sup>38</sup> Save the Children (2011), *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 9.



### The European Commission

In 2006, the Commission issued a Communication called '**Towards an EU Strategy on the Rights of the Child**', in which it noted that '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' and, taking into consideration Member States' own competences, 'to take specific positive action to safeguard and promote children's rights'.<sup>39</sup> The Communication served as a policy plan to promote and safeguard children's rights in its internal and external actions, as well as supporting EU Member State efforts in addressing children's rights issues. The Communication refers to the obligation to respect children's rights under international treaties and Article 24 of the then not yet into force<sup>40</sup> European Charter of Fundamental Rights. It provides specific objectives for the EU strategy on children's rights:

- maximise the use of existing policies and instruments while addressing urgent needs
- identify the main priorities for EU future action
- mainstream children's rights in EU actions
- establish efficient coordination and consultation mechanisms among the main stakeholders
- enhance capacity and expertise on children's rights
- communicate more effectively on children's rights
- promote the rights of the child in external relations<sup>41</sup>

The accompanying Commission Staff Working Document provides an inventory of EU actions affecting children's rights until the 2006 Commission Communication.<sup>42</sup>

The Commission also contributed to improving children's health in adopting an EU Environment and Health Strategy, the 'SCALE initiative', with a particular focus on the health of children and the promotion of the UNCRC children's right to 'best achievable health'.<sup>43</sup>

### The European Parliament

The **European Parliament** has been active in promoting children's rights as co-legislator and through policy initiatives. In addition to instruments such as the Declaration of the European Parliament on combating trafficking in children,<sup>44</sup> the European Parliament adopted a series of resolutions promoting the protection of children ranging from child trafficking and child soldiers, to the exploitation of children in developing countries, with a special focus on child labour, strategies to prevent the trafficking of women and children

<sup>39</sup> European Commission, *Towards an EU Strategy on the Rights of the Child*, COM(2006) 367, 3.

<sup>40</sup> The Charter became directly enforceable with the Lisbon Treaty on December 2009, becoming then legally binding for all 27 Member States and the EU institutions. Nevertheless, the Charter was used before its entry into force as a text of reference and a shared basis for EU standards in the area of fundamental rights.

<sup>41</sup> European Commission, *Communication from the Commission: Towards an EU Strategy on the Rights of the Child*, COM(2006) 367.

<sup>42</sup> European Commission (2006) *Staff Working Document Accompanying the Communication from the Commission 'Towards an EU Strategy on the Rights of the Child'*, SEC(2006) 889.

<sup>43</sup> European Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - A European Environment and Health Strategy*, COM(2003) 338.

<sup>44</sup> Declaration of the European Parliament on combating trafficking in children of 21 October 2008.

who are vulnerable to sexual exploitation, migrant children left behind in the country of origin and regarding the education the children of migrants.<sup>45</sup>

In line with the Commission Communication, the European Parliament adopted a resolution 'Towards an EU strategy on the rights of the child' setting priorities for the EU strategy on the rights of the child, namely violence; poverty/discrimination; child labour; children of immigrants, asylum seekers and refugees; right of the child to information and education; health; birth registration; children in armed conflict; and children and democracy.<sup>46</sup>

Examples of European Parliament initiatives include: (1) the European Parliament Mediator for International Parental Child Abduction created in 1987 as an alternative dispute resolution platform to help children of binational parents who have been abducted by one of the parents, and (2) the European Parliament hearing on Rights of Children of 19 April 2007 to discuss a long term strategy on the rights of children.<sup>47</sup>

On the initiative of the Commission and in co-decision with the Council, the European Parliament has established new programmes participating to further protection of children, such as the programme of Community action in the field of public health (2003-2008), which includes an important component on the health of children and young people. Another such initiative adopted by the Parliament and the Council are the Daphne Programmes I, II and III aiming at promoting actions to combat violence against children, young people and women, following the Commission success with its predecessor: the Daphne Initiative. Daphne I started in 2000, Daphne II (2004-2008) continued the work of Daphne I to prevent and combat all types of violence against children, young people and women extending to EFTA/EEA and EU candidate countries, and Daphne III (2007-2013) adds to the previous goals the further objective to attain a high level of health protection, well-being and social cohesion.<sup>48</sup> For 2012, the Commission has proposed a budget of €17.955.000 for this programme, with focus on the rights of victims of violence, violence linked to harmful practices, children as victims and perpetrators of violence, perpetrator programmes and interventions, training programmes for professionals in contact with victims, and empowerment work at grass-roots level.<sup>49</sup>

### The Council of the European Union

In the area of health, the **Council of the European Union** (the Council) adopted a 2007 Recommendation on the prevention of injuries and the promotion of safety targeting seven groups, including children and adolescents. The Recommendation called for combined actions between the Commission and the Member States to develop a European

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<sup>45</sup> European Parliament resolution of 3 July 2003 on child trafficking and child soldiers; European Parliament resolution of 5 July 2005 on the exploitation of children in developing countries, with a special focus on child labour; European Parliament resolution of 17 January 2006 on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation; European Parliament resolution of 12 March 2009 migrant children left behind in the country of origin; European Parliament resolution of 2 April 2009 on educating the children of migrants.

<sup>46</sup> European Parliament resolution of 16 January 2008 'Towards an EU strategy on the rights of the child'.

<sup>47</sup> More information on the European Parliament Mediator for International Parental Child Abduction available at <http://www.europarl.europa.eu/aboutparliament/en/000c205a13/Child-abduction-mediator.html>, (6 March 2012); More information on the Parliament hearing on Rights of Children available at: [http://www.europarl.europa.eu/hearings/20070417/libe/summary\\_en.pdf](http://www.europarl.europa.eu/hearings/20070417/libe/summary_en.pdf), (6 March 2012).

<sup>48</sup> European Commission Brochure (2005), *The Daphne Experience. – 1997-2003*, available at: [http://ec.europa.eu/justice\\_home/daphnetoolkit/files/others/daphne\\_experience/daphne\\_experience\\_en.pdf](http://ec.europa.eu/justice_home/daphnetoolkit/files/others/daphne_experience/daphne_experience_en.pdf), (6 March 2012); more information on Daphne III Funding Programme available at: [http://ec.europa.eu/justice/grants/programmes/daphne/index\\_en.htm](http://ec.europa.eu/justice/grants/programmes/daphne/index_en.htm), (6 March 2012).

<sup>49</sup> DAPHNE Annual Work Programme 2012, available at: <http://ec.europa.eu/justice/newsroom/files/daphnewp2012.en.pdf>, (6 March 2012).

surveillance system for more efficiency in decisions on injury prevention and the elaboration of national action plans on injury prevention and safety promotion.<sup>50</sup>

Other Council instruments promoting children's protection include the Council recommendation on the protection of minors and human dignity, and the recommendation on the prevention of smoking and on initiatives to improve tobacco control with specific provisions on the prevention of tobacco sales to children and adolescents; the Council Resolution on unaccompanied minors who are nationals of third countries, and **Directive 94/33/EC on the protection of young people at work**, adopted with the purpose of ensuring that young people are protected against economic exploitation and against any work likely to harm their safety and health or development or to jeopardise their education.<sup>51</sup>

Under the Council's auspices, the EU has also developed **guidelines** promoting the rights of the child: the Guidelines on the Promotion and Protection of Children's Rights,<sup>52</sup> focusing on combating all forms of violence against children.

### The Court of Justice of the European Union

Finally, the **CJEU** has recognised the importance of the protection of children through its decisions.<sup>53</sup> It did so basing its judgments on reasoning that referred to the Charter of Fundamental Rights (at that time not yet entered into force), the UNCRC, the International Covenant on Civil and Political Rights, but also in accordance with Member States' right to take necessary measures for the protection of young persons pursuant to a number of Community law instruments, such as Directive 2000/31 on electronic commerce.<sup>54</sup> In *Dynamic Medien Vertriebs GmbH v Avides Media AG*, the Court stated that 'the protection of the child is a legitimate interest which, in principle, justifies a restriction on a fundamental freedom guaranteed by the EC Treaty, such as the free movement of goods'.<sup>55</sup>

### Other EU Bodies

The **European Forum for the Rights of the Child** is an example of an EU body established for the promotion and respect of children's rights.<sup>56</sup> The Forum was set up as a permanent group following the adoption of the Commission Communication 'Towards an EU

<sup>50</sup> Council Recommendation of 31 May 2007 on the prevention of injury and the promotion of safety, OJ C 164, 18.7.2007.

<sup>51</sup> Council of the European Union Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (OJ L 270, 7.10.1998, p. 48); Council of the European Union Recommendation 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control; Council of the European Union Resolution on unaccompanied minors who are nationals of third countries, 26 June 1997, 97/C 221/03; Council Directive 94/33/EC on the protection of young people at work (OJ L 216, 20.8.1994, p. 12).

