Applying the EU Charter of Fundamental Rights to children’s rights in the EU


POLICY PAPER
About Eurochild

Eurochild advocates for children's rights and well-being to be at the heart of policymaking. We are a network of organisations working with and for children throughout Europe, striving for a society that respects the rights of children. We influence policies, build internal capacities, facilitate mutual learning and exchange practice and research. The United Nations Convention on the Rights of the Child is the foundation of all our work.

Eurochild AISBL
Avenue des Arts 1, B – 1210 Brussels, Belgium
Tel. +32 (0)2 511 70 83 Fax +32 (0)2 511 72 98
info@eurochild.org – www.eurochild.org

For more information, contact:
Mieke Schuurman, Eurochild Policy Advisor
Email: mieke.schuurman@eurochild.org

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Summary

Every year the European Commission reports on the efforts of the European Union (EU) and the Member States to apply the EU Charter of Fundamental Rights\(^1\). The Report documents progress made in translating the Charter into practice by providing examples of legislation, policy and case law. The rights of the child have a dedicated section under the 'Equality' title and are referenced across the other titles – Dignity, Freedoms, Solidarity, Citizen's Rights and Justice.

Eurochild – the network promoting the rights and well-being of children in Europe – analyses the report from the perspective of children's rights. Our analysis extracts the relevant references in the Report to children's rights and then provides an assessment of some of the gaps or weaknesses.

Our assessment is intended for all stakeholders interested in following the EU's efforts in promoting and protecting children's rights – in particular the membership of Eurochild. It also offers recommendations to EU-level policy makers committed to making the EU a more effective champion for children's rights.

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\(^1\) 2014 report on the application of the EU Charter of Fundamental Rights.
Section 1: How are Fundamental Rights protected in the EU?

The protection of fundamental rights within the EU is ensured both at national level by the guarantees embedded in Member States’ constitutions, and at EU level by the Charter and Treaty on European Union (TEU)\(^2\). Protection and promotion of children’s rights is set as one of the objectives of the EU in Article 3 of TEU and the rights of the child are enshrined in Article 24 of the Charter.

The Charter itself draws on the European Convention on Human Rights (ECHR), the European Social Charter, other international human rights instruments, as well as constitutional traditions common to the EU Member States. Importantly, the Charter does not replace the national systems, rather complements them. In order to ensure that all EU institutions comply with the Charter in all their actions, several checks have been put into place.

The Commission services carry out fundamental rights impact assessments when preparing their legislative proposals. In 2014, the Commission committed to revise the impact assessment guidelines, dated of 2011\(^3\). The new guidelines were published in 2015 and are part of the so-called better regulation package\(^4\), which brings together a series of processes to ensure EU policy and legislation is prepared in a transparent way, informed by evidence, and involving stakeholders. The guidelines state that impact assessments should examine the impact of the different options on fundamental rights, including children’s rights, and whether they are in line with the Charter.

In 2014 the Council of the EU updated its Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies\(^5\). The 2014 Report indicates that training was provided for the staff to operationalise the guidelines.

The European Parliament shall in all its activities fully respect fundamental rights as laid down in the Charter, as well as the rights and principles enshrined in TEU.\(^6\) In case of uncertainty about whether the proposal complies with the Charter, the matter can be referred to the committee for the interpretation of the Charter.\(^7\)

If despite the abovementioned checks, legislation or policies adopted are found to be in conflict with the Charter, the CJEU can determine that the legislation or policy be annulled.

In its external actions, the EU has been guided by the Action Plan on Human Rights and Democracy, renewed in 2015\(^8\). To ensure the protection of children, the EU institutions shall follow the EU Guidelines for the Promotion and Protection of the Rights of the Child\(^9\).

\(\)\(^2\) Treaty on the European Union.
\(\)\(^4\) Better Regulation Package – Impact assessment Guidelines and toolbox
\(\)\(^6\) Treaty on European Union, Article 2 and Article 6(2) (3).
\(\)\(^9\) EU Guidelines for the Promotion and Protection of the Rights of the Child.
The Charter is binding to Member States when implementing EU law and measures. If a national authority, breaches fundamental rights laid down in the Charter when implementing EU measures or acting within the scope of EU law\(^{10}\), the Commission can launch an infringement procedure against the Member State that could ultimately end up before the CJEU. In limited cases, when individuals or entities consider that an act of the EU institutions, which directly affects them, violates their fundamental rights they can file the case with the CJEU. Moreover, by answering referrals for preliminary rulings, the CJEU also gives guidance to national judges on the applicability of the Charter and the interpretation of its provisions.

