

ASSESSMENT

The European Commission's 2013 Report on the Application of the EU Charter on Fundamental Rights and its contribution to protecting children's rights in the EU

2014

SUMMARY

The fourth annual Report on the application of the EU Charter of Fundamental Rights (referred to herein as 'the Report')¹ aims to demonstrate what has been done by the European Commission to ensure the effective application of the Charter through examples of policy, legislation and case law which applied the Charter in some way. Children's rights have a separate section in the Report within the Equality title and are furthermore mentioned across the other five titles (Dignity, Freedoms, Solidarity, Citizens' rights and Justice).

The Report provides an overview of how fundamental rights have been implemented in the EU. Eurochild particularly welcomes that for the first time the Report stresses that the Charter is referred to as a legally binding instrument as well as a policy objective, depending on the areas concerned. Hence, the Report is longer than in previous years and covers in a more comprehensive manner application of the different rights of the Charter. This is equally valid with respect to children's rights. However, while noting improvements in the consideration of children's rights throughout the Report, Eurochild highlights some initiatives taken which are absent from the Report and further notes that external actions of the Commission are still largely left uncovered. Our view is that the Report still needs to be broader in its scope in relation to the rights of the child. To this end, we call for the Commission to:

1) EU legislation and policy should give due consideration to the rights of the child.

Eurochild recommends the Report reflects upon all initiatives taken by the European Commission to promote and protect the rights of the child. Ultimately, Eurochild believes a specific report should be devoted to assessing the implementation of an overall framework for EU action on the rights of the child, both at internal and external level.

2) Develop a framework for EU action on the rights of the child.

Eurochild urges the new Commission and European Parliament to adopt a strong successor to the EU Agenda on the rights of the child in 2015. The promotion and protection of children's rights must feature prominently among the priorities of the new Commissioner responsible for the Charter and the rule of law.

3) Mainstream children's rights across the work of the Commission.

The Commission should develop a policy to mainstream children's rights across its work to ensure the rights of the child are considered in the different legislative and policy-making processes. Sufficient resources and authority should be given to the unit on the rights of the child to perform its coordination role on children's rights. Further training should be conducted to increase understanding amongst Commission staff of children's rights and the impact EU policy and action can have on children.

Eurochild's assessment aims first to document what is included within the Report from a child rights perspective, and then provides a critique and further elaborates our recommendations.

¹ COM(2014) 224 final, [2013 Report on the Application of the EU Charter of Fundamental Rights](#), and SWD(2014) 141 final - Commission Staff Working Document accompanying the Report, [part 1/2](#) and [part 2/2](#).

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1. INTRODUCTION TO THE REPORT ON THE APPLICATION OF THE EU CHARTER OF FUNDAMENTAL RIGHTS

The EU Charter of Fundamental Rights became legally binding across the EU with the entry into force of the Lisbon Treaty on 1 December 2009. The Charter applies to all actions by the EU institutions and bodies, in particular to their legislative processes, as well as to Member States when they are implementing EU law.

In case of violation of the Charter, individuals or entities can bring their case to the Court of Justice of the European Union (CJEU) or to national competent courts. In addition, the Commission might initiate infringement proceedings against the Member State, and ultimately it can take the Member State to the CJEU. In some cases and under specific conditions, individuals might also bring the case before the European Court of Human Rights in Strasbourg.

Last year the EU finalised the draft agreement on the EU's accession to the European Court of Human Rights (ECHR), an obligation derived from the Lisbon Treaty, and is now awaiting the Court's opinion on the agreement. The ECHR is an international court to which individuals can seek recourse upon exhaustion of national remedies in case of violation of their human rights.

The Commission Report on the application of the EU Charter of Fundamental Rights is one of the initiatives envisaged in the Commission's strategy² which aims at giving practical effect to the Charter, making sure that it is respected and promotes a culture of fundamental rights in the EU institutions.

All proposals for EU legislation must respect the Charter. In order to reinforce its assessment of the impact of new legislative proposals on fundamental rights, the Commission adopted a new operational guidance³ in 2011. On the basis of a fundamental rights check-list, the Commission services identify which fundamental rights could be affected by a proposal and assess systematically the impact on these rights of each envisaged policy option.

Building on the fundamental rights check-list, the United Nations Convention on the Rights of the Child (UNCRC) implementation handbook and the UNCRC Committee General Comments on implementing the UNCRC, the child rights unit of the Directorate General for Justice and Fundamental Rights assesses the impact of Commission proposals on children's rights.

The Council developed guidelines on methodological steps to be taken to check the fundamental rights compatibility of the Council's preparatory bodies in 2011. The guidelines also aim to raise general awareness regarding fundamental rights matters in the Council preparatory bodies. It is however not clear to what extent the guidelines are being used and whether the rights of the child are being taken into account.

The European Parliament is also bound to fully respect fundamental rights as laid down in the Charter in the application of its rules of procedures. Under certain conditions if a proposal for a legislative act or parts of it do not comply with the Charter it can be referred to the committee responsible for the interpretation of the Charter⁴.

