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


POLICY PAPER

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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.

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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. 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.
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 domestic legislative provisions of the Member States as well as at EU level by the Charter of Fundamental Rights and the Treaty on European Union (TEU). Member States’ national systems for the protection of fundamental rights work in tandem with the European Convention on Human Rights (ECHR), thus providing a comprehensive framework for the protection of human rights.

The Charter of Fundamental Rights of the European Union (the Charter) entered into force via the establishment of the Lisbon Treaty and became directly binding for all EU Member States when implementing EU legislation and institutions on 1 December 2009. The rights of the child are enshrined specifically within Article 24 of the Charter and importantly, Article 3 of the TEU calls for the promotion and protection of children’s rights as a leading objective of the EU.

All EU institution actions including those of the Commission, Parliament and Council must comply with the Charter, particularly with regards to the legislative process. The Commission is required to ensure that all its actions respect the rights provided for in the Charter.

However the Charter is only applicable in Member States when the matter concerns a question of EU law. If a national authority is in breach of fundamental rights as set out in the Charter when implementing EU law, the Commission can commence an infringement procedure against the Member State in question. This may lead to an ultimate assessment of the Member State by the Court of Justice of the European Union (CJEU). Individuals are also entitled to file a case with the CJEU when their rights have been directly violated by an EU institution. Through these cases the CJEU can provide guidance to Member States with regards to better aligning national law and practices with provisions in EU law and namely those found in the Charter.

The European Commission undertakes systematic fundamental rights impact assessments during the preparation of draft legislation and policy in order to certify compliance with the Charter. The recently revised Better Regulation agenda seeks to uphold and encourage transparent EU decision-making processes with regards to both policy and legislation. Additionally, the ‘better regulation toolbox’ provides the Commission with a fundamental rights checklist which can be used when carrying out assessments.

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1 Treaty on the European Union. See here.
2 Case C- 617/10 Akberg Fransson, par. 21.
4 European Commission, Better Regulation toolbox. See here.
In September 2015 the European Parliament adopted a resolution on fundamental rights in the European Union 2013-2014. The resolution established a framework to monitor the rule of law and laid out cases of individual rights issues in Member States.

The EU’s programme on external action is guided by Article 21 of the TEU. In July 2015, the EU Action Plan on Human Rights and Democracy (2015-2019) was set out, implementing commitments made within the strategic framework. In all external relations regarding children and their rights, EU institutions must adhere to the EU Guidelines for the Promotion and Protection of the Rights of the Child.

The Commission would like to further strengthen the advancement of human rights through the EU’s accession to the European Convention on Human Rights and Fundamental Freedoms. After the Court of Justice’s ruling on the draft agreement in 2014, the Commission is undergoing a consultation process with the special committee chosen by the Council to respond to the challenges uncovered in the opinion of the CJEU.

**Section 2: Children’s Rights within the Report**

The Report is divided up under the titles of the Charter: Dignity, Freedoms, Equality, Solidarity, Citizen’s Rights and Justice. Although there is a subsection that focuses specifically on children’s rights under the ‘Equality’ title, child rights issues also feature within other sections. A general overview of the Report reveals an emphasis on children in certain areas including child protection, migration and education.

**Child protection**

The report refers to several key developments within the area of child protection:

**Legislation and application by the Member States**

- On 15 December 2015 the Parliament and Council agreed on a Directive on **special safeguards for children in criminal proceedings**. This will strengthen procedural safeguards for children as greater attention will be placed on their ability to effectively participate in the proceedings through a more clear understanding of the justice process. It will also ensure that children are able to exercise their right to a fair trial and that those who do

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enter the penal justice system are able to reintegrate into society afterwards.

- In order to complement and strengthen the Directive on child sexual abuse 2001/93/EU, some Member States have committed to supporting its implementation. The Directive seeks to provide a better system of protection for children and to more adequately deal with the prosecution of offenders. During 2015, the Commission pursued with Reasoned Opinions the infringement procedures against seven Member States to properly establish the Directive on child sexual abuse.