<sup>52</sup> EU Guidelines for the Promotion and Protection of the Rights of the Child (2007), approved by the Council on 10 December 2007, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>, (8 February 2012).

<sup>53</sup> The following list includes some notable decisions in the field of the protection of children's rights and illustrates the gradual progress of the Courts' developments in the area: C-491/10 PPU, *Aguirre Zarraga v Pelz* 22 December 2010; Case C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)*, 8 March 2011; C-497/10 PPU, *Mercredi v Chaffe*, 2010; C-400/10 PPU, *J.McB v L.E.*, 5 October 2010; C-211/10 PPU, *Doris Povse v Mauro Alpago*; Case C-256/09, *Purrucker v Pérez*.

<sup>54</sup> *Dynamic Medien Vertriebs GmbH v Avides Media AG*, C-244/06, 14 February 2008, paragraph 41; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

<sup>55</sup> *Ibid.* paragraph 42.

<sup>56</sup> European Forum on the Rights of the Child, available at [http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index_en.htm), (8 February 2012).

Strategy on the Rights of the Child'. It has met and issued reports annually since 2007, to promote children's rights in the EU's internal and external actions. The Forum plays an advisory role towards EU institutions and provides a platform for the exchange of information. It convenes representatives of Member States, the permanent intergovernmental group "l'Europe de l'Enfance", the inter-institutional "European Network of National Observatories on Childhood" (ChildONEurope), UN agencies, the Council of Europe, civil society and children themselves to "contribute to the design and monitoring of EU actions. It also acts as an arena for the exchange of good practice".<sup>57</sup> Since it first convened in June 2007, the Forum has focused on the exploitation of children, sexual offences against children, child pornography, social exclusion and poverty, child participation, and data collection in the field of child-friendly justice and produced reports.<sup>58</sup> Unlike its gender equality counterpart, the European Women's Lobby, the Forum is yet to become a catalyst for children's rights in the European Union. Effective use or integration in decision-making of the outcomes of the Forum's meetings is not evident, yet.

With the entry into force of the Lisbon Treaty, the EU has gained a specific legal foundation to protect children's rights. The next section discusses the impact of this new legal framework.

## 4.2. Impact of the Lisbon Treaty on the Competence of the EU in this Area

### 4.2.1. Lisbon Treaty

With the adoption of the Lisbon Treaty, the protection of the rights of the child has been expressly recognised as one of the leading objectives of the EU both internally and in its relations with the wider world. Children's rights have found a statutory footing in **Article 3 of the Treaty on European Union (TEU)** which requires the EU to promote the protection of the rights of the child. It further adds that 'in its relations with the wider world' the Union must contribute to the protection of fundamental rights, in particular the rights of the child. In addition, **Article 2 TEU** includes the respect for fundamental rights as a core value of the EU.

Other notable provisions are: **Article 21 TEU** which establishes human rights and fundamental freedoms as guiding principles of EU action on the international scene, creating the obligation for the EU to consolidate and support human rights in its policies; **Article 6 TEU** which requires the EU to accede to the ECHR as previously mentioned; **Article 79 TFEU** which provides that the European Parliament and the Council shall adopt measures combating trafficking in persons, in particular women and children; and **Article 83 TFEU** which offers the possibility for the European Parliament and the Council to legislate on various crimes including the trafficking in human beings and sexual exploitation of women and children.

The Lisbon Treaty contributes to reinforcing the capacity of the EU to safeguard children's rights, notably through the legal recognition of the Charter. Both instruments provide a more visible and explicit recognition of the EU commitment to protect children's rights. As a result of the abolishment of the pillars system, the Lisbon Treaty further strengthens EU

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<sup>57</sup> Ibid, 8.

<sup>58</sup> This was addressed at the last meeting held in Brussels on 23<sup>rd</sup> of November 2011. No meeting so far has been dedicated to the condition of migrant and asylum seeking children. See Drywood, E. (2011), 'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, *International Journal of Children's Rights* 19, 418-419.

legal capacity to promote the rights of the children, notably thanks to the shared competence of the EU in area of freedom, security and justice.<sup>59</sup> Lastly, **Article 216 of the TFEU** enables the EU to conclude international conventions within the framework of its policies or one of the EU's objectives, allowing for the EU to sign international human rights instruments or to accede to existing children's rights conventions through the conclusion of a Protocol.

The entry into force of the Lisbon Treaty also marks the incorporation of **the Charter of Fundamental Rights of the European Union** (the Charter) as part of the EU legal framework, on the basis of Article 7 TEU. It became directly binding on all EU institutions and Member States on 1 December 2009. The Charter enshrines the rights of the child, in particular in **Article 24**:

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 Charter establishes specific rights relevant to children, such as **Article 14** establishing a right to education and **Article 32** prohibiting child labour and providing guarantees for the protection of young people at work.

The Charter establishes that **EU policies directly or indirectly affecting children must be designed, implemented and monitored taking into account the principle of the best interests of the child**. The EU must guarantee the right to such protection and care as is necessary for the well-being of children, in particular the need to protect children from abuse, neglect and violations of their rights, and situations which endanger their well-being.<sup>60</sup>

Concretely, the Charter requires a legal review of European law in light of the Charter's rights. For example, any custody regulations or lawsuit before the CJEU must be interpreted in light of Article 7 of the Charter (right for private and family life) and taking into consideration the child's best interests, as recognised in Article 24(2).<sup>61</sup> However, the Charter does not allow for cases to be brought directly before the CJEU nor does it extend the competencies of the European Union's institutions as defined in the Treaties.<sup>62</sup>

#### 4.2.2. Impact on EU Competence

The Lisbon Treaty placed the rights of the child at the forefront of the EU agenda. While the Treaty, together with the Charter, provides legal grounds for EU action in the area of

<sup>59</sup> The shared competence allows the EU and Member States to adopt binding acts in these fields. However, Member States cannot exercise competence in areas where the Union has done so.

<sup>60</sup> European Commission, DG Justice, Fundamental Rights, available at [http://ec.europa.eu/justice/fundamental-rights/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/index_en.htm), (7 February 2012).

<sup>61</sup> Court of Justice of the European Union, case C-400/10 PPU, *J.McB V L.E.* [2010], paragraph 60; See also CRIN, the European Union and child rights, available at: <http://www.crin.org/resources/infoDetail.asp?ID=18063&flag=report>, (7 February 2012).

<sup>62</sup> Article 6 of the amended Treaty on the European Union and Article 51(2) of the Charter.



children's rights, neither the Charter nor the Lisbon Treaty confer a competence on the EU as a general policy area. However, **the new legal provisions create an obligation for the EU to take measures targeted at the fulfilment of children's rights**, in addition to the international requirement, now part of EU law with the entry into force of the Lisbon Treaty, to consider the best interests of the child when adopting decisions affecting children.<sup>63</sup>

Despite the absence of specific competence to legislate on children's rights, EU actions related to children's rights have a direct impact on the law and policies that affect children in the Member States. Child-friendly justice is an area where the EU has actively elaborated measures to ensure the respect and promotion of the rights of the child in judicial proceedings. Based on the EU ability to legislate on the rights of victims of crime under the Lisbon Treaty<sup>64</sup>, the Commission has adopted a proposal for a Directive on victims' rights, with a higher level of protection of children as vulnerable victims.<sup>65</sup> It has also supported the revision of EU legislation on parental responsibility with a view to ensuring the best interests of the child and contributed to promoting the Council of Europe's Child-Friendly Justice Guidelines.<sup>66</sup>

The Lisbon Treaty enhanced the EU's capacity to adopt binding legal instruments on child protection issues previously regulated under the third pillar.<sup>67</sup> The competence of the EU as far as children are concerned remains however limited to the aspects identified by Articles 81 and 82(2) TFEU namely: (1) facilitating the mutual admissibility of evidence between the Member States in judicial procedures; (2) supporting the rights of people during the civil and criminal processes; (3) protecting victims of crime; and (4) measures relating to family law, including matters relating to child custody, where they have cross-border effects or affect the common market.<sup>68</sup> In addition, the competence in criminal matters is restrained to a list of serious crimes under Article 83(1) TFEU: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. This list can be extended to other aspects of criminal procedure by unanimous decisions of the Council with the approval of the Parliament.<sup>69</sup>

Within the EU, the responsibility for policies targeted at children sits with the Commissioner for Justice, Fundamental Rights and Citizenship. Other institutions also can take specific action for the fulfilment of children's rights within their area of competence.

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<sup>63</sup> Save the Children (2011), *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 12, available at [http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov\\_for\\_children/EU\\_webb\\_final.pdf](http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_final.pdf) (8 February 2012).

<sup>64</sup> Article 82 TFEU.