Individuals may turn to national courts to seek remedies for violation of their rights. All EU Member States are also bound to respect human rights under the ECHR. Therefore, after exhausting all available national remedies, individuals may lodge an application with the European Court of Human Rights (EChHR) in Strasbourg for a violation of the rights enshrined in the ECHR. According to the TEU, the fundamental rights, as guaranteed by the ECHR, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the EU's law. The bridge between the Charter and the ECHR has been further reinforced by the jurisprudence of the EChHR and CJEU.

The TEU also establishes an obligation for the EU to accede to the ECHR\(^{11}\). In December 2014, the CJEU delivered its ruling\(^{12}\) on the draft agreement\(^{13}\) on the EU's accession rendering it incompatible with EU law. Nevertheless, the accession to ECHR has been acknowledged as a strong priority for the new Commission; thus a new agreement should be negotiated in the future.

Section 2: How does the EU's Fundamental Rights Report address children’s rights?

2.1 How is the Report structured?

The Report is divided up under the titles of the Charter: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights and Justice. It also includes new sections on General Provisions governing the interpretation and application of the Charter, and ‘fundamental rights in the digital environment’ – recognised as an important emerging issue. By referring to the investigation by the European Ombudsman, the Report also addresses how the management of the EU funds, both by the EU institutions and bodies and the Member States ensure respect for fundamental rights.

In addition, the Report pays attention to the human rights dimension of EU external actions in accordance with Article 21 TEU.

Under each title, the Report includes examples of legislation, policy, and case law that give effect to the right in question. The legislative section gives examples of how the EU institutions promote the Charter, as well as examples of how legislation and infringement procedures ensure compliance with the Charter. The policy section gives examples of

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\(^{10}\) Case C- 617/10 Akerberg Fransson, par. 21.

\(^{11}\) TEU, Article 6(2) and Protocol no.8 to the Treaties.

\(^{12}\) Opinion 2/13, 18 December 2014.

\(^{13}\) Fifth negotiation meeting between the CDDH ad-hoc negotiation group and the European Commission on the accession of the European Union to the European Convention on Human Rights, 13 June 2013.
measures within policy areas, for example through recommendations, guidelines and good practice. The case law sections include jurisprudence of the CJEU, as well as national courts decisions referring to the Charter.

The report acknowledges that the Charter has steadily gained legal importance witnessed by increasing number of the EU Courts referring to it – 210 in 2014 compared to 114 in 2013. The rights of the child were referenced in 3% of the national courts’ decisions. Interestingly, to show the growing impact of the Charter, the Report includes decisions of the national courts referring to the Charter even in the cases where EU law was not applicable.

The Report also provides an overview of the questions and petitions received from the European Parliament, letters from the general public and data gathered by the Fundamental Rights Agency (FRA). 1% of letters received from the general public concerned children’s rights. Some 5% of questions from the European Parliament relate to children, compared to 3.8% in 2013. With regard to petitions on children’s rights, the number fell from 11.9% in 2013 to 7% in 2014.

2.2 A closer look at the children’s rights section in the Report

The title on Equality includes a specific focus on children’s rights, offering the following examples of legislation, policy and case law:-

- **Legislation**
  The Council agreed in June on a general approach for implementation of the Directive on procedural safeguards for children suspected or accused in criminal proceedings\textsuperscript{14} which, together with other initiatives\textsuperscript{15}, aims to enhance child-friendly justice systems. The proposal enshrines special guarantees for children throughout the criminal proceedings, including access to lawyer, prompt information on their rights, assistance by parents, the right to receive medical examination and to be kept separate from adults if deprived of liberty, and a duty of the authorities to consider alternatives to deprivation of liberty. The proposal awaits plenary voting by the European Parliament in 2016.

  In application of CJEU jurisprudence\textsuperscript{16} the Commission adopted a proposal amending Article 8(4) of the Dublin III Regulation\textsuperscript{17} to ensure all the loopholes in the responsibility criteria relating to unaccompanied minors are covered. The amendment seeks to ensure that the child’s best interests is a primary consideration in the Dublin procedure by determining that a child will not be needlessly transferred from one EU State to another and that the examination of their application shall not be unduly prolonged.

- **Policy**
  The Report makes a reference to the successful completion of the actions set out in the 2011-2014 EU Agenda for the rights of the child. It indicates a preliminary evaluation of the Agenda presented to the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) led to Council Conclusions on the promotion and

\textsuperscript{15} Directive establishing minimum standards on the rights, support and protection of victims of crime, and on-going FRA research on forms of child participation in criminal and civil judicial proceedings, 2012/29/EU.
\textsuperscript{16} CJEU judgment of 6 June 2013.
\textsuperscript{17} COM (2014) 382 final.
protection of the rights of the child adopted in December 2014 to mark the 25th Anniversary of the UN Convention on the Rights of the Child.\textsuperscript{18} The Conclusions invite the Commission and Member States to give full recognition to children as rights holders and to ensure respect for the principle of the best interests of the child in all policies affecting children. They commit the Council to consistently apply the internal guidelines on fundamental rights compatibility in its preparatory bodies.