² COM(2010) 573 final, Commission Communication on the Strategy for the effective implementation of the Charter of Fundamental Rights by the EU.

³ SEC(2011)567 final, Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments.

⁴ Article 36 of the European Parliament rules of procedure.

2. CHILDREN'S RIGHTS IN THE REPORT

OVERALL STRUCTURE

The Report aims to better inform citizens on the application of the Charter and to measure progress in its implementation. The Report presents concrete examples of the application of the Charter by the EU institutions and, where applicable, the Member States in each of its six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. Children's rights are addressed under the title on Equality and considered in relevant issues across the other five titles of the Charter.

This year's report follows a similar structure to that of previous years but importantly emphasises it aims to render account of the different ways the Charter was invoked, and contributed to progress made in respecting and promoting fundamental rights. Its structure was further delineated under each section to include legislation, policies and case law sections which related to the separate rights under each heading.

The information under the legislative section is based on legislative examples of the EU institutions promoting the charter, examples of how the EU institutions and Member States ensure compliance with and have applied the Charter within other legislation and infringement procedures launched by the Commission against Members states for failing to or wrongly implementing relevant legislation. The policy section is based on examples of how the EU institutions and Member States ensured compliance with and have applied the Charter in 2013 within policy areas. The case-law sections are based on relevant Judgments from the Court of Justice of the EU (CJEU) and case law from national courts which referred to the Charter. Importantly, as noted in the Report, EU Courts have increasingly referred to the Charter in their decisions. References to article 24 of the Charter on the rights of the child were more common before national courts. Other sources include the overview of questions and petitions from the European Parliament and letters from the general public received and data gathered by the Fundamental Rights Agency (FRA) in 2013.

The Report shows that among the rights and freedoms under the Equality title, 10.61% of the questions and 6.96% of the letters sent to the European Commission were on the rights of the child, a significant increase in the interest shown in children's rights.⁵

CHILDREN'S RIGHTS SECTION

. The Report indicates that progress made in the completion of actions in relation to the EU Agenda in 2013 by providing a link to a useful document with information on actions undertaken to achieve the priorities⁶.

Other initiatives are broken down, as mentioned, into sections on legislation, policy and case law as follows:

1. Legislation

- The European Commission's proposal for a **directive on procedural safeguards for children suspected or accused in criminal proceedings** is highlighted. The Directive is aimed at ensuring that children benefit from safeguards which will protect them during what can be a confusing and intimidating process including a mandatory right to access to a lawyer at all stages, a right to be promptly informed about their rights, being assisted by their parents or another appropriate person, the right not to be questioned in a public hearing, right to medical examination and the right to be kept separate from adult inmates if deprived of liberty. This proposed directive forms part of one of the actions in the EU Agenda as a means of adding to the conception of a more child-friendly justice system along with, as the Report notes, directive 2012/29/EU which established minimum standards, rights, support and protection for victims of crime and the 2011 legislation on child abuse and exploitation and trafficking in human beings. The Report also mentions, in a footnote, the close cooperation of the Commission with ongoing FRA research on forms of child participation in criminal and civil judicial proceedings which should conform to the Council of Europe's guidelines on child-friendly justice.

⁵ According to the previous Report in 2012, 3,32% of the questions, 1,19% of the petitions from the European Parliament, and 1,31% of the letters sent to the European Commission were on the rights of the child.

⁶ http://ec.europa.eu/justice/fundamental-rights/files/eu_agenda_state_of_play_2013_en.pdf

- **Amendments to the Schengen Borders Code** were adopted by Regulation 610/2013⁷ which requires the training of border guards to help them in detecting and dealing with the vulnerabilities of unaccompanied minors and victims of trafficking.
- **The deadline for the transposition of the Directive on combating the sexual abuse and sexual exploitation of children and child pornography lapsed in 2013.**⁸ To date only 5 Member States have notified of full transposition and a further 10 Member states of partial transposition. The Commission launched 11 infringement proceedings in January 2014 citing non-communication of transposing the Directive and formal letters have been sent notifying these Member States of the infringement proceedings.