**Policy**

- On the 20th October the Commission in conjunction with the Presidency of Luxembourg, held the 9th EU Anti-Trafficking Day as part of promoting the EU’s strategy on eradicating trafficking in human beings. A series of studies on trafficking were published by the Commission, which incorporated a Study on high-risk groups focusing on children. Additionally, the Fundamental Rights Agency with the support of the Commission, launched the report “Guardianships systems for children deprived of parental care in the European Union”8. This report assesses the guardianship systems in place across EU Member States and addresses the challenges of protecting children without parental care who are at risk of violence and human trafficking.

- A study focusing on existing data on children’s involvement in criminal, civil and administrative proceedings from all 28 EU Member States finally concluded and was published9. The study used all accessible data to highlight pitfalls in procedural safeguarding systems and showcased best practice examples from Member States. The research was very detailed and provided an analysis of the current policy and legal context of children’s involvement in the justice systems in each Member State. This includes information on the ways in which children are involved before, during and after judicial proceedings.

- Similarly, the Fundamental Rights Agency produced a report on targeted violence and hostility against children with disabilities10. It includes legislative and policy data on the situation in all 28 EU Member States and focuses on good practice of states when tackling the issue.

- The 9th European Forum on the rights of the child focused on integrated child protection systems11. A reflection paper on coordination and

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8 EU Agency for Fundamental Rights, Handbook on Guardianship for children deprived of parental care. See here.
9 DG Justice and Consumers, Child-friendly justice and children suspected or accused in criminal proceedings. See here.
10 EU Agency for Fundamental Rights, Children with disabilities: targeted violence and hostility. See here.
cooperation in integrated child protection systems was a main point of discussion for participants who ranged from child protection organisations to Members of the European Parliament.

- At the end of October the Commission held a Safer Internet Forum entitled ‘Breaking down barriers for better Internet’ which focused on safeguarding and promoting the rights of the child online.

Migration Policy

- In May 2015, the Commission established a European Agenda on Migration,\(^{12}\) which clearly defines urgent measures to respond to the migrant crisis at EU level. The agenda comprises of four comprehensive pillars, focusing on: (1) reducing incentives for irregular migration; (2) border management- saving lives and securing external borders; (3) fulfilling Europe’s duty to protect through a strong common asylum policy; and (4) developing a new policy on legal migration.

- In order to respond to the migratory pressures and challenges that frontline Member States are contending with at the EU’s external borders, the Commission has proposed the implementation of a ‘Hotspot approach’\(^{13}\). The European Asylum Support Office (EASO), EU Border Agency (Frontex) EU Police Cooperation Agency (Europol) and EU Judicial Cooperation Agency (Eurojust) will work with the authorities of the frontline Member States to assist them in realising their obligations under EU law and quickly identify, register and fingerprint incoming migrants.

- At the end of 2015, a proposal was put forth for a Regulation establishing a European Border and Coast Guard (‘the Agency’)\(^{14}\). This would ensure that all border control operations were compliant with fundamental rights protocols and protection under international law. A fundamental rights strategy will be drawn up with special attention being given to the most vulnerable groups including children.

- The Commission sent Greece a letter of formal notice on the situation of reception centres for refugees and asylum-seekers, highlighting the country’s failure to provide adequate living conditions and support to unaccompanied children.

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\(^{13}\) European Commission, ‘The Hotspot approach to managing exceptional migratory flows’. See here.

The European Ombudsman closed her investigation into the work of Frontex stating that the agency’s respect for fundamental rights in joint return operations was commendable. However she requested that the agency continues to guarantee that families with children and pregnant women are seated separately from other returnees.

The EU Action Plan against migrant smuggling was adopted on 27th May 2015 and has one of its priorities, a Commission proposal to review the current EU legal framework on migrant smuggling by the end of 2016. The objective of this revision is to strengthen the existing penal framework for dealing with those who have been involved in illegal activities involving migrants.

In June 2015, the European Migration Network published a study on policy, practice and data with regards to unaccompanied children and minors in the EU Member States and Norway. The study seeks to properly assess Member States’ safeguarding practices in relation to unaccompanied children’s journeys from the time of their arrival in EU territory. A synthesis report in addition to national reports from Member States have been published to showcase both policy and practice with regards to this particular group of children.