The European Parliament adopted a Resolution to mark the 25th anniversary of the UN Convention on the Rights of the Child,\textsuperscript{19} calling on Member States to put children's rights on the EU's agenda and to consider children as a priority in future regional and cohesion policies. The Resolution also calls on the Commission to seize the opportunity afforded by the mid-term review of the multiannual financial framework to ensure that EU funds benefit the most disadvantaged and vulnerable children across Europe.

A Resolution and Council Conclusions were adopted related to youth: the EU Work Plan for Youth (2014 – 2015), a 18-month structured plan to address urgently the high youth unemployment rates and the consequences of the current crisis for young people and Conclusions on promoting young people's access to rights in order to foster their autonomy and participation in civil society.

The Council adopted the EU Work Plan for Sport (2014 – 2017)\textsuperscript{20} setting out actions to protect young athletes and safeguard children's rights in sport, among other suggestions, and Conclusions on multilingualism and the development of language competences:\textsuperscript{21} The latter include measures to support children and adults with migrant backgrounds in learning the language(s) of the host country.

With regard to children's health two important documents were adopted: the Action Plan on Childhood Obesity 2014 – 2020\textsuperscript{22} and Council Conclusions on 'The European Pact for Mental Health and Well-being: results and future action'\textsuperscript{23}, inviting Member States to strengthen mental health promotion of children and young people by supporting positive parenting skills, holistic school approaches to reduce bullying and to increase social and emotional competences as well as supporting families where a parent has a mental health problem.

Within the framework of the 2013 Commission Recommendation on Investing in children: breaking the cycle of disadvantage\textsuperscript{24}, the following initiatives were concluded in 2014:

- A synthesis report ‘Investing in children: breaking the cycle of disadvantage – A study of national policies\textsuperscript{25} by the European network of independent experts on social inclusion. This report assesses what has been done and provides Member States recommendations to implement the Recommendation.

\textsuperscript{18} Conclusions of the Council of the EU on the promotion and protection of the rights of the child, 17 December 2014
\textsuperscript{21} Council Conclusions on multilingualism and the development of language competences, 20 May 2014.
\textsuperscript{22} EU Action Plan on Childhood Obesity 2014-2020, 24 February 2014.
\textsuperscript{23} Council Conclusions on The European Pact for Mental Health and Well-being: results and future action, 6 June 2011.
\textsuperscript{24} Commission Recommendation Investing in children: breaking the cycle of disadvantage, 20 February 2013.
\textsuperscript{25} Investing in children: breaking the cycle of disadvantage – A study of national policies, 28 April 2014.
• Study on how conditional cash transfers (CCTs) can promote investment in children. The Commission maintained the European Platform for Investing in Children (EPIC) website to share good examples of policymaking for children and families and to foster cooperation and mutual learning in the field.

• The 2014 country-specific recommendations related to children encourage Member States to invest in areas such as inclusive education and early school leaving, income support, affordable housing, financial disincentives, reconciliation, youth activation, health, Roma, efficiency/effectiveness, and early childhood education and care. Furthermore, the Commission proposed recommendations to enhance access to affordable quality early childhood education looking at enhancing reconciliation of family and professional life and supporting the participation of parents in the labour market.

• Study on the effective use of early childhood education and care (ECEC) in preventing early school leaving (ESL). The Report refers to several initiatives related to child protection:

• Study on children's involvement in criminal proceedings was published by the European Commission. It is part of a broader study collecting data on children's involvement in criminal, civil and administrative judicial proceedings expected to be completed in 2015. Although not detailed in the Report it is worth highlighting this study interviewed children on their experiences of being involved in judicial proceedings, as witnesses, victims or party to the proceedings. The focus was on cases of domestic violence, sexual abuse, neglect, and custody conflicts in divorce proceedings. The fieldwork findings, based on interviews with professionals and children, show that there is a long way to go to make justice more child-friendly across the EU.

• In preparation of a Communication on integrated child protection systems the Commission carried out a public consultation on integrated child protection systems and the FRA conducted a mapping of Member States' national child protection systems.

• Report on "The meaning of online problematic situations for children: results of qualitative cross-cultural investigation in nine European countries" was released by the EU Kids Online, research co-funded by the Commission under the EU safer/better internet programme.