2. Policy

- **The 8th European Forum on the rights of the child** thematically focused on an integrated child protection-system through the implementation of the EU Agenda. Input was given from organisations involved in national child protection including from justice, social affairs, and health and education authorities. Members of the European Parliament, NGOs, experts and professionals discussed good practices aimed at providing a background for future European guidelines on child protection systems. Encouragingly it was acknowledged that to achieve cooperation amongst the numerous actors and a comprehensive child protection system there is a need for multidisciplinary teams of specially trained professionals in every child protection system and proper collection and sharing of data and information. Specific sessions within the Forum focused on the best interests of the child in cases of cross-border parental abduction, the needs of children on the move and protecting children from cyber bullying and female genital mutilation (FGM).
- **The Commission established an informal Member State expert group on the rights of the child** at the beginning of 2013 and the group met a total of 3 times during the year. The Commission hopes to seek to continue to support Member States efforts in relation to children by encouraging exchange of best practices, cooperation and communication with and among national authorities with child related responsibilities. Items discussed at the meetings included the Commission's child rights related legislation and policies, the third Optional Protocol to the UNCRC on a complaints procedure and General Comment 14 from the Committee on the Rights of the Child on the best interests of the child. **The EU Civil Society Platform against Trafficking in Human Beings was launched** in May 2013. The Platform is another delivered action under the **"EU Strategy towards the Eradication of Trafficking in Human Beings"**⁹ and I brings together civil society including organisations promoting the rights of children. The Strategy stresses the importance of comprehensive child-sensitive protection systems in combating trafficking and is seen to complement the directive on preventing and combating trafficking of human beings which pays particular attention to the rights of the child. Eurochild commends the role of the EU anti-trafficking coordinator in fostering actions to fight trafficking in human beings.
- **The Commission adopted the European Strategy Better Internet for children** in 2012.¹⁰ This Strategy aims to give children the skills they require to use the internet to their advantage, safely and responsibly. The report states that industry players have been engaged with throughout 2013 to make devices and services appropriate for children. The Report states that the Commission intends to continue to engage industry further and future actions to implement the strategy will be funded under the Connecting Europe facility which will support the set up the operation of a Digital Services Infrastructure for Safer Internet Centres.
- In December 2013, the Commission published **a study on missing children in the EU** which focused on the period between 2009 and 2012.¹¹ This study maps the occurrences of missing children and the responses in 27 EU Member States. The study makes the case for improving data collection, using common definitions, reporting of cases and coordination of actions taken by services in the national child protection system in order to improve the responses to such cases. The study further recommends diversifying the type of data recorded in order to gain a better understanding of the causes of such disappearances and raising awareness about services available including **the 116 00 hotlines for missing children**. The Commission also stepped up its efforts to facilitate the setting up of the remaining 116 00 hotlines by awarding €4,5 Million through the

⁷ Regulation No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council, OJ L 182, 29.06.2013.

⁸ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1.

⁹ COM(2012) 286 final, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.

¹⁰ COM(2012) 196 final, [Commission Communication on a European Strategy Better Internet for Children](#).

¹¹ Commission, [Missing Children in the EU: Mapping, Data Collection and Statistics](#).

Daphne III programme to organisations within 18 Member States which helped to bring the hotlines to 26 Member States by the end of 2013.

- The Report discusses **the Recommendation on Investing in Children: Breaking the cycle of disadvantage**¹² noting its rights based three pillar approach which focuses on covering access to adequate resources, access to affordable quality services and children's right to participate. The Report states that the Recommendation is particularly focused on the prevention of child poverty especially targeting those children who are most at risk because they face multiple disadvantages, such as Roma and migrant children. The Recommendation calls on Member States to set up social investment targeted at children and crucially encourages the use of the EU financial instruments to this end to ensure better outcomes for children in order to break the cycle of disadvantage.
- The Report also notes in a footnote that children's rights are referenced in other documents relating to the Social Investment Package, such as the **Communication from the European Commission: Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020** which highlights the importance of targeting funds to invest in children, and the accompanying **European Commission Staff Working Document Confronting Homelessness in the European Union** which draws special attention to the situation of homeless children.¹³ Another footnote includes a cross reference to Roma children under the article on non-discrimination.
- The Commission announced that it would push for the elimination of FGM, as an internationally recognised human rights violation, in Europe and beyond in its **Communication: Towards the Elimination of female genital mutilation**.¹⁴ This comes in the wake of the knowledge that thousands of girls are suspected of being at risk of FGM in Europe. The Report states the Commission will make full use of EU funding in order to prevent this practice in Europe and beyond by supporting national enforcement of anti-FGM laws, the improvement of EU protection asylum rules for women and girls at risk and improving support for victims and supporting health practitioners. The European Commission and the European External Action Service have committed to encouraging worldwide elimination of FGM through bilateral and multilateral dialogue. In addition, the Commission will promote research into the number of women and girls at risk of FGM.

3. Case Law

- In the decision ***MA and others v Secretary of State for the Home Department***¹⁵, the CJEU interpreted the provisions of the Dublin II regulation as meaning that the Member State responsible for the examination of the asylum application of an unaccompanied minor is the State in which the minor is present after having lodged an application there. This clarified a vague provision which did not specify whether the first application lodged in a Member State was the application referred to in the provision or the most recent application which may have been lodged in another Member State. The Court stressed that the provision must be read in light of Article 24 and given that unaccompanied minors are particularly vulnerable it was seen as in the child's best interest not to prolong the procedure more than necessary which would be the case if transfer procedures to other Member States were initiated. The Report refers to this interpretation as Charter friendly as it appears to have found a reading more compatible with the best interests of the child.
- **A ruling of the Supreme Court of Czech Republic** is highlighted in the Report.¹⁶ The case concerned the decision of a Court to deprive a father of his parental rights and responsibilities because he had been convicted of murder. The father had claimed on appeal that the Courts had failed to interrogate his daughter which was in violation of her right to be heard. The Supreme Court referred to EU case law, a Council Regulation and Article 24 of the Charter and came to the decision that given the child's age and the likelihood of mental harm due to interrogation the Court had not violated Article 24 in the initial case and that interrogation was not compulsory in every case.