<sup>65</sup> European Commission (2011), *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*, COM(2011) 275.

<sup>66</sup> Action Plan Implementing the Stockholm Programme, COM(2010) 171; European Commission (2011), *Communication from the Commission to 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, 6-8.

<sup>67</sup> Stalford, H., and Schuurman, M. (2011), *Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda*, *International Journal of Children's Rights* 19, 383–385.

<sup>68</sup> Stalford, H., and Schuurman, M. (2011), *Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda*, *International Journal of Children's Rights* 19, 386 and Remien, O. (2001), *European private international law, the European community and its emerging area of freedom, security and justice*, *CML Rev* 38, 73 -74.

<sup>69</sup> Stalford, H., and Schuurman, M. (2011), *Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda*, *International Journal of Children's Rights* 19, 386 and Peers, S. (2008), *EU criminal law and the TL*, *European Law Review* 33 (4), 507 – 529.

#### 4.2.3. Changes in EU Policies and Legislation after the Lisbon Treaty

Since the entry into force of the Lisbon Treaty on 1 December 2009, a number of instruments, including policy and legislative acts, relevant to children's rights have been adopted.

##### The Commission

The Commission has actively participated in advancing the rights of the child in the EU through its Communication '**An EU Agenda for the Rights of the Child**'.<sup>70</sup> The Agenda aims at stepping up efforts in protecting and promoting the rights of children in all relevant EU policies and actions, and 'in ensuring the respect of the provisions of the Treaties, the Charter of Fundamental Rights of the European Union and of the UNCRC with regard to the rights of children'. The agenda's 11 concrete actions include contributing to children's well-being in different areas, such as children at risk of poverty, disabled children, victims of sexual exploitation and trafficking, children seeking asylum, unaccompanied or separated children, early school leaving, Roma children, runaway children, child alert mechanisms and a hotline (number 116 000) for missing children.<sup>71</sup> In particular, it points to the following:

- the adoption of proposals for a Directive on victims' rights to raise the level of protection of vulnerable victims, including children (adopted on 18 May 2011)<sup>72</sup>
- proposals for a Directive on special safeguards for suspected or accused persons who are vulnerable (expected to be adopted in May 2012)<sup>73</sup>
- promoting the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice

The **Europe 2020 Strategy**, which sets out a vision of Europe's social market economy for the 21<sup>st</sup> century, sets concrete targets for children and youth with a focus on education and training.<sup>74</sup> Such targets include the reduction of early school leavers to less than 10% and giving all children access to early childhood education and care.<sup>75</sup> The 2020 Strategy established a flagship initiative 'Youth on the Move' that aims to improve education and training systems at all levels, strengthen policy efforts for improving youth employment and increase EU youth mobility for learning purposes and on the labour markets.<sup>76</sup>

The fulfilment of children's rights relies also on child-friendly policies in areas such as employment, environment, security or migration.

<sup>70</sup> European Commission (2011), *Communication from the Commission to 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.

<sup>71</sup> European Commission (2011), *Communication from the Commission to 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, 11.

<sup>72</sup> European Commission (2011), *Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime*, COM(2011) 275.

<sup>73</sup> See European Commission, DG Justice, *Initiative: Roadmap for the legislative proposal on special safeguards in criminal procedures for Suspected or accused persons who are vulnerable*, available at [http://ec.europa.eu/governance/impact/planned\\_ia/docs/2012\\_just\\_016\\_vulnerable\\_persons\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2012_just_016_vulnerable_persons_en.pdf), (9 February 2012).

<sup>74</sup> European Commission (2010), *Communication from the Commission, EUROPE 2020: A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020.

<sup>75</sup> European Commission (2011), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling early school leaving: A key contribution to the Europe 2020 Agenda*, COM(2011) 18.

<sup>76</sup> Youth on the Move, [http://ec.europa.eu/youthonthemove/index\\_en.htm](http://ec.europa.eu/youthonthemove/index_en.htm), (8 February 2012).

The Commission issued an **action plan on unaccompanied minors** (2010-14) to address the growing challenge of third-country nationals or stateless minors arriving on EU territory unaccompanied by a responsible adult, or who are left unaccompanied after entering EU territory.<sup>77</sup> The plan stresses the need to respect the rights of the child as set out in the Charter of Fundamental Rights and the UNCRC, in particular the principle of 'the best interests of the child'. This includes placing unaccompanied minors in appropriate accommodation and treating them 'in a manner that is fully compatible with their best interests'. Where detention is exceptionally justified, it should be 'used only as a measure of last resort, for the shortest appropriate period of time and taking into account the best interests of the child as a primary consideration'.<sup>78</sup>

The Commission's Communication 'Putting the Charter of Fundamental Rights into practice' emphasises the need to inform the public, in particular children and young people, about their rights in a child-friendly manner.<sup>79</sup>

In 2009, the EU launched the **Children in the Union: Rights and Empowerment initiative (CURE)**, which has the mission to raise awareness on best practices to protect the child victim within the criminal justice system. In its 2010 official report, CURE provides recommendations to the Commission and EU Member States to give further considerations to child victims in legislation and policies.<sup>80</sup>

The EU has continued to develop **external action** towards specific children's rights. With respect to combating child labour, the EU was scheduled to prepare a report by end of 2011 on the worst forms of child labour and trade. Concerning safeguarding the rights of children in and affected by armed conflicts, the EU developed the 2010 Implementation Strategy of EU Guidelines on Children in Armed Conflicts. The 2011 Communication addresses child sex tourism.<sup>81</sup> The EU is the largest donor of development aid in the world and contributes extensively to humanitarian aid, proving the EU with leverage in development cooperation to include children's rights protection goals. As a member of the G20 and a UN observer, the EU plays a key role in international fora. It participates actively in peace-building efforts in conflict-affected countries and influences international policy debates in areas such as climate change, energy, terrorism, migration, development and trade, which have significant, although perhaps less visible, impacts on children.<sup>82</sup>

### The European Parliament

The **European Parliament** has used the Charter as a basis for new efforts towards the protection of children. Based on Article 14 of the Charter, the Parliament, on its own initiative following a Commission Communication, set an EU strategy for youth with a focus on education and training, employment and entrepreneurship, health, well-being and

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<sup>77</sup> European Commission (2010), *Communication from the Commission to the European Parliament and the Council: Action plan on unaccompanied minors*, COM(2010) 213.

<sup>78</sup> Ibid, 2 and 9.

<sup>79</sup> European Commission (2010), *Communication from the Commission: Putting the Charter of Fundamental Rights into Practice*, COM(2010) 573.

<sup>80</sup> Crime Victim Compensation and Support Authority, CURE project recommendations, available at <http://www.brottsoffermyndigheten.se/Sidor/EPT/CURE%20-%20Puffar/Bilder/CURE%20recommendations.pdf>, (9 February 2012).

<sup>81</sup> European Commission (2011), *Communication from the Commission to 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, 13.

<sup>82</sup> Save the Children (2011), *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 9, available at [http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov\\_for\\_children/EU\\_webb\\_final.pdf](http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_final.pdf) (8 February 2012).



environment, participation and social inclusion.<sup>83</sup> The European Parliament, jointly with the Council also adopted Directive 2011/92/EU on combating the sexual abuse, and sexual exploitation of children and child pornography referring to Article 24(2) of the Charter.<sup>84</sup>

In areas affecting children, the Parliament has adopted an EU strategy on Roma, based on its own initiative procedure following a Commission Communication, including a specific focus on the education of Roma children and youth.<sup>85</sup> Furthermore the Parliament has voted resolutions on the situation of single mothers with specific regards to ensure access to affordable and quality childcare, the elimination of discrimination and social exclusion, as well as Parliament resolutions on preventing trafficking in human beings and on the European Platform against poverty and social exclusion providing further protection for children.<sup>86</sup>

New European Parliament initiatives include the Alliance for children, an informal cross-party and cross-committee group, recently set up aiming at mainstreaming children rights across EU actions and programmes, as well as improving the quality of work taking place in the European Parliament on protection of children's rights.<sup>87</sup>

In the area of Information Society and Media, the Parliament, jointly with the Council, adopted **Directive 2010/13/EU (Audiovisual Media Services Directive)**, requiring all media services to take full account of the interests of EU citizens, including the most vulnerable users. The Directive contains comprehensive rules seeking to protect minors from inappropriate on-demand media audiovisual services where 'human dignity should be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter'.<sup>88</sup> For example, the Directive bans the inclusion of harmful content in any programme, which could seriously impair minors' well-being and safety.