• Declaration on Facilitating International Cooperation in Online Child Sexual Abuse Investigations endorsed by the Global Alliance against Child Sexual Abuse Online, a joint initiative at ministerial level of the EU and the US seeking to ensure the Charter rights are respected and promoted. The Declaration includes commitments to facilitate transnational investigation and prosecution of on-line sexual abuse crimes.

27 European Platform for Investing in Children (EPIC).
29 Study on the effective use of early childhood education and care (ECEC) in preventing early school leaving (ESL), 2014.
30 Children in Judicial Proceedings (European Commission website).
32 EU Kids Online (website).
• Launch of infringement proceedings against 11 Member States for the non-communication of measures transposing Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

• Continuation of dedicated funding to hotlines in Member States that work in partnership with law enforcement, industry and children’s organisation to combat the distribution of child abuse images online. The Commission also funds awareness centres and helplines in Member States that provide information and support to young people, parents and teachers for issues, including cyberbullying, supported by a central platform of shared information and services.  

• Midterm Report on the implementation of the EU Strategy towards the eradication of trafficking in human beings 2012-2016 and the Second Eurostat Working Paper on statistics on trafficking in human beings, revealing that 16% of 30 146 victims of trafficking (between 2010 and 2012) were under 18 and that more than 1000 children have been trafficked for the purpose of sexual exploitation.

• Handbook on ‘Guardianship for children deprived of parental care – a handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking’.

• Launch of study on identifying high-risk groups of trafficking. It aims to develop the knowledge and increase understanding on children as a particularly vulnerable group that is at greater risk of being trafficked into the EU and within the EU and Member States.

• Council Conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation.

• European Migration Network (EMN) work: compilation of replies on admission/residence and guardianship-related provisions for unaccompanied foreign and/or EU children in vulnerable situations and on issues relating to care orders for foreign children of illegally staying parents; and EU synthesis report on the use of detention and alternatives to detention in the context of immigration policies.

• Fund of projects on the protection of migrants, including children, from abuse and human rights violations such as trafficking in human beings, and empowering them through effective integration policies and promoting access to basic services such as healthcare. The Commission launched a EUR 9.5 million globally coordinated civil society action with the International Federation of the Red Cross, focusing on the rights of vulnerable migrants and victims of human trafficking.

• Case law

The Report summarises several CJEU judgments holding that jurisdiction in matters of parental responsibility must be determined, above all, in the best interests of the child. Cases appreciated by the Court related to the Brussels Ila Regulation on jurisdiction and

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35 EU Council conclusions on “Preventing and combating all forms of violence against women and girls, including female genital mutilation”, 5 June 2014.
36 Ad-hoc query on admission/residence and guardianship related provisions for unaccompanied foreign and/or EU minors in vulnerable situations, 16 January 2014.
37 The use of detention and alternatives to detention in the context of immigration policies - Synthesis Report for the EMN Focused Study 2014, European Commission.
the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

In Saciri and Others⁹⁹ the CJEU held that where a Member State has opted to grant the material reception conditions in the form of financial allowances or vouchers, the amount of those allowances must allow dignified standard of living and be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.

In Tarakhel v. Switzerland, ECtHR issued a judgment on whether a transfer of a family with children by Switzerland to Italy under the Dublin regulations would violate Articles 3, 13 and 8 of the ECHR. The Court ruled that Switzerland should seek individual guarantees from Italy “that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together” before sending the applicants to Italy.

- Application by the Member States

The Commission looked into how Member States applied the Charter at the Union’s external borders, in particular as regards the application of the principle of non-refoulement, and issues such as the application and length of detention, detention conditions, and the particular situation of children, free legal assistance and effective remedies in the context of the asylum process.

In addition to the infringement procedures launched against countries that didn’t notify transposition of the Directive on Child Sexual Abuse Directive (see above) the Commission launched an infringement procedure against a Member State on the situation of unaccompanied minors seeking asylum in what appears to be a proper implementation of the Reception Conditions and the Asylum Procedures Directives, as well as breaching article 24 of the Charter on the Rights of the Child.

2.3 How are children’s rights addressed in other parts of the Report?

Right to human dignity (art. 1) - reference to the CJEU Saciri and Others case (see above).

Right to the integrity of the person (art. 3) – mention of continued efforts to collect more data on gender-based violence, support to targeted campaigns on sexual harassment amongst young people, and on support for projects aiming at prevention of violence against women and girls. In connection to the latter the Commission adopted measures for implementation of the Communication “Towards the elimination of female genital mutilation including training and support to professionals who can help women and girls living with or at risk of female genital mutilation.”

Reference is also made to infringement procedures launched against Member States for non-communication of measures transposing Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography (see above).