¹² [Commission Recommendation, Investing in children: breaking the cycle of disadvantage](#), OJ L 59, 02/03/2013, p. 5–16.

¹³ [European Commission Staff Working Document Confronting Homelessness in the European Union](#), SWD(2013)42.

¹⁴ [European Commission Communication: Towards the elimination of female genital mutilation](#), COM(2013) 833, 25.11.2013.

¹⁵ CJEU, case C-648/11 MA, BT, DA v Secretary of State for the Home Department, 6.6.2013.

¹⁶ Supreme Court of Czech Republic (Nejvyšší soud), case 30 Cdo 1376/2012, Municipality of Olomouc v. Regional Attorney's Office, 22.5.2013.

CHILDREN'S RIGHTS IN OTHER PARTS OF THE REPORT

Children and their rights are also mentioned in other sections of the Report in relation to other articles of the Charter.

- Right to human dignity (art.1) - refers to the recasting of legislation on asylum stating that the new rules offer better protection of asylum seeking children and the adoption of the EU strategy towards the eradication of trafficking in human beings, further developed under article 5.
- Right to integrity of the person (art 3) - the directive on combating the sexual abuse and sexual exploitation of children and child pornography and the Commission Communication on FGM are mentioned again in this section.
- Prohibition of torture or inhumane or degrading treatment (art 4) - the Report highlights the Recast Dublin Regulation¹⁷ which provides for widened rules of reunification for unaccompanied minors, guarantees the right to a guardian, the right of all applicants to detailed information on the functioning of the Dublin system including, for minors, in a manner adequate for their understanding. In addition, it also mentions the *MA and others case*¹⁸ as the Parliament, Council and Commission declared that they would use their respective legislative powers for a revision of the provisions in the recast Dublin Regulation, so as to ensure that the best interest of the child is safeguarded, once the CJEU had ruled on the case.
- Prohibition on slavery and forced labour (art 5) - the Communication on the EU Strategy towards the eradication of trafficking in humans and the EU civil society Platform against trafficking in human beings are briefly mentioned although no specific reference to children is made here. It furthermore refers to the launch of the EU anti-trafficking website which contains information on EU policy and legislation, national information pages on all member states European Commission funded projects and publications by relevant stakeholders¹⁹. The Report raises the Council's Revised Draft Conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings, which invites Member States to promote the rights of victims with special attention being given to child victims.²⁰
- Respect for private and family life (art.7) - the Report notes there has been an increase in the number of petitions to the Commission about the functioning of German Youth Welfare Offices (Jugendämter) which has been restricting the access of non-German parents to their children without the parent or child being heard and an absence of alleged complaints mechanisms. Petitioners complain that the system does not implement the principle of the best interest of the child correctly and allege violation of the right children to be heard by the Jugendämter.
- Right to asylum (art 18) - this section mentions the *MA and others case*²¹ due to its relevance to the right to seek asylum as it relates to the child.
- Non-discrimination (art 21) - this section expands in a foot note on the special attention paid to the rights of Roma children, especially in the context of full and equal access to quality education of Roma in the Council recommendation on effective Roma integration measures in the Member States²² and the Commission Communication on Steps Forward in Implementing National Roma Integration Strategies²³ which both emphasize the child's right to education as enshrined in Article 28 of the UNCRC.
- Integration of persons with disabilities (art 26) - the Parliamentary Committee on Civil Liberties Justice and Home Affairs commissioned a report on the Member State policies relating to children with disabilities.²⁴ The study evidenced recognition of the rights of the child nationally but pointed to implementation problems which posed challenges for children with disabilities. The Report mentions the preparation of the EU report on measures taken to implement the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Disability High Level Group Report on the Implementation of the UNCRPD.

¹⁷ Regulation No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31

¹⁸ CJEU, case C-648/11 MA, BT, DA v Secretary of State for the Home Department, 6.6.2013

¹⁹ <http://ec.europa.eu/anti-trafficking>

²⁰ http://ec.europa.eu/anti-trafficking/entity.action?path=EU+Policy%2FRevised_Draft_Council_Conclusions

²¹ CJEU, case C-648/11 MA, BT, DA v Secretary of State for the Home Department, 6.6.2013

²² Council recommendation on effective Roma integration measures in the member states, Brussels, 9 and 10 December 2013.

²³ Commission Communication: Steps forward in implementing national Roma integration strategies, COM (2013) 454 final, 26.06.2013.

²⁴ European Parliament, Member States' Policies for Children with Disabilities, 2013.