### The Court of Justice of the European Union

The **CJEU** has heard a few cases directly relevant to the rights of the child since the entry into force of the Lisbon Treaty, in particular with respect to aspects of citizenship and the

<sup>83</sup> European Parliament resolution of 18 May 2010 on 'An EU Strategy for Youth – Investing and Empowering'; European Commission (2009), 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions An EU Strategy for Youth – Investing and Empowering A renewed open method of coordination to address youth challenges and opportunities', COM(2009) 200.

<sup>84</sup> Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA; Position of the European Parliament adopted at first reading on 27 October 2011 with a view to the adoption of Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

<sup>85</sup> European Parliament resolution of 9 March 2011 on the EU strategy on Roma inclusion; European Commission (2010), 'Communication From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions - The social and economic integration of the Roma in Europe', COM(2010) 0133.

<sup>86</sup> European Parliament resolution of 25 October 2011 on the situation of single mothers; European Parliament resolution of 10 February 2010 on preventing trafficking in human beings; European Parliament resolution of 15 November 2011 on the European Platform against poverty and social exclusion.

<sup>87</sup> See:

<http://www.europarl.europa.eu/news/en/headlines/content/20110328STO16533/html/EP-alliance-to-protect-children-in-Europe-and-beyond>;  
[http://www.eurochild.org/index.php?id=208&tx\\_ttnews%5Btt\\_news%5D=1819&tx\\_ttnews%5BbackPid%5D=185&cHash=cc6d4444ebae436b2a844a082a0ea2a8](http://www.eurochild.org/index.php?id=208&tx_ttnews%5Btt_news%5D=1819&tx_ttnews%5BbackPid%5D=185&cHash=cc6d4444ebae436b2a844a082a0ea2a8), (6 March 2012).

<sup>88</sup> Heading 60 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

right to respect for private and family life.<sup>89</sup> In *J.McB v L.E.*,<sup>90</sup> the Court held that 'the provisions of that regulation [Regulation No 2201/2003] cannot be interpreted in such a way that they disregard that fundamental right of the child, the respect for which undeniably merges into the best interests of the child', as guaranteed by Article 24 of the Charter.<sup>91</sup> In *Gerardo Ruiz Zambrano v Office national de l'emploi*, the Court stated that 'Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen'.<sup>92</sup>

#### 4.2.4. Monitoring of the Respect of Children's Rights

The Commission has played an active role in promoting children's rights in EU policies, including through legislative initiatives and soft law, among which the key Commission Communications as mentioned above. The following measures have been taken to ensure a follow-up of these actions.

The Commission Communication on 'Strategy for effective implementation of the Charter of Fundamental Rights' requires the **Commission to perform a 'fundamental rights check'** of EU draft legislation to ensure its compatibility with the fundamental rights guaranteed by the Charter.<sup>93</sup> The Commission also endeavours to promote and advance children's rights at the international level by defining an EU Action Plan on Children in External Action.<sup>94</sup>

The Commission **reports annually on the application of the Charter**.<sup>95</sup> In its 2010 report, the Commission points out that the rights of the child were the most frequently raised issues among the rights and freedoms under the title 'Equality'. The report identifies the main concerns in the area of child rights: the issue of the removal of the child from the custody of one or both parents, missing children, sexual exploitation of children and child pornography, protection of unaccompanied migrant children in the EU and disabled children living separated from their parents in state institutions.<sup>96</sup>

In a report by the Fundamental Rights Agency of the European Union (FRA), the FRA has developed **indicators** for the protection, respect and promotion of children's rights in the Union on the basis of EU competence in this area. These indicators cover such areas as family environment and alternative care, protection from exploitation and violence,

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<sup>89</sup> Case C-256/11, *Murat Dereci, Vishaka Heiml, Alban Kokollari, Izunna Emmanuel Maduiké, Dragica Stevic v Bundesministerium für Inneres* [2011] ECR I-0000, where the Court applied the Treaty provisions concerning citizenship of the Union and right to respect for private and family life towards the protection of children.

<sup>90</sup> C-400/10, *J.McB v L.E.* [2010] PPU.

<sup>91</sup> *Ibid*, paragraph 60.

<sup>92</sup> Case C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi*, [2009] OJ C 90.

<sup>93</sup> European Commission (2010), *Communication from the Commission: Strategy for the effective implementation of the Charter of Fundamental Rights*, COM(2010) 573. The Communication provides a fundamental rights 'check-list' to ensure that all the fundamental rights have been respected in all draft proposals.

<sup>94</sup> European Commission (2008), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Special Place for Children in EU External Action*, COM(2008) 55.

<sup>95</sup> The Commission annual reports on the application of the Charter are available at: [http://ec.europa.eu/justice/fundamental-rights/charter/application/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm), (16 February 2012).

<sup>96</sup> European Commission (2011), *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2010 Report on the Application of the EU Charter of Fundamental Rights*, COM(2011) 160.

education, citizenship and cultural activities, and adequate standard of living.<sup>97</sup> These indicators, aiming at evaluating the impact of EU law and policy on children in the Member States, range from the existence of legal obligations to the availability of specialised health care (including free HIV testing) for children exploited in prostitution.

## 5. THE CAPACITY OF EXISTING INSTRUMENTS TO FACILITATE CHILDREN'S RIGHTS

### KEY FINDINGS

- An extensive range of international instruments recognises the human rights of children and provides for specific protection of children.
- EU Member States have widely ratified international instruments, providing for effective children's rights protection at the national level.
- The European Union framework is more limited in its scope than the international standards.
- Future EU accession to the ECHR and adherence to the UNCRC can remedy the gap.

As shown above, many legal and policy instruments have been developed to strengthen the protection of children based on their vulnerability in various social, economic or legal contexts. This section and its accompanying Annex provide a detailed review of the legal framework provided by existing instruments at the international, regional and EU level, with a deeper look at the rights and legal protection they offer for children with the aim of facilitating the gap analysis taking place in the following section.

Member States are bound by international and regional conventions upon ratification of such instruments. Considering the wide ratification of EU Member States of international and regional treaties, a strong protection of children's rights already exists at the national level. EU-level instruments, on the other hand, require the EU to adopt measures. EU institutions are not bound by international and regional instruments. While the EU has the possibility to accede to some international and regional instruments, this option is either not available for most international instruments with regards to children's rights, such as the UNCRC, or the EU has not yet made use of the option in the case of the Council of Europe's instruments allowing for such accession. EU accession would serve as an additional layer of protection for children's rights and reinforce EU commitment and legislative efforts to fulfil children's rights.

### 5.1. Review of Existing Instruments at the International Level

Children's rights have slowly risen on the international agenda starting as early as the 1970s ILO conventions, and progressing to the development of various instruments ranging from the comprehensive UN Convention on the Rights of the Child, ILO conventions focused on labour rights related to children, and specialised instruments such as the protocol on children in armed conflict.

As per the guide in the Annex, the UNCRC and its Optional Protocols provide a rather comprehensive set of rights ensuring the protection of children, ranging from civil and political rights to socio-economic rights. The UNCRC sets important international standards

<sup>97</sup> European Union Agency for Fundamental Rights (2010), *Report on developing indicators for the protection, respect and promotion of the rights of the child in the EU*, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2010/pub-rightsofchild-summary\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-rightsofchild-summary_en.htm), (13 February 2012).

that have been closely followed by subsequent EU legislative instruments. On the other hand, the ILO Conventions offer fundamental minimal protection against child labour and the worst forms of child labour. While the ILO instruments have achieved wide ratification, by more than 160 countries world-wide, including all EU Member States, and have integrated standards for child labour in the corpus of fundamental norms of international law, the conventions grant rather minimal protection with the possibility for States to set a minimum age as low as 12 years old under specific conditions, and leaving States to determine the types of labour falling under 'worst form of labour' and necessary implementation measures.

## **5.2. Review of Existing Regional Instruments**

The Council of Europe has created an important set of rights related to the protection of children through a set of legally binding instruments. Most of the Conventions also establish monitoring mechanisms, which promote better compliance in the Council's 47 Member States. In addition, the ECHR and the European Social Charter allow individuals or entities to lodge a complaint for the violation of the rights set by those instruments before the European Court of Human Rights or the European Committee of Social Rights, respectively.

From the Annex's review of instruments, it emerges that the Council of Europe has set a number of principles and rights for the protection of children. While the Council has mostly been active in providing rights for children in the context of family life, its instruments also provide social and economic protection to children, in the European Social Charter and the convention against sexual abuse, as well as specific procedural protection in the European Convention on the Exercise of Children's Rights. In addition, the ECHR offers legal protection to children as its provisions apply to everyone within States' jurisdiction, including children.

## **5.3. Review of Existing Legal Provisions at the EU Level**

Following the entry into force of the Lisbon Treaty, children's rights became a legally enforceable aim of the EU through two instruments: the Treaty on European Union and the Charter of Fundamental Rights of the European Union.