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⁹⁹ CJEU Judgment of 27 February 2014 in Case C-79/13, see also Articles 1 and 7.
Prohibition of torture and inhuman or degrading treatment or punishment (art. 4) – In reference to the European Ombudsman inquiry on the means through which FRONTEX ensures respect for fundamental rights of the persons who are subject to forced returns in joint return operations, observations are made on particular attention to families and children and the exclusion of unaccompanied minors in joint return operations, in their best interests.

The ECHR Tarakhel v. Switzerland case is sustained as an example where children’s rights were considered (see above).

Prohibition of slavery and forced labour (Art.5) – Several actions related to the 2012-2016 EU Strategy towards the eradication of Trafficking in Human Beings are mentioned, with references to children being detailed in the dedicated section (see above). The Report also stresses the Commission will not hesitate to take steps to ensure full compliance with the 2011 Directive on preventing and combating trafficking in human beings which adopts an integrated, holistic, and human rights based approach, including children’s rights, in addressing trafficking in human beings.

Right to liberty and security (art. 6) – A study on Children in conflict with the law and in detention found that in most Member States there was a statutory obligation for pre-trial detention of children suspected of committing offences to be used as a measure of last resort. However, it shows that practice varies across Member States as regards the maximum duration of pre-charge and post-charge pre-trial detention of child suspects. It also found that while Belgium and Portugal are the only Member States with no rules requiring that children in pre-trial detention are held separately from adults, several countries fail to implement this obligation due to problems of infrastructure.

Respect for private and family life (art. 7) – A Communication was adopted providing guidance for application of the Directive on the right to family reunification stressing that the Directive must be interpreted and applied in accordance with fundamental rights, including, the rights of the child.

Right to education (art. 14) – Notes the infringement proceedings launched by the European Commission against a Member State concerning discrimination of Roma children in education (further developed under article 21 – see below).

Right to asylum (art 18) – Mention of the Commission’s proposal amending Article 8(4) of the Dublin III Regulation on the issue of determining responsibility for examining applications made by unaccompanied children to ensure their best interests are always a primary consideration in the Dublin procedure (see above).

The annual Fundamental Rights Agency Conference focused on fundamental rights and migration to the EU in particular the challenges in the area of asylum, border and migrant integration. A number of measures related to the protection of children were recommended in the conference outcomes.

40 Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the EU, European Commission, 2014.
In the framework of the EU’s external migration policy this section also mentions the Global Approach to Migration and Mobility projects focusing on protecting migrants, in particular the most vulnerable groups such as children, empowering them though effective integration policies and access to basic services, including health care.

Reference is made to the ECHR decision on the Tarakhel vs Switzerland case (see above).

**Non-discrimination (art. 21)** – Particular attention is paid to Roma discrimination and the Report provides examples of action taken, notably on infringement proceedings against a Member State concerning discrimination of Roma children in education, and the promotion of equal access to quality education for Roma children and inclusive education thought the ROMED programme (2011-2014). Furthermore the Report refers to the European Commission Report on the implementation of the Framework for National Roma Integration Strategies\(^41\) presenting progress on the situation of Roma in education, employment, health, housing and discrimination. Children are mainly mentioned in the chapter on education, particularly in relation to early childhood education and care.

**Cultural, religious and linguistic diversity (art. 22)** – The Council adopted conclusions on multilingualism and the development of language competences, including measures to support children and adults with migrant backgrounds in learning the language(s) of the host country.

**Equality between women and men (art. 23)** – Reference is made to the annual 2014 Report on equality between women and men and the use of European Structural and Investment Funds to promote, amongst other areas, investment in early childhood education and care facilities. Eurochild notes no links with children’s rights are made though it is important to read these measures in conjunction with guaranteeing the quality of ECEC services (see assessment section below).

**Integration of persons with disabilities (art. 26)** – No specific mention to children with disabilities is made with regard to the submission of the first Commission’s report to the UNCRPD Committee on the implementation of the Convention. Importantly, the Commission acknowledges that ratification of the UNCRPD has had tangible impacts in EU legislation and policy making.

Reference is made to the reinforced provisions introduced in the 2014-2020 regulatory framework for the European Structural and Investment Funds (ESIF) on the ex-ante conditionality criteria aimed to ensure investments are effectively used to promote the rights of persons with disabilities. The new regulation funds also prioritise investments to support the transition from institutional to community-based services, an objective also promoted through national seminars on the use of structural funds.

The Report provides information on the 2015 Access City Award which recognises accessibility initiatives improving equal access to city life for people with disabilities, such as children’s playgrounds.