There have been a number of positive developments in relation to fulfilling the health needs of migrants. The EU Health Programme (2014-2020) is funding the project ‘The European Refugees- Human Movement and Advisory Network’ which aims to improve the EU’s ability to address the health needs of migrants and refugees. Another project ‘Supporting health coordination, assessments, planning, access to health care and capacity building in Member States under particular migratory pressure’ aims to assist Member States in responding to the health challenges. Additionally the project ‘8 NGOs for migrants/ refugees’ health needs in 11 countries’ helps NGOs to provide assistance to health authorities in 11 EU Member States. The supported health services will focus especially on meeting the needs of migrant children, unaccompanied minors and pregnant women.

**Education**

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15 European Migration Network.
17 National reports available here.
19 European Commission Health Programme, Health projects to support Member States actions, 2015. See here.
20 European Commission Health Programme, Health projects to support Member States actions, 2015. See here.
Policy

- In March 2015 at an informal meeting in Paris, the EU Education Ministers adopted the 'Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education'\(^\text{21}\). This Paris Declaration highlights the importance of education in achieving respect for fundamental rights such as active citizenship, diversity, equality, social inclusion and the prevention of violent extremism.

- A joint report by the Council and Commission on the implementation of 'Education and Training 2020,'\(^\text{22}\) highlighted the importance of providing equal access opportunities to high quality early childhood education and care. The report called for the application of the Quality Framework, particularly with regards to disadvantaged groups of children and families.

Application by Member States

- The Commission has launched infringement proceedings against two Member States in relation to a violation of Directive 2000/43/EC\(^\text{23}\) in relation to the discrimination of Roma children in education. The Directive calls on upholding equal treatment of between persons irrespective of racial and ethnic origin. The Commission is currently exploring the situation in other Member States.

Health

Legislation

- The Regulation (EU) No 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control\(^\text{24}\) requires the Commission to establish specific requirements vis à vis infant formula and follow-on formula. A draft accompanying Regulation to No 609/2013, provides specific compositional requirements for infant and follow-on formula and places

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\(^{21}\) Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education. See [here](#).

\(^{22}\) Joint 2015 Report on the progress in the implementation of the ‘Education and Training 2020 Strategic Framework for European cooperation in education and training’. See [here](#).


limitations on advertising infant formula. This works to ensure that breastfeeding remains an important practice.25

Child Participation

Policy

• A study to evaluate legislation, policy and practice on child participation in the EU was published in June 201526. The analysis gave an overview of the existing legal and policy framework for child participation in Member States and at a EU level. The research offers insight into how individual children and groups of children can become involved in participatory work in order to influence policies that directly affect them. A child-friendly summary was produced alongside the main report as well as a report showcasing best practices in each Member State. A useful resource catalogue which includes child participation tools and materials is also available.

• FP7 and Horizon 2020 (EU research programmes) have facilitated research on child well-being and child and youth participation27. Not only can the data be used for future policy-making but the research has uncovered how children and young people can enrich the research process itself.

Recommendation on Investing in Children

Policy

• The European Commission in 2015 published Country Specific Recommendations (CSRs) for 14 EU Member States that were directly linked to the Recommendation on Investing in Children. The CSRs corresponded to themes such as poverty, social inclusion and education. Two Member States were issued CSRs on early childhood education and care while two others were requested to better perform in the area of early school leaving. Six Member States received recommendations relating to education and social inclusion, particularly with regards to the most marginalised groups such as Roma children.

27 European Commission, Their Future is Our Future – Youth as Actors of Change, 2015. See here.
Section 3: What’s working and what more can be done?

The Report provides a comprehensive overview of how different articles of the Charter apply to children. Although the section under ‘Equality’ offers a specific overview of children’s rights, other sections of the report also highlight the Charter’s influence in the fulfilment of children’s rights.

While acknowledging that the Report cannot be exhaustive, our assessment draws attention to initiatives that were either not reported or associated with children’s rights. We further provide recommendations in order to advance the implementation of article 24 of the Charter so that it becomes a more integral part of the framework for the protection and promotion of fundamental rights in the EU.