The Report underlines the UNCRPD concluding observations to Hungary on the note that the country has made use of EU funds to build large institutions for persons with disabilities contrary to the aim of de-institutionalisation as stipulated in the UNCRPD. While there is no specific mention, Eurochild notes this is largely the case of children with disabilities who, along with Roma children, are over represented in institutions in Europe and welcomes de-institutionalisation as a funding priority under structural and investment funds for 2014-2020.

- Consumer protection (art 38) - this section highlighted the Report and a Communication on the Functioning of the Unfair Commercial Practices Directive.²⁵ This directive is intended to provide the legal basis to tackle misleading and aggressive commercial practices across the EU including direct targeting of children. This Report highlighted that there needs to be further efforts to enforce the directive and the Report states that the Commission will be taking a prominent role in relation to this process including initiating a pre-infringement dialogue with Member States. The Commission has also taken incorrect transposition procedures against some Member States.
- Free movement and residence (art 45) – The Commission adopted a proposal on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU.²⁶ The Report states that the proposal promotes the application of the Charter by addressing the indirect discrimination of nationals of other Member States in comparison with their own nationals. The Report also states that the proposal would potentially positively impact the rights of the child and the family. The Report additionally mentions proceedings taken against Belgium to ensure that children born in Belgium with one Belgian parent and one parent of another EU Member State can be registered with the double surname with which they can be registered in the consulate of another EU Member State, Belgium has committed to amend legislation and dialogue with the Commission continues.
- Presumption of innocence and right to a defence (art 48) – the Report highlights again the proposed directive for safeguards for children in criminal proceedings. This section also refers to financial support to training delivered to legal practitioners on fundamental rights. It is not clear whether it includes training mentioned in the document showing the state of play of the agenda.²⁷ Nonetheless it is positive that, as referred to in the latter, funding was allocated to trainings on child rights for EU institutions' staff – although it is regrettable that the latest was held in 2012 – and a toolkit on mainstreaming child rights in development cooperation was produced.

²⁵ [First Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market](#), COM(2013) 139 final and [Communication on the application of the Unfair Commercial Practices Directive](#), COM(2013) 138 final.

²⁶ [Proposal of 24 April 2013 for a Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union](#) and amending Regulation (EU) No 1024/2012, COM(2013) 228 final.

²⁷ Idem footnote 6.

4. EUROCHILD ASSESSMENT

OVERALL APPROACH OF THE REPORT

The Report builds on the structure of previous years by outlining the actions taken, as mentioned above. It is welcomed that data is collected on decisions referring to the Charter by the EU Court of Justice and in administrative courts at national level. 9% of the references to the Charter in decisions of national courts related to Article 24 on the rights of the child prompting the Report to note that the rights of the child were more often referred to in the jurisprudence of the national courts in comparison to the EU courts.

HOW THE REPORT ADDRESSES CHILDREN'S RIGHTS

This year's Report more comprehensively articulates the initiatives relating to the rights of the child in comparison to previous years, both under the dedicated section and across the Report. Eurochild welcomes the complementary document showing progress made to achieve the initiatives of the Agenda. Recognising that the report cannot be exhaustive, nonetheless Eurochild has identified several initiatives/actions with strong implications for children's rights which were omitted:

- The Council approved the concluded negotiations for the Commission **proposed Fund for European Aid to the Most Deprived**²⁸, which is intended to replace the Food Distribution Programme and will see the distribution of €3,8 Billion to Member States over the next seven years. This instrument aims to help the most-deprived to break out of the poverty cycle and deprivation and will make a concrete contribution to the Europe 2020 targets. The proposal of the Commission explicitly targeted children because they are at greater risk of poverty or social exclusion than the rest of the population and suffer from forms of material deprivation that make them less likely than their better-off peers to do well at school, enjoy good health and realise their full potential as adults. The text highlighted that “this Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including ... the rights of the child...”.
- New funding instruments have provided strong links for child rights. In December 2013, the Council adopted **the Rights, Equality and Citizenship Programme** for the period 2014-2020. The Programme has a budget of over € 439 million aimed at financing actions to promote the rights of European citizens, the rights of the child, the principles of non-discrimination and equality between women and men. In addition, the Commission has been instrumental in including the transition from institutional to community-based care in the **Common Provisions Regulations for the Structural Funds**²⁹ which will mean that the Structural Funds can be used to facilitate de-institutionalisation in Europe. Other objectives include combating poverty and discrimination and promoting investing in education with the priority, amongst others, to promoting equal access to quality early childhood education.
- In November 2013, the **Thematic Working Group on Early School Leaving (ESL) published its Final Report**.³⁰ The objective of the group was to support Member States in the design and development of comprehensive policies on ESL. The Report listed critical conditions for successful policies to combat ESL based on the work of the Thematic Working Group since 2011 and included a check-list for self-assessment targeted towards Member States.
- The Report only briefly mentions in a footnote the **Thematic Working Group on Early Childhood Education and Care (ECEC)** without elaborating further on progress made. The group of member states experts was brought together by the Commission in 2012 and its mandate includes the preparation of a proposal for a **ECEC European Quality Framework. In 2013** peer Learning Activities took place in

²⁸ Commission Proposal for a Regulation on the Fund for European Aid to the Most Deprived, COM(2012) 617 final.