Health care (art. 35) – New rules adopted under the Tobacco Products Directive aim to reduce the number of people who start smoking in the EU, especially children and teenagers. Member States must transpose the Directive by May 2016.

Right to an effective remedy and a fair trial (art. 47) – this section mentions infringement procedures launched against a member state for incorrect transposition of the Reception Conditions and the Asylum Procedures Directive (see above).

Presumption of innocence and right of defence (art. 48) - notes that during 2014 negotiations on the Procedural rights package advanced, including the Directive on special safeguards for children in criminal proceedings.

Section 3: What's working and what more can be done?

The Report improves year-on-year in how children’s rights are addressed. There are more cross-references between the different sections and the article on the rights of the child, which facilitate understanding how different articles of the Charter apply to children. This year’s Report also pays some attention to the impact of the Charter in the EU’s external dimension, such as references to the Global Approach to Migration and Mobility and the human rights guidelines on freedom of expression.

While acknowledging the Report cannot be exhaustive, our assessment draws attention to initiatives that were either not reported or not associated with children’s rights. We furthermore provide recommendations in order to further the implementation of article 24 of the Charter and a broader protection and promotion of children’s rights and well-being by the European Commission.

- The Report notes that a preliminary assessment of the Agenda presented to the Council’s FREMP working group led to Council conclusions on the promotion and protection of children’s rights. Eurochild regrets this assessment was not made public as it would support identifying gaps and opportunities for a successor to the Agenda.

- We welcome that the Report underlines the call from the European Parliament to the Commission\(^42\) to take the opportunity of the multiannual financial framework mid-term review to ensure EU funds benefit the most disadvantaged children across Europe.

- Although not mentioned in the Report, the creation of an Intergroup on children’s rights in the European Parliament was an important development in 2014. It aims to promote children’s rights and ensure that the best interests of the child are taken into account in EU internal and external action. It should bring more visibility to children’s rights and can play a key role in mainstreaming the rights of the child across the work of the Parliament.

- The European Parliament action related to children’s rights included motions for resolutions on issues such as child brides, online child pornography, protection of children on the web, child poverty in Europe, risks stemming from overuse of

\(^{42}\) EP Resolution on the 25th anniversary of the UNCRC, 24 November 2014.
electronic devices by children, access to healthcare, child obesity. It has also called for a European center for the monitoring and protection of children’s rights and adopted a Resolution on the Commission communication entitled ‘Towards the elimination of female genital mutilation’ encouraging Member States to use existing mechanisms, in particular Directive 2012/29/EU, including training for professionals to protect women and girls, and to pursue, prosecute and punish any resident who has committed the crime of FGM, even if the offence was committed outside the borders of the Member State concerned. The Resolution also calls on the Commission to designate 2016 as the European Year to End Violence against Women and Girls. Council conclusions adopted on preventing and combating all forms of violence against women and girls, including female genital mutilation are referred to in the Report (see above).

- The 2014-2020 Daphne Programme was launched and will continue to fund projects to prevent and combat violence against children, young people and women and to protect victims and groups at risk.

- Part of the section under article 24 is dedicated to indicatives on youth. Although important to mention, those measures do not concern the vast majority of under eighteen’s since the primary aim is to foster the inclusion of young people in the labour market rather than protecting children’s fundamental rights. Still, the use of the Structured Dialogue is potentially a good opportunity to engage adolescents and improve their knowledge on accessing their rights, including the right to participate.

- Eurochild commends the dedicated paragraph on the Investing in Children Recommendation: breaking the cycle of disadvantage. Amongst other initiatives (see above) it mentions the synthesis report by the European network of experts on social inclusion on how Member States can implement the Recommendation but it does not acknowledge its implementation is sluggish. As a contribution to further the implementation of the Recommendation, the EU Alliance for Investing and Children published a compilation of inspiring examples on how the Recommendation can be put into practice.

The Report notes the Country Specific Recommendations (CSRs) related to children issued by the Commission to the Member States. The CSRs are an important tool to secure children’s rights are considered in application of the European Semester processes and suggest how investment could better be directed to children. The Report adds that CSRs included recommendations to

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43 EP Resolution on the issue of child brides, 4 December 2014.
43 EP Resolution on the fight against online child pornography, 9 April 2014.
43 EP Resolution on establishing a European centre for the monitoring and protection of children’s rights, 12 April 2014.
44 EP Resolution on establishing a European centre for the monitoring and protection of children’s rights, 12 April 2014.
enhance access to early childhood education and care (ECEC) services with a view to reconcile parents’ family and professional life and labour market participation. While this is welcomed for its potential to provide children with ECEC, improving access must go hand in hand with ensuring quality of the services provided. As a contribution to this end the European Commission supported a Working Group on ECEC that published in 2014 a Proposal for key principles of a Quality Framework for Early Childhood Education and Care49. It aims to improve, monitor, and evaluate the quality of ECEC focusing on five main aspects: access, workforce, curriculum, evaluation and monitoring, and governance and funding.