As shown in the Annex, the EU Treaties now provide a legal foundation for the EU to promote the protection of the rights of the child in its internal and external policies. In addition, the Charter sets specific rights, which reflect international standards, such as the UNCRC's 'best interests of the child' without, however, constituting a legal basis for legislative proposals.

## **5.4. Findings on Children's Rights under the EU Legal Framework Compared to the International Standards**

While the Union has gradually taken steps to strengthen its commitment and approach to children's rights through the adoption of specific Communications and, most recently, the references to the rights of the child in the Lisbon Treaty and in the Charter, these measures lack legal strength. Primarily, they encompass broad commitments and policy objectives rather than specific legal obligations.

Despite the progressive development towards the implementation of the UNCRC, the legal provisions in the EU Treaties fall short of reflecting all the international standards encapsulated in the UNCRC and other international and regional instruments. While the TEU

and Charter highlight the need for the protection of children's rights, the legal scope is restrained to an obligation for the EU to promote children's rights in its policies. The TFEU also provides a narrow margin of manoeuvre for EU institutions to adopt comprehensive legislative measures for the fulfilment of children's rights, albeit limited to matters such as judicial cooperation, human trafficking and sexual exploitation of women and children. The EU therefore faces a challenge to design a regulatory framework that comprehensively covers both external and internal actions within a rather limited legal foundation.

While the EU refers to the UNCRC through various policy tools, the EU is not a State Party to the Convention. This is partly because the UNCRC does not allow regional organisations to accede to the Convention. The EU could, however, declare itself bound by the UNCRC provisions through a unilateral declaration of adhesion, such as was the case for the EU with respect to the UN Convention on Disability Rights, or, since the EU has the power to conclude international agreements, it could conclude a protocol declaring its commitment to the UNCRC and its principles. It is noted that the EU can only bind itself to the provisions of the UNCRC which fall within EU competence.<sup>98</sup> **EU accession to the UNCRC would be an effective means to fill the gap between EU and international legal standards for the protection of children.** It would provide further support to the EU commitment to promote the rights of the child within and outside the Union. In addition, as a result of the accession to the UNCRC, the EU would be required to comply with the UNCRC Committee reporting process allowing for a periodic review of EU compliance with the Convention and an assessment of EU efforts in this area.

In line with the UNCRC, the accession of the EU to the ECHR will add further legal strength to EU human rights policies and initiatives, including those related to children. The ECHR is a well-recognised instrument, which, together with the jurisprudence developed by the European Court of Human Rights, establishes strong human rights standards. Its scope includes children's rights, albeit not explicitly. EU accession to the ECHR is soon to become a reality as the result of the current negotiation of the EU with the Council of Europe in compliance with Article 6 of the TEU. While originally the ECHR did not allow regional organisations to become party to the Convention, since 2004, Article 59 of the ECHR offers the possibility for the EU to accede to the Convention.<sup>99</sup>

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<sup>98</sup> Save the Children (2011), *Governance Fit for Children, To what extent have the general measures of implementation of the UNCRC been realised in the EU Institutions?*, 14, available at [http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov\\_for\\_children/EU\\_webb\\_final.pdf](http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_final.pdf) (8 February 2012).

<sup>99</sup> The modification was introduced by the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, 13 May 2004.

## 6. GAP ANALYSIS AND OPTIONS FOR FUTURE ACTIONS

The protection of the rights of the child, as an objective of the EU, serves as a guiding principle for the interpretation of the Treaties. This section analyses how the EU, and in particular the Parliament, might enhance the protection and promotion of children's rights within the post-Lisbon Treaty policy framework. The new institutional framework defines three categories of competence, with different legal characteristics: the EU may have exclusive competence, shared competence or competence only for supporting, coordinating or supplementary action. The areas where the EU and the Member States share competence include matters such as social policy, environment, and consumer protection, which might have particular implications for children's rights. Achieving the ambitions discussed below needs more than the political will of key actors. The allocation of sufficient resources is essential, through the re-orientation of existing budgetary lines as well as investment in sufficient human resources.

### 6.1. Results of the Gap Analysis

#### KEY FINDINGS

- Enhanced EU legal competence to adopt measures targeted at the fulfilment of children's rights may be needed to achieve the aims of the Commission's 2006 and 2011 Communications.
- The EU is obliged to take measures targeted at fulfilling the rights of the child and to take into due consideration the principle of the child's best interest.
- A children's rights based interpretation of Title II TFEU would provide concrete opportunities to enhance children's rights through EU legal and policy measures.
- Through invoking a 'passerelle clause', the EU could expand its competence to enact legislative provisions to advance children's interests in the context of family justice.
- The situation of children in the EU could be improved through mainstreaming children's rights in the daily work of the EU across all of its areas of competence.

The Lisbon Treaty provides an opportunity to enhance the rights of the child in the framework of the EU Treaties. It introduced explicit references to children's rights into both the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). It also altered the procedural and institutional structures of the EU, enabling the enhancement of the capacity of the EU institutions and the Member States and advocating for protection and promotion of children's rights. This section analyses the Lisbon reform and the way it might support future actions of the European institutions in general and of the European Parliament in particular in this area.

#### 6.1.1. Legislative Competence in Relation to Children's Rights

In recent decades children's rights have become a prominent aspect of the EU's social agenda. Three events have reinforced this trend: the publication in July 2006 of the Commission Communication 'Towards a Strategy on the Rights of the Child';<sup>100</sup> the entry into force of the Lisbon Treaty in December 2009; and the launch of the EU Agenda for Children's Rights in February 2011.<sup>101</sup> Although they aim to develop a logical and inclusive operational approach to children's rights, the limited legal competence to formulate

<sup>100</sup> European Commission (2006), *Commission Communication: Towards an EU strategy on the rights of the child*, COM(2006) 367.

<sup>101</sup> European Commission (2011), *Communication from the Commission to 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.



children's rights measures have hampered such actions until today. While the Lisbon Treaty, with the EU Charter, provides further legal weight and guidance for EU action in the area of children's rights, neither instrument confers a general competence, or legal basis to act, on the EU.

**The inclusion of children's rights as an objective of the Treaty, such as in Article 3 TEU, does not specifically reinforce the EU's competence to advance these rights. It rather serves to guide the interpretation and implementation of the Treaties' provisions.** Opportunities to enhance children's rights through EU measures need to be identified in more universal provisions, such as Articles 9 and 10 TFEU.

### 6.1.2. Procedural Legislative Aspects

The Lisbon Treaty expanded the use of what is now the ordinary legislative procedure. Arguably, this process allows for a more democratic legitimacy, because it requires co-decision by the Council and the European Parliament.<sup>102</sup> It applies, among others, in one area that can affect children's rights, such as criminal law.<sup>103</sup> On the other hand, cross-border family law and non-discrimination legislation in general may be subject to a special procedure, with reduced involvement of the Parliament. In these latter areas, it is possible to invoke a '**passerelle clause**', which allows for the use of the ordinary procedure on further range of issues. The activation of the passerelle clause must be authorised by the Council.<sup>104</sup>

Another innovation of the Lisbon Treaty, the '**Citizens Initiative**',<sup>105</sup> was welcomed by the Parliament as a means to stimulate dialogue among civil society, young citizens, and the EU institutions.<sup>106</sup> Citizens initiatives and the Parliament's prerogative, which existed already under previous Treaties, to invite the Commission to present legislative proposals represent possible ways to stimulate new children's rights legislation after the Lisbon Treaty.<sup>107</sup>

### 6.1.3. Non-Legislative Activities

As suggested by other fields of action of the European Union, such as gender equality, the implementation of an effective EU agenda on children's rights cannot be fully pursued through legislation. Article 3 of the TEU, which identifies children's rights as a core EU objective, implies **the mainstreaming of children's rights into all legislation, policies and programmes for which the EU has competence.**<sup>108</sup> Mainstreaming requires the integration of a particular perspective in relation to a specific concern into wider EU policies

<sup>102</sup> Dougan, M. (2008), *The treaty of Lisbon 2007: Winning minds, not hearts*, CMLRev 45, 640.

<sup>103</sup> Ex article 82(2) and article 79(2)(d) TFEU.

<sup>104</sup> Article 48 TEU provides a general passerelle clause applying to all European policies to use the ordinary legislative procedure to areas for which the Treaties had laid down a special legislative procedure; activation of this clause must be authorised by a Decision of the European Council acting unanimously and Article 81(3) TFEU, offering a passerelle clause on judicial cooperation in family law, where national Parliaments retain a right to object.

<sup>105</sup> Article 11(4) TEU and Article 24 TFEU

<sup>106</sup> European Parliament Motion for a Resolution on The perspectives for developing civil dialogue under the treaty of Lisbon, (2008/2067(INI)).