²⁹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

³⁰ [Reducing early school leaving: Key messages and policy support](#), Final Report of the Thematic Working Group on Early School Leaving November 2013.

Bucharest, Copenhagen and Dublin which focused respectively on quality and access, and the ECEC workforce.³¹

- The **Staff Working Document on Trade and the Worst Forms of Child Labour**³² was finalised in 2013. The document emphasises the EU's commitment to eradicating the worst forms of child labour at a global level with the contribution of trade policy, bilateral agreements and introducing additional tools to help achieve this goal. Eurochild believes this is a good representation of how children's rights can be mainstreamed across the work of the European Commission.
- While the section relating to non-discrimination does mention the possible adoption of a motion on Gender aspects of the EU Framework for National Roma Integration Strategies, it does not further build on the **FRA analysis of its Roma survey results by gender** which highlighted that early marriages are a problem within the Roma community.³³ The survey shows that some 2% of Roma girls aged 10-15 were reported as traditionally married or cohabitating with a partner, while 24% of Roma girls between the ages of 16 and 17 were in some form of marital relationship (5% legally married, with around 19% traditionally married or cohabiting). Child marriages are often source of children's rights violations and detrimental impact on girls' physical and mental well-being.
- Except a reference to the European Parliament study on member states policies for children with disabilities, children with disabilities are not mentioned elsewhere. Eurochild believes this gap must be addressed by profiling the rights of children with disabilities across the Commission's work. Currently, the Agenda only notes that disabled children are more vulnerable to the violation of their rights and they require and deserve special protection, with a cross-reference to the European Disability Strategy. However, only two areas of this strategy specifically highlight the situation of children with disabilities: '**Participation**' in relation to using the EU funds for the development of community-based services for children with disabilities, and '**Education**' in relation to using the Youth on the Move initiative to facilitate inclusive education for children and young people with disabilities.
- Under the solidarity section, with regard to the right to social security and social assistance there is no reference to the impasse on the negotiations of the maternity leave directive which would have provided an extended leave period and would be a benefit to children and their well-being.
- On 11 March, the **Council of the European Union adopted the multi-annual framework (2013-2017) of the Fundamental Rights Agency**. The Council decision determines the nine themes on which the agency will work over the next five years which includes the rights of the child. The Council decision establishes that in view of the **importance of the fight against poverty and social exclusion** for the Union, which has made it one of the five targets of the Europe 2020 growth strategy, the Agency should take into consideration the economic and social preconditions enabling an effective enjoyment of fundamental rights when collecting and disseminating data within the thematic areas established by this decision. As poverty and social exclusion particularly affect children in the EU, Eurochild welcomes this link between the Europe 2020 strategy and the work of FRA and it is hoped that research is undertaken to shed more light on the effects of economic and social exclusion on the rights of the child.

As regards references to the rights of the child in the dedicated chapter and throughout the Report, Eurochild would like to provide the following remarks:

- **EU Agenda for the Rights of the Child:**

As in previous years there is an overall mention made to the Agenda and information is provided on the directive relating to safeguards for children in criminal proceedings and child-friendly justice, the European Strategy Better Internet for Children and the implementation of the 116 000 hotline for missing children. A link to a document showing progress made in implementing the agenda gives an overall view of the initiatives taken. However, most are not included in the Report and others are still missing including:

- €600,000 in funding was made available in relation to the child alert mechanism in 2013.
- Funding priority was given to fundamental rights and the rights of the child in the Fundamental Rights and Citizenship Programme 2013 with specific focus on, among other things, the

³¹ [PLA on ECEC in Bucharest](#) 18-20 March: Summary Report, 7 April 2013, [PLA on ECEC in Copenhagen](#) 20-2 November: Summary Report, 29 November 2013, [ECEC in Dublin](#) 29-30 May: Summary Report, 7 June 2013.

³² Commission Staff Working Document on Trade and Worst Forms of Child Labour, SWD(2013) 173 final.

³³ FRA, [Analysis of the FRA Roma Survey by Gender](#), September 2013.

“development and delivery of training modules on child-friendly justice for legal and other professionals and practitioners who interact with children in the context of judicial proceedings” which directly complements action point 5 of the EU Agenda.