- A single set of rules covering the European Structural and Investment funds was introduced in 2014 according to which at least 20% of ESF funding in the 2014-2020 programming period must be allocated to social inclusion and poverty reduction. It can cover actions such as targeting people at risk of discrimination; measures towards enhanced access to affordable, sustainable and high-quality social services including out-of-school care, reducing and preventing early school-leaving and promoting equal access to good quality ECEC, primary and secondary education, and support for the transition from institutional care to community-based care services for children. However, the enduring challenge is to ensure implementation by Member States and effective use of the funding towards investing in children and promoting children’s well-being.

- As follow-up to discussions at the EU Child Rights Forum the Commission launched a public consultation50 to help prepare a Communication on integrated child protection systems. This is also backed up by FRA’s research mapping national child protection systems. The outcome, however, was a not a Communication but a reflection paper for the 2015 EU Child Rights Forum. Nonetheless these guidelines can offer an important resource to improve member states national child protection systems. Although addressing violence against children is a main component of child protection, Eurochild supports a broader understanding to include social protection to secure rights of the child, and child well-being more generally, as set out in the 2013 Commission Recommendation Investing in Children.

- In 2014 FRA presented other research outcomes relevant for children that are not mentioned in the Report:
  
  An EU-wide survey on Violence against women was based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including domestic violence during childhood.
  
  The ‘Roma survey – Data in focus: Education: the situation of Roma in 11 EU Member States’ examines the results of FRA’s 2011 Roma survey on education, which show that considerable gaps between Roma and non-Roma children persist at all educational levels. Unequal access to education can lead to unequal access

50 Eurochild’s response to the consultation can be found here.
to employment, housing and health and ultimately reduce Roma’s chances to enjoy their fundamental rights. It stresses that improving the educational situation of Roma is a litmus test of the EU’s ability to achieve progress in the inclusion of all extremely marginalised groups.

- FRA is also developing a **handbook on access to justice** which will summarise the key European legal and jurisprudential principles in the area of Justice. It would be important this handbook also takes into account the rights of the child and builds on findings from FRA publication: Handbook on **European law relating to the rights of the child**\(^{51}\).

- The adoption of a Regulation\(^{52}\) establishing rules for the surveillance of the external sea borders includes coordination measures in search and rescue operations by FRONTEX to ensure the protection and safety of lives and strengthen the protection of fundamental rights. Although not mentioned in the Report, the Regulation sets out that the special needs of children shall be addressed and the UNCRC is amongst the international human rights laws instruments that Member States must respect during border surveillance operations at sea.

- Eurochild welcomes the prominence of children’s rights in the new manual for trainers on fundamental rights\(^{53}\), although this is not specifically mentioned in the Report. Seeing the current humanitarian crisis of migrants trying to reach Europe’s shores it is of utmost importance this manual is used to train EU and Member States missions deployed at sea.

- The new EU Human Rights Guidelines on Freedom of expression Online and Offline\(^{54}\) adopted by the Council in May 2014 aim to provide political and operational guidance to EU and Member States officials working in third countries, international organisations and civil society. At a time where many countries adopt restrictive measures allegedly aimed at protecting children from harmful information\(^{55}\) it is relevant the guidelines endorse article 13 of the UNCRC on children’s rights to freedom of expression which includes the right to get and to share information.

- The Report highlights the Commission’s priority to adopt the horizontal anti-discrimination Directive. This is a welcome step after years of stalled negotiations at Council level. The Directive has significant potential to increase the level of protection against discrimination suffered by children\(^{56}\).

- When addressing the prohibition of child labour and protection of young people at work the Report merely explains the content of article 32 of the Charter and misses

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\(^{51}\)Handbook on European law relating to the rights of the child, FRA, European Court of Human Rights, Council of Europe, 2015.

\(^{52}\)Regulation (EU) No 656/2014 of 15 May 2014 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 EU.

\(^{53}\)Fundamental rights training for border guards, FRONTEX, 2013.

\(^{54}\)EU Human Rights Guidelines on Freedom of expression Online and Offline, Council of the EU, 12 May 2014.

\(^{55}\)Report of the UNSG Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, August 2014.

\(^{56}\)Equality for All, 16 June 2015.
the opportunity to indicate how the 2013 Commission’s staff working document on trade and the worst forms of child labour\textsuperscript{57} has been used to protect children’s rights.