<sup>107</sup> Stalford, H., and Schuurman, M. (2011), *Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda*, International Journal of Children's Rights 19387-389.

<sup>108</sup> Child mainstreaming has been introduced in some areas. The EU's guidelines on the treatment of children in armed conflict form an important part of its external relations agenda. The EU Council of Youth Ministers has asserted that all appropriate fields of action should consider a children's policy dimension (Resolution on a Renewed Framework for European cooperation in the youth field (2010-2018), OJ C 311 of 19.12.2009).

and legislation. This requires the development of a more systematic approach to children's rights in EU internal and external activities.

The EU should assess the impact of its actions on children and take into consideration the rights of the child in the development and implementation of policy in all areas that could affect children.<sup>109</sup> Effective mainstreaming requires constant assessment of the actions performed, and the adequate policy structures. This entails activities that go beyond a straightforward incorporation of a particular perspective into legislative texts, and includes resource, decision-making, and knowledge enhancement.<sup>110</sup>

#### 6.1.4. Requirements for Mainstreaming the Activity

Mainstreaming is increasingly recognised as an approach to the promotion of children's rights in the EU.<sup>111</sup> The Commission's 2006 Communication includes as a key objective more efficient mainstreaming of children's rights in EU policies, strategies or programmes, aiming to ensure full compatibility and harmonisation of all legislative and non-legislative action with the principles of the UNCRC.<sup>112</sup> Another institutional recognition of a mainstreaming duty is the Parliament's 2008 resolution<sup>113</sup> stating that it is 'essential that the children's rights are incorporated and protected in all EU policies affecting children'.<sup>114</sup>

The previously mentioned 2011 Commission Agenda on the Rights of the Child provides an indication of how to pursue mainstreaming, stating that the 'EU policies that directly or indirectly affect children should be designed, implemented, and monitored taking into account the principle of the best interests of the child enshrined in the EU Charter and in the UNCRC'.<sup>115</sup> Gender equality provides a well-established example of application of mainstreaming in the EU.<sup>116</sup> The Council of Europe in 1998 also elaborated a

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Furthermore, the EU's financial commitment to combating social exclusion and poverty supports the development of child well-being measures.

<sup>109</sup> For a more detailed analysis of what child mainstreaming implies, see Drywood, E. (2011), '*Child-proofing*' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, *International Journal of Children's Rights* 19. On how children's rights should be mainstreamed into EU accession negotiations, Stalford, H. (2009), *Children, Enlargement and the Acquis Communautaire*, UNICEF: Brussels Office; Schuurman, M. (2010), *A Review of Children's Rights in the EC PROGRESS REPORTS 2007–2009 for the South-Eastern European Countries and Turkey and the Eastern European and Central Asian European Neighbourhood Countries*, UNICEF CEE/CIS. For a detailed review of the importance of such mechanisms to gender mainstreaming, see Beveridge, F. (2007), *Building against the past: The impact of mainstreaming on EU gender law and policy*, *European Law Review* 32 (2), 193–212.

<sup>110</sup> Mazey, S. (2002), *Gender mainstreaming strategies in the EU: Delivering on an Agenda*, *Feminist Legal Studies* 10 (3–4), 227–240. Beveridge, F. (2007), *Building against the past: The impact of mainstreaming on EU gender law and policy*, *European Law Review* 32 (2), 193–212.

<sup>111</sup> Drywood, E. (2011), '*Child-proofing*' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, *International Journal of Children's Rights* 19, 412.

<sup>112</sup> European Commission (2006), *Commission Communication: Towards an EU strategy on the rights of the child*, COM(2006) 367.

<sup>113</sup> European Parliament Resolution of 16 January 2008 'Towards an EU Strategy on the Rights of the Child' (2008) (2007/2093(INI)).

<sup>114</sup> European Parliament, 'European Parliament Resolution of 16 January 2008', Towards an EU Strategy on the Rights of the Child (2008) (2007/2093(INI)).

<sup>115</sup> European Commission (2011), *Communication from the Commission to 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, 3.

<sup>116</sup> European Commission (1996), *Incorporating Equal Opportunities for Women and Men into all Community Policies and Activities*, COM (1996) 67; European Commission (2006), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Roadmap for equality between women and men, 2006-2010*, COM (2006) 92 final. Beveridge, F. & Nott, S. (2002), *Mainstreaming: A case for optimism and cynicism*, *Feminist Legal Studies* 10 (3–4), 299–311. Mazey, S. (2002), *Gender mainstreaming strategies in the EU: Delivering on an Agenda*, *Feminist Legal Studies* 10 (3–4), 227–240. Beveridge, F. (2007), *Building against the past: The impact of mainstreaming on EU gender law and policy*, *European Law Review* 32 (2), 193–212. Woodward, A.E. (2008), *Too late for gender mainstreaming? Taking stock in Brussels*, *Journal of European Social Policy* 18, 289–302.



comprehensive definition of gender mainstreaming indicating the necessity to (re)organise, improve, develop and evaluate policy processes, and to comprehensively incorporate gender and equality.<sup>117</sup>

Moreover, **the Commission should prioritise specific areas of action in which to improve children's status.** This would entail including children's rights perspectives in all legislative provisions while targeting specific areas of intervention.<sup>118</sup> This would require the creation, as in the gender equality field, of a duty for the Commission Legal Service to assess the effective inclusion of children's rights in all the (existing and future) legislative acts of the EU, during the legislative process. Such a system should verify the manner in which provisions are formulated, as well as mentions of children. This implies the need for structures dedicated to these activities and staff, with the knowledge and experience to shape laws to address these issues in the child's best interest.

**Four central elements** are required for effective mainstreaming of children's rights within the EU framework: a) appropriate representation of children's rights and needs within the EU institutions through the creation of specific mechanisms of representation in order to accommodate the variety of childhood and adolescence situations in the Member States; b) appropriate coordination among EU institutions on children's rights; c) strengthening of children's rights know-how within the EU institutions to underpin decision-making; d) ongoing monitoring of EU activities in order to provide an impact assessment of measures in the field.<sup>119</sup>

#### a. Representation

Children's rights could benefit from an 'empowering approach', in which children are considered fully-fledged owners of rights and their exercise. It would be useful to develop structures to facilitate the representation of children's opinions before decisions are taken at EU level. The representation of children's rights is a crucial aspect for effective mainstreaming. Their voices and needs should be heard within the EU decision-making process, in order to represent the range of childhood and adolescence situations characterising the Member States. The gender equality experience does not provide for a valuable insight here, as the increase of women's representation in decision-making cannot be duplicated in the case of children.

**Children's participation in law and policy making** has acquired support through concluding observations of the UN Committee on the Rights of the Child for the effective fulfilment of Article 12 of the UNCRC and the development of practices of child consultation, for instance in the work of the UN Ombudsperson and Commissioner for children.<sup>120</sup> While within the EU institutions, the participation of children in decision-making is not a common practice, some initiatives have promoted children's participation, such as: the first EU Youth

<sup>117</sup> Council of Europe (1998), *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices*, Final Report of the Activities of the Group of Specialists on Mainstreaming EG-S-MS(98)2.

<sup>118</sup> In 2001 the Commission adopted a strategy whereby their legal service systematically gender-proofed texts. See Mazey, S. (2002), *Gender mainstreaming strategies in the EU: Delivering on an Agenda*, *Feminist Legal Studies* 10 (3–4), 236.

<sup>119</sup> On the mainstreaming approach in the field of gender equality see Beveridge, F. & Nott, S. (2002), *Mainstreaming, A case for optimism and cynicism*, *Feminist Legal Studies* 10 (3–4), 299. Drywood, E. (2011), *'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision*, *International Journal of Children's Rights* 19, 414.

<sup>120</sup> Bernacchi, E., Moyerson, J. and Ruggiero, R. (2006), *Survey on the CRC Committee's concluding observations on the last EU Countries' reports*, ChildONEurope, available at: [http://www.childoneurope.org/issues/crc\\_committee/su00-Survey.pdf](http://www.childoneurope.org/issues/crc_committee/su00-Survey.pdf), (6 March 2012); Lansdown, G. (2001), *Promoting Children's Participation in Democratic Decision-Making*, UNICEF Innocenti.

Summit in March 2007; the European Youth Parliament; and the European Youth Portal. These are sometimes criticised as involving only well-educated children living in a healthy economic and social milieu.<sup>121</sup> The only initiative that systematically tries to reach less fortunate children is the Youth and European Social Work Forum (the YES Forum), a network of European organisations across several EU and non-EU countries with the main objective of fostering social inclusion and active participation of children and young people who experience disadvantage and exclusion. Any children's mainstreaming process should consider how to involve children from all areas of society.