- In 2013, the DAPHNE III Programme included priorities on anti-bullying programmes including social networks and projects to empower children to use media in a safe way which is significant to the action point of the EU Agenda relating to making the most of online opportunities and countering cyber bullying.
- The ongoing work of the thematic working groups of Member States experts on ECEC and on ESL (see section above).
- The Report gives no account of the EU website for children and young people and of the Kids corner, which can provide indication on the interest of children, adults and other professionals working with children on EU action to promote children’s rights.
- As mentioned above Eurochild noted that the Staff Working Document on Trade and the Worst Forms of Child Labour was absent from the Report. The only real element of external action as it related to children included was the Commission Communication on the elimination of FGM. While Eurochild understands that the Report largely excludes reference to external actions as regards fundamental rights, the EU Agenda mentioned several areas where it would take action to promote and protect the rights of the child and in particular the EU guidelines on the matter. As the Report represents the main vehicle which measures implementation of the EU Agenda, it follows that all actions relating to progress should be included. It is however positive that the document presenting progress on the Agenda mentions other external initiatives such as prioritizing children’s rights in human rights country strategies, children’s rights as a funding priority of the EIDHR programme and the development of a toolkit to integrate children’s rights in development cooperation.

- **Recommendation on Investing in Children: Breaking the Cycle of Disadvantage**

Eurochild is pleased to see that the Recommendation has been given proper consideration within the Report. The Recommendation draws attention to the fact that poverty and social exclusion go hand in hand with the denial of basic human rights. The Recommendation is based on a children’s rights approach referring to both the Charter and also the UNCRC and recognises that children are independent rights holders in their own right. The Recommendation serves as a key reminder within the Europe 2020 framework which acknowledges that the fight against child poverty and social exclusion requires an integrated strategy based on prevention, intervention, child participation and access to services.

- **Recast Asylum Procedure and Reception Directives**

Both these directives are mentioned, somewhat briefly. Eurochild welcomes the adoption of these directives as both contain measures which will help unaccompanied minors and asylum seeking children on arrival and through the asylum process including limitations on detention, special guarantees for unaccompanied minors such as interpretation and legal assistance and the right to a qualified representative and the recognition of ageing out issues such as access to education which shall not end upon majority of the child. Both directives should help to promote and protect the principle of the best interest of the child in the context of asylum and the directives contain explicit references to the UNCRC. However, the asylum procedure directive does not exempt unaccompanied minors from border and accelerated procedures which have far less guarantees, regarding for instance access to legal assistance or appeal. Detention of children is still allowed in transit/border zone areas. In the Reception directive, detention of children is also allowed albeit as a last resource measure. Civil society worldwide has joined efforts to call for a Global Study to shed light on the situation of children deprived of liberty, including situations of immigration detention.³⁴

The remaining challenge will be the translation of the law into practice and the Commission must monitor the implementation of the Directives to ensure children’s rights are respected.

³⁴ www.childrendeprivedofliberty.info.

- **8th Forum on the Rights of the Child**

The Forum built on the discussions of the previous year's meeting and again focussed on the theme of integrated child protection systems. Eurochild is encouraged the conference acknowledged that comprehensive child protection system require multidisciplinary teams of specially trained professionals in child protection systems and proper collection and sharing of data and information. As a follow-up, a public consultation was launched prior to developing EU guidance on where and when the EU can support member states and where individual countries can contribute to EU activities.

- **Directive on procedural safeguards for children suspected or accused in criminal proceedings**

The Commission's proposed draft included several elements which could lead to a more child-friendly justice system including a mandatory right of access to a lawyer at all stages, a right to be promptly informed about their rights, being assisted by their parents or another appropriate person during the process, the right not to be questioned in a public hearing, the right to medical examination and the right to be kept separate from adult inmates if deprived of liberty. Eurochild hopes that the final version of the directive will not be watered down and the protections enumerated will fully take into account the Council of Europe Guidelines on Child Friendly Justice.³⁵

In addition, Eurochild notes that the Report only briefly mentioned the directive on the right of access to a lawyer³⁶ which was adopted in 2013 but does not highlight that the directive promotes the rights of the child and takes into account the Council of Europe guidelines on child friendly justice. This directive also has implication for children in the justice system including the obligation to notify social welfare authority when a child has been deprived of their liberty and the limitation of a child's communication with a third party whilst deprived of liberty only in exceptional circumstances.

- **European Strategy for Better Internet for Children**

Eurochild is pleased that initiatives towards the achievement of the European Strategy Better Internet for children were highlighted as strengthening prevention, empowerment and participation of children to make the most of online technologies as countering cyber-bullying behaviour was a key priority in the Agenda.³⁷ The engagement with industry players to design child friendly devices and the CEO coalition to improve the internet as a space for children is welcomed.

- **116 000 hotlines for missing children**

This is one of the key actions of the Agenda and the Commission has been successful in helping to bring the hotline to 26 countries. However, the Report does not mention the third annual conference on the topic aiming to raise awareness about the 116 000 hotlines, exchange best practices, and identify practical tools to help remove the obstacles for the implementation of the service.

- **The establishment of an informal Member State expert group on the rights of the child**

Eurochild welcomes the establishment of this expert group and is particularly interested in the topics the Commission has chosen to present at the meetings (see above). However, the lack of transparency around the group including its membership inhibits the effectiveness of the group by depriving civil society the opportunity to engage with the members of the group.