- Apart from announcing the launch of the Access City Award to improve accessibility of people with disabilities the Report overlooks children with disabilities. It also omits any reference to children when mentioning one of the ESIF’s priority to support the transition from institutional to community base care. Eurochild recalls this is important as children with disabilities are overly represented in institutional care. Follow-up to the first Commission’s report to the UNCRPD Committee on the implementation of the Convention is an opportunity to ensure the rights of children with disabilities are mainstreamed across the Commission’s work.

Section 4: Recommendations

As stated in the Report the priority actions set out in the 2011 EU Agenda\textsuperscript{58} have been accomplished. It remains to be seen if and how the European Commission can keep a clear focus on delivering the Treaty objective to promote and protect children’s rights in the absence of a guiding framework.

Application of the new impact assessment guidelines\textsuperscript{59} which require all legislative and policy proposals to be assessed for their impact on fundamental rights, including children’s rights, can be helpful. However Eurochild fears that this may become a ‘tick-box’ exercise which will not lead to the meaningful mainstreaming of the rights of the child across the work of the Commission.

Upon taking office in November 2014, President Juncker committed ‘...to make use of the prerogatives of the Commission to uphold, within our field of competence, our shared values and fundamental rights, while taking due account of the diversity of constitutional and cultural traditions of the 28 Member States’. He also stressed the need to enhance collegiality and break down the silos in European policy making, enhance coordination, direction and impact.

However, the narrowing focus on growth and jobs and weakening commitment to an integrated approach as envisaged in the Europe 2020 strategy is putting fundamental rights at risk. Investing in children and promoting children’s rights and overall well-being appears to be falling down the priority list of the current leadership.

Make the realization of children’s rights a political priority

In the absence of a robust successor to the EU Agenda on the rights of the child, there is a risk that the European Commission loses sight of its role and responsibilities in protecting the rights of the child. Since the first Fundamental Rights Report in 2010, children’s rights have gained visibility. Progress has been made both in specific priority areas, and in mainstreaming the rights of the child across all areas of the EUs work. But there is a risk that this trend is stalled or even reversed. Notwithstanding the excellent work of the child

\textsuperscript{57} Trade and Worst Forms of Child Labour, SWD (2013) 173 final, 30 April 2013.
\textsuperscript{58} An EU Agenda on the Rights of the Child (European Commission website).
rights coordinator and her team in DG JUST, high level political recognition of, and commitment to, children’s rights is lacking. This indifference prevents progress and may even lead to greater child rights violations, as can be seen for example in the response to the migration and refugee crisis.

In addition to political recognition and commitment, Eurochild proposes 10 practical steps that the European Commission ought to take to effectively implement its objective to promote and protect children's rights.

1. Ensure the European Commission coordinator on children's rights has the authority, capacity and resources to oversee how children's rights commitments are being delivered across the European Commission.
2. Develop and deliver training and capacity building throughout DGs, and appropriate tools\(^\text{60}\).
3. In light of the Better Regulation framework, it is important to review effectiveness of impact assessment processes through European Commission\(^\text{61}\) and Council guidelines\(^\text{62}\), and ensure meaningful use of tools \(^\text{63}\) to mainstream children’s rights.
4. Strengthen the role of the Commission’s inter-service group and ensure its members have responsibility and resources to properly integrate the rights of the child in the work of their respective DGs.
5. Improve inter-institutional coordination on children’s rights – in particular of the Commission with the European Parliament through the new intergroup on children’s rights – and with Member States, through links built with the Commission's Member State expert group.
6. Develop a budget monitoring tool to track EU budget allocations relevant to children and assess their effectiveness.
7. Expand on existing research and data collection and make better use of existing statistics, research and projects, including from the FRA, OECD and Eurostat. Research and comparable data are crucial to shed light on the situation of children and build evidence-based policies.
8. Create a database of EU funded projects to share main outcomes and deliverables.
9. Support the use and further development, where appropriate, of specific indicators on children\(^\text{64}\).
10. Engage with stakeholders. Civil society organisations can offer valuable perspectives to advance the child rights agenda. They are also a crucial partner to engage with children at national and local level and bring their perspectives into consultation processes and dialogue at EU level.

\(^{60}\) Such as the toolkit providing guidance to integrate child rights in development cooperation produced jointly by UNICEF and the European Commission.


\(^{62}\) Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council’s preparatory bodies, (10140/11, 18 May 2011), Council of the European Union

\(^{63}\) Mainstreaming Children’s Rights in EU Legislation, Policy and Budget, Discussion Paper, Eurochild, February 2014

\(^{64}\) Within the framework of the Investing in Children Recommendation a set of indicators is proposed but has not been put into use.