#### b. Coordination

By adopting its Communication on the EU Strategy, the Commission created two structures to strengthen the capacity of EU institutions to address children's rights, laying the foundations for evidence-based policies and stepping up interaction with stakeholders<sup>122</sup>: **1) the European Forum on the Rights of the Child** (see page 11); and **2) the Children's Rights Coordinator within DG Justice**, who cooperates with other services of the Commission to ensure that the rights of the child have a prominent role in all relevant policies and actions.<sup>123</sup>

#### c. Impact Assessment

Another important element is the assessment of how policies affect children and adolescents. This activity can be operated before a legislative proposal is adopted (*ex ante*) to verify the aspects on which it is necessary to intervene, or after implementation (*ex post facto*), to capture the effects of EU actions.<sup>124</sup>

The Commission in 2006 stated that all relevant EU action should be examined to review its impact on children. Such impact assessments should be rooted in the UNCRC philosophy. In July 2007 the Commission asked the **EU's Fundamental Rights Agency (FRA) to develop indicators measuring the respect, protection and promotion of the rights of the child** for use in future research on the impact of EU activities on children.<sup>125</sup> Indicators should capture both qualitative and quantitative data, to evaluate the effects of EU law and policy for progress every five years.<sup>126</sup> In 2009 a first set of indicators was produced covering four core areas of existing EU provisions relevant to children: (1) Family Environment and Alternative Care; (2) Protection from Exploitation and Violence; (3) Education, Citizenship and Cultural Activities; (4) Adequate standard of living.<sup>127</sup> Based on the UNCRC philosophy, these indicators are useful for the measurement of the extent to

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<sup>121</sup> O'Toole, T. & Gale, R. (2006), *Participative governance and youth inclusion: The case of youth Parliaments*, available at: [www.childhoodstudies.ed.ac.uk/research/TO%27Toole.doc](http://www.childhoodstudies.ed.ac.uk/research/TO%27Toole.doc), (24 February 2012) .

<sup>122</sup> European Commission (2006), *Commission Communication: Towards an EU strategy on the rights of the child*, COM(2006) 367 final.

<sup>123</sup> More information available at [http://ec.europa.eu/justice/fundamental-rights/rights-child/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm), (29 March 2012).

<sup>124</sup> Atkinson, T. et al. (2002), *Social Indicators: The EU and Social Inclusion*, Oxford.

<sup>125</sup> European Commission (2006), *Commission Communication Towards an EU strategy on the rights of the child*, COM(2006) 367 final, 19 explicitly refers to the need to formulate a set of indicators to review the impact of EU legal and policy activity on children.

<sup>126</sup> European Commission (2006), *Staff Working Document Accompanying the Communication from the Commission 'Towards an EU Strategy on the Rights of the Child'*, SEC(2006) 889

<sup>127</sup> FRA Summary Report (2009), *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union*, March 2009, available at: [http://fra.europa.eu/fraWebsite/attachments/RightsOfChild\\_summary-report\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/RightsOfChild_summary-report_en.pdf), (21 March 2012).

which EU provisions accommodate child-focused concepts such as empowerment or participation, non-discrimination, and best interests.<sup>128</sup>

While the Commission has declared its commitment to the use of the children's rights indicators, to 'guide decision making', 'inform evidence-based opinions' and 'support the EU institutions and Member States when they take measures or formulate actions',<sup>129</sup> these indicators have not yet led directly to the formulation of EU policies and laws affecting children's rights. The European Parliament could ask the Commission to set up a regular assessment as initially planned every five years and implemented by the FRA. The assessment should integrate these children's rights indicators.

## 6.2. Recommendations

### KEY RECOMMENDATIONS

- In addition to legal measures, effective EU response to children's rights issues should encompass policy, budgetary, research, educational and knowledge exchange initiatives.
- It is important to mainstream children's rights into all aspects of EU activity.
- A clear articulation of what mainstreaming children's rights practically implies would be beneficial.
- The European Commission should take into account the European Convention on Human Rights and its burgeoning jurisprudence on children when proposing legislation in relation to children's rights.
- Dedicated personnel both within and outside the EU institutions, ideally including children themselves, should seek to represent children's voices in EU policy evaluation and development.

### 6.2.1. Recommendations for Legislative Action

#### Recommendation 1

The Lisbon Treaty established co-decision as the ordinary legislative procedure, thus considerably expanding the legislative powers of the European Parliament. In view of this expansion of powers, the Parliament should enhance its role as a persuasive and informed institutional advocate of the rights and best interests of children in the decision-making.

#### Recommendation 2

The Parliament should call upon the Commission to use their power granted in Article 81(3) TFEU to propose a Council decision that would apply the ordinary rather than the special legislative procedure to aspects of family law with cross-border implications. The particular aspects should be specified with a view to protect and promote children's rights in the EU.

#### Recommendation 3

The Parliament should support the development of means to systematically ensure due consideration of children's rights and the principle of the best interest of the child in the EU legislative process. Such a system might include components such as a new duty of the

<sup>128</sup> See Drywood, E. (2011), 'Child-proofing' EU law and policy: interrogating the law-making processes behind European asylum and immigration provision, *International Journal of Children's Rights* 19, 423. More in general on the issue of children's rights indicators see: Ben-Arieh, A. (2008), *The Child Indicators Movement: Past, Present and Future*, *Child Indicators Research* 1, 8.

<sup>129</sup> European Commission (2011), *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, 5.

Commission Legal Service to review all legislative acts of the EU (existing legislation and future legislative proposals), along with the 'human rights check' it currently performs to ensure the effective inclusion of children's rights, and to employ staff specifically trained to address children's rights issues in the Legal Service and other legislative support units of each institution.

#### Recommendation 4

The European Parliament should ask the Commission to propose new legislation to reflect the provisions set in the European Convention on Human Rights related to children's rights, along with the jurisprudence developed by the European Court of Human Rights, in interpreting and applying those provisions for the fulfilment of children's rights in such areas as the right to legal assistance for children; the detention and deportation of children; children's voice in child protection and placement decisions and in international adoption.

### 6.2.2. Recommendations for Non-Legislative Activities

#### Recommendation 5

The EU should explore means to accede to the UNCRC in order to further promote and strengthen the rights set in the Convention.

#### Recommendation 6

The European Parliament should call on the Commission to develop a plan for the mainstreaming of children's rights in all areas of EU competence, informed by the principles of the UNCRC. The elements of such a plan might include, for example: 1) taking further into consideration children's rights and needs within the EU institutions such as varying childhood and adolescence situations including disadvantage and exclusion; 2) further enhancing children's rights expertise within the EU institutions; 3) coordination within EU institutions aimed specifically at addressing children's rights; 4) on-going monitoring to evaluate the impact of the mainstreaming process.

#### Recommendation 7

The European Parliament should assess the work to date of the Children's Rights Coordinator and the European Forum on the Rights of the Child (see page 11).

#### Recommendation 8

The Parliament and the Council, as the budgetary authority of the Union, and the Member States, should invest in children's rights through the allocation of sufficient financial resources for children-oriented actions, through both the re-orientation of existing budgetary lines and new investment in human resources and training programmes.

#### Recommendation 9

The Commission and the Parliament should take in particular the necessary steps to ensure support in form of funding and programming for research investigating the social exclusion of children living in disadvantaged situations, and the degree to which their interests are accounted for in EU and Member State policy-making which may affect children. Such research might encompass civic participation, educational opportunity, and possible exploitation, for example. Such research should directly involve the children concerned, where this can be accomplished with due regard for their vulnerability and individual best interest.

#### Recommendation 10

The EU institutions should encourage the use of the impact assessment process to ensure that EU actions that could potentially affect children are reviewed. The use of children's rights indicators such as those elaborated by the FRA should be promoted. A next step in this direction could be to plan the process describing how such indicators could be used.

#### Recommendation 11

The European Parliament should support collaboration and consultation with the Member States through organisations promoting children's rights (such as the Permanent Intergovernmental Group 'l'Europe de l'Enfance' or ChildONEurope). Such organisations could also support the provision of data and information on childhood conditions at national level and the related national governmental experiences by providing comparative analysis.