- **Proposed Regulation establishing rules for the surveillance of the external sea borders**³⁸

The Report briefly mentions the proposal of the Regulation but failed to mention the references to children and their special needs and the rights of the child in the proposal. Eurochild is encouraged by the content of the finalised Regulation which was adopted in May 2014 and includes the recognition of the special needs of the child, in particular unaccompanied minors, and includes a reference to the UNCRC.

³⁵ [Council of Europe Guidelines on Child-Friendly Justice](#), November 2010.

³⁶ [Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.](#)

³⁷ [Commission Communication on a European Strategy Better Internet for Children](#), COM(2012) 196 final.

³⁸ Regulation, No PE-CO S 35/14, establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2035%202014%20INI>

RECOMMENDATIONS

Eurochild is pleased that this year's Report broadened its scope to include actions of a policy nature that concern fundamental rights, therefore covering areas which fall outside the EU's legislative competence. We welcome the Report gives greater attention to key initiatives related to children's rights as well as increased consideration of the rights of the child across other sections of the Report. Eurochild however considers that children's rights cannot be dealt with in a comprehensive manner within this Report as some initiatives, to a large extent in the case of external actions, are still excluded.

Given that the EU Agenda will be coming to its term this year, Eurochild suggests that a new framework for EU action on children's rights includes a requirement to produce a specific report which more exhaustively analyses the progress towards the Treaty objective to promote and protect children's rights.

There is still limited mainstreaming of children's rights evidenced within the Report. This confirms the conclusions of a Eurochild study conducted during 2013³⁹ reporting that consideration of the rights of the child in the institutions is still marginal. We therefore encourage the development of guidelines to mainstream children's rights across the work of the Commission alongside training to increase the understanding and impact of EU policy and action on children.

To this end, Eurochild's recommendations remain largely the same as in previous years and we call on the Commission to:

➔ ***EU legislation and policy should give due consideration to the rights of the child.***

The EU *acquis* and policy documents on the rights of the child⁴⁰, regularly updated by the child rights unit, reflects the extent to which EU legislation and policies are of relevance to children's rights, both internally and externally. The *acquis* is a useful tool to keep track of EU documents on children's rights but does not preclude a thorough annual report reflecting upon all initiatives taken by the European Commission to promote and protect the rights of the child.

At a time where the EU is seeking to reinforce coherence between internal and external policies, and there are many voices calling for the development of an internal human rights strategy, due consideration to children's rights is even more necessary to ensure child rights-based policies with better outcomes for the whole society.

The forthcoming revision of the Commission's impact assessment guidelines is an opportunity to improve consideration of children's rights in this process, in particular taking into account medium and long term benefits from investing in children.

➔ ***Develop a framework for EU action on the rights of the child.***

By the end of 2014 the EU Agenda will come to its term, and follow-up is a vital component to honour the EU's objective of promoting and protecting children's rights. This objective is at risk of remaining on paper without a clear framework on how to address children's rights across the work of the European Commission and the EU's institutions in general. Such a Framework should endorse the UNCRC principles and put forward a programme for action, including specific actions, mainstreaming, and monitoring and evaluation, bridging actions between the different directorate-generals and by the Member States when implementing measures stemming from EU policies.

Eurochild urges the new Commission and European Parliament to adopt a framework for EU action on the rights of the child, whatever form this new initiative might take, in 2015. Children's rights must be amongst the priorities of the new Commissioner responsible for the Charter and the rule of law.

³⁹ Eurochild Working Paper: Mainstreaming child rights in EU legislation, policy and programmes - lessons from practice, February 2014 available at: http://www.eurochild.org/fileadmin/ThematicPriorities/ChildrensRights/Eurochild/Mainstreaming_Childrens_Rights_Discussion-paper_Feb2014.pdf

⁴⁰ [EU acquis and policy documents on the rights of the child](#), DG Justice, last updated 24 February 2014.

→ **Mainstream children's rights across the work of the Commission.**

A toolkit providing guidance to integrate child rights in development cooperation⁴¹ was developed jointly by UNICEF and the European Commission and launched in 2013. Such an initiative is missing with regard to internal policies where existing tools and means are clearly insufficient to mainstream children's rights. Sufficient resources and authority should be given to the unit on the rights of the child to perform its coordination role on children's rights. Members of the Commission's inter-service group on the rights of the child should gain increased responsibility to integrate children's rights in the work of their respective DGs.

The development of a policy to mainstream children's rights, supported by training on children's rights delivered across DGs, would contribute to better design and monitoring of legislation, policies and actions that impact directly or indirectly on children's rights. Inspiration can be drawn from national level examples collected in Eurochild's study on mainstreaming child rights.⁴²



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Eurochild is a network of organisations and individuals promoting the rights and welfare of children and young people in Europe. The network currently has 170 members in 35 European countries. Our work is underpinned by the United Nations Convention on the Rights of the Child.

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⁴¹ <http://www.unicef.org/eu/crtoolkit/>.

⁴² Idem 39.