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## 8. ANNEX: GUIDE TO THE RELEVANT INTERNATIONAL AND EU INSTRUMENTS

### 8.1. Existing Instruments at the International Level

UNITED NATIONS SYSTEM INSTRUMENTS
United Nations Convention on the Rights of the Child
<ul style="list-style-type: none"> <li>• Non-discrimination (Article 2)</li> <li>• Consideration of the best interests of the child in policy-making (Article 3)</li> <li>• Right to life (Article 6)</li> <li>• Right to a legally registered name, right to a nationality, right to know and be cared for by parents (Article 7)</li> <li>• Right not to be separated from parents against their will, except when competent authorities subject to judicial review determine it is in their best interests (Article 9)</li> <li>• Right to be free from arbitrary or unlawful interference with their privacy, family, or correspondence, nor to unlawful attacks on their honour and reputation (Article 16)</li> <li>• Protection from all forms of physical and mental violence, from sexual exploitation and sexual abuse, from any forms of exploitation, and from torture or other cruel, inhuman or degrading treatment or punishment (Article 9, 34, 36, 37)</li> <li>• States to take measures to combat the illicit transfer and non-return of children abroad and to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children (Article 11, 35)</li> <li>• Right to be free from torture and exploitation (Article 36, 37)</li> <li>• Freedom of expression, thought, conscience and religion and right to express their views freely in all matters affecting them (Article 12, 13, 14)</li> <li>• Rights to freedom of association and of peaceful assembly (Article 15)</li> <li>• Right of a disabled child to special care (Article 23)</li> <li>• Right to the enjoyment of the highest attainable standard of health (Article 24)</li> <li>• Rights to benefit from social security, an adequate standard of living, and to be protected from economic exploitation (Article 26, 27, 32)</li> <li>• Right to education (Article 28)</li> <li>• Right not to be unlawfully or arbitrarily deprived of liberty (Article 37)</li> </ul>
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
<ul style="list-style-type: none"> <li>• States to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities (Article 1)</li> <li>• States to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces (Article 2)</li> <li>• States which allow voluntary recruitment into their national armed forces under the age of 18 years to maintain specific safeguards (Article 3)</li> </ul>
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<ul style="list-style-type: none"> <li>• States to prohibit the sale of children, child prostitution and child pornography (Article 1)</li> <li>• States to protect the rights and interests of child victims at all stages of the criminal</li> </ul>

justice process (Article 8)

- States to adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in this protocol (Article 9)

#### ILO Convention No. 138 on the Minimum Age

- States to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (Article 1)
- The minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. A Member State whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years (Article 2)
- The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years (Article 3)

#### ILO Convention No. 182 on the Worst Forms of Child Labour

- States to secure the prohibition and elimination of the worst forms of child labour, including: (i) all forms of slavery or similar practices, such as the sale and trafficking of children; the use, procuring or offering of a child for prostitution or for the production of pornography; (ii) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children; (iii) forced recruitment of children in armed conflict; and (iv) the use, procuring or offering of a child for illicit activities (Articles 1,3)
- States to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration (Article 7)
- States to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour (Article 7)

## 8.2. Existing Regional Instruments

<b>COUNCIL OF EUROPE INSTRUMENTS</b>
<b>European Social Charter</b>
<p>Rights relating exclusively to children:</p> <ul style="list-style-type: none"> <li>• The right of children and young persons to protection (Article 7)</li> <li>• The right of children and young persons to social, legal and economic protection (Article 17)</li> </ul> <p>Rights relevant to children:</p> <ul style="list-style-type: none"> <li>• Right of the family to social, legal and economic protection (Article 16)</li> <li>• Right to protection of health (Article 11)</li> </ul>
<b>European Convention on the Exercise of Children's Rights</b>
<ul style="list-style-type: none"> <li>• Right to be informed and to express his or her views in proceedings (Article 3)</li> <li>• Right to apply for the appointment of a special representative in proceedings (Article 4)</li> <li>• Judicial authority shall take into account the best interest of the child in the decision-making process (Article 6)</li> <li>• Judicial authority shall act speedily (Article 7)</li> </ul>
<b>Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse</b>
<ul style="list-style-type: none"> <li>• States shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children (Article 5)</li> <li>• States to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity (Article 6)</li> <li>• States to take preventive intervention programmes or measures (Article 7)</li> <li>• States to Promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children (Article 8)</li> <li>• States to ensure participation of children, the private sector, the media and civil society (Article 9)</li> <li>• States to Establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person responsible for their care (Article 11)</li> <li>• States to ensure reporting suspicion of sexual exploitation or sexual abuse (Article 12)</li> <li>• States to take measures to assist victims, in the short and long term, in their physical and psycho-social recovery (Article 14)</li> <li>• States to ensure the criminalisation of sexual abuse, offences concerning child prostitution, offences concerning child pornography, corruption of children and solicitation of children for sexual purposes (Articles 18, 19, 20, 22, 23)</li> </ul>
<b>European Convention on the Repatriation of Minors</b>
<ul style="list-style-type: none"> <li>• No decision shall be taken concerning a request for repatriation until the minor, if his capacity for discernment allows, has been heard in person by a competent</li> </ul>

authority in the requested State (Article 5)
<b>European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children</b>
<ul style="list-style-type: none"> <li>• Authorities to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child (Article 5)</li> </ul>
<b>European Convention on the Legal Status of Children born out of Wedlock</b>
<ul style="list-style-type: none"> <li>• The same legal obligation to maintain a child born in wedlock shall also apply for the benefit of a child born out of wedlock. (Article 6)</li> <li>• A child born out of wedlock shall have the same right of succession as if born in wedlock (Article 9)</li> </ul>
<b>European Convention on the Adoption of Children (revised)</b>
<ul style="list-style-type: none"> <li>• The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the interest of the child (Article 4)</li> <li>• An adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn: (i) the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place; (ii) the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years; (iii) the consent of the spouse or registered partner of the adopter (Article 5)</li> </ul>
<b>Convention on Contact concerning Children</b>
<ul style="list-style-type: none"> <li>• A child and his or her parents shall have the right to obtain and maintain regular contact with each other. Such contact may be restricted or excluded only where necessary in the best interests of the child. (Article 4)</li> <li>• Subject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child. (Article 5)</li> <li>• Right of the child, unless this would be manifestly contrary to his or her best interests: (i) to receive all relevant information; (ii) to be consulted; (iii) to express his or her views. Due weight shall be given to those views and to the ascertainable wishes and feelings of the child. (Article 6)</li> </ul>
<b>Convention for the Protection of Human Rights and Fundamental Freedoms</b>
<p>Rights relevant to children:</p> <ul style="list-style-type: none"> <li>• Right to life (Article 2)</li> <li>• Prohibition of torture (Article 3)</li> <li>• Prohibition of slavery and forced labour (Article 4)</li> <li>• Right to liberty and security (Article 5)</li> <li>• Right to a fair trial (Article 6)</li> <li>• Respect for private and family life (Article 8)</li> </ul>

### 8.3. Existing Legal Provisions at the EU Level

EUROPEAN UNION INSTRUMENTS
Treaty on European Union
<p>Provisions relating explicitly to children:</p> <ul style="list-style-type: none"> <li>• The Union shall promote the protection of the rights of the child (Article 3)</li> <li>• In its relations with the wider world, the Union shall contribute to the protection of human rights, in particular the rights of the child (Article 3)</li> </ul> <p>Provisions relevant to children:</p> <ul style="list-style-type: none"> <li>• Fundamental rights shall constitute general principles of the Union's law (Article 6)</li> <li>• The Union's action on the international scene shall be guided by the principles of indivisibility of human rights and fundamental freedoms, respect for human dignity, and respect for international law (Article 21)</li> <li>• The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to consolidate and support human rights (Article 21)</li> </ul>
Treaty on the Functioning of the European Union
<p>Provisions relating explicitly to children:</p> <ul style="list-style-type: none"> <li>• The European Parliament and the Council shall adopt measures combating trafficking in persons, in particular women and children (Article 79)</li> <li>• The European Parliament and the Council to legislate on various crimes including the trafficking in human beings and sexual exploitation of women and children (Article 83)</li> </ul> <p>Provisions relevant to children:</p> <ul style="list-style-type: none"> <li>• The EU to take into account requirements linked to the promotion of the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. (Article 9)</li> <li>• The Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 10)</li> <li>• The right of EU citizens to move and reside freely within the territory of the Member States (Article 20)</li> <li>• The EU shall develop judicial cooperation in civil and criminal matters having cross-border implications (Articles 81 and 82)</li> <li>• The European Parliament and the Council shall adopt measures concerning the rights of individuals in criminal procedure and the rights of victims of crime (Article 82)</li> </ul>
Charter of Fundamental Rights of the European Union
<p>Rights relating exclusively to children:</p> <ul style="list-style-type: none"> <li>• Children shall have the right to such protection and care as is necessary for their well-being (Article 24)</li> <li>• Freedom of expression (Article 24)</li> <li>• Child's best interests must be a primary consideration in all actions relating to children (Article 24)</li> <li>• Right to maintain on a regular basis a personal relationship and direct contact with both parents, unless that is contrary to his or her interests (Article 24)</li> <li>• Prohibition of child labour and protection of young people at work (Article 32)</li> </ul> <p>Rights relevant to children:</p>

- Right for private and family life (Article 7)
- Right to education (Article 14)
- The family shall enjoy legal, economic and social protection (Article 33)
- Right to health care (Article 35)





DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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