- Eurochild welcomes the Report’s focus on child protection, particularly with regard to the Directives on special safeguards for children in criminal proceedings and child sexual abuse. These are important developments in ensuring that children are better protected within the justice system and that child sexual abuse is met with stricter sanctions.
- We also welcome the Report’s reference to the Investing in Children Recommendation and its subsequent implementation with regards to the European Semester framework. The Country Specific Recommendations in relation to children are mentioned and there is a commendable reference to early childhood education and care and the use of the Quality Framework. However the Report does not call for better use of the Country Specific Recommendations to achieve improved outcomes for children, which is a missed opportunity.
- Although not mentioned in the Report, the Commission has recently published ‘Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation’. The guide seeks to address the educational needs and housing needs of marginalised communities for example those from Roma and migrant backgrounds.
- As in the Fundamental Rights Agency Report (FRA) for 2015, the issue of integrated child protection systems was also accorded importance in the EC report. The mapping of child protection systems across Europe has facilitated the creation of 10 fundamental principles for securing good systems of protection for minors. Eurochild is calling on the European Commission to support the implementation of these 10 fundamental principles in national Member States.
- Eurochild commends the publication by the FRA of the new ‘Handbook on European law relating to the rights of the child’. The guide, which was

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28 European Commission, Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation. See here.
29 EU Agency for Fundamental Rights, Handbook on European law relating to the rights of the child. See here.
produced in conjunction with the Council of Europe and the European Court of Human Rights, will support the work of legal professionals, social workers and non-governmental bodies on legal issues relating to children.

- It remains disappointing that the issue of child poverty is given little prominence in the EC’s report given that the number of children at risk of poverty in Europe continues to increase. In the FRA report, child poverty features on a number of pages, particularly in relation to the European Semester process and the EU 2020 targets. In the EC report, there is still no reference to the lack of Country Specific Recommendations on child poverty when certain EU Member States with high poverty levels fail to adequately address the issue in their National Reform Programmes.

- The coverage of issues relating to migration and integration is laudable. However considering that children account for more than half of the migrants arriving in Europe, specific reference to them as a group remains insufficient. When responding to the migrant crisis and the challenges posed, the Commission must always make special provisions for children separately from adults. The special status accorded to asylum-seeking and refugee children under international law, should be better highlighted in the report.

- Eurochild welcomes the publication of the EMN study on unaccompanied children and minors\(^30\) and calls for concrete follow-up actions.

**Section 4: Recommendations**

Although the Report is helpful in terms of giving an update on the European Commission’s commitment to children’s rights, it remains unclear how children’s rights will continue to be protected without a specific mandate and without a robust successor to the EU Agenda on the Rights of the Child.

Looking at the current situation in the European Union, there seems to have been some progress in shifting the balance towards progressing the social agenda. With the introduction of the European Social Pillar of Rights under President Juncker, the Pillar will seek to complement the existing EU social acquis in order to provide a framework that will secure fairer labour markets and better social protection systems.

In addition to the Social Pillar framework, the establishment of the Sustainable Development Goals also provides a comprehensive framework for advancing children’s rights. The SDGs can be used at an EU level to progress and further the EU 2020 agenda to end child poverty and can strengthen the EU’s commitment to respecting, protecting and fulfilling children’s rights.

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\(^30\) European Migration Network, Synthesis Report for the EMN Focused Study 2014 - Policies, practices and data on unaccompanied minors in the EU Member States and Norway, May 2015. See [here](#).
Eurochild makes the following recommendations:

1. The Commission must take action and establish a successor to the EU Agenda on the rights of the child so to ensure that the realisation of children’s rights remains a top political priority. This could be accompanied by a list of comprehensive actions, as was done on LGBTI rights.
2. In light of the Better Regulation Framework, it is important to apply specific child rights impact assessments when the issue in question relates specifically to children.
3. The 20 policy domains of the Social Pillar should provide mechanisms that advance children’s rights in addition to providing certain benchmarks for children for example in the remit of childcare.
4. The EC should develop a tool for monitoring EU budget allocations with child specific indicators.
5. The Commission must place attention on the issue of deinstitutionalisation and develop comprehensive policies and guidance to Member States to address this challenge.
6. The European Commission coordinator on children’s rights should be given the resources to properly ensure that children’s rights commitments are being mainstreamed across the Commission.
7. Child rights training and capacity building should be delivered to all DGs.
8. The European Commission Interservice group on Children’s Rights should be used by the EU institutions to better align their policies in order to achieve enhanced protection of children’s rights.
9. The EU should strengthen its commitment to the SDGs and use the framework to carry their agenda past 2020 by developing clear indicators that will measure progress in implementing the SDGs and that will include specific references to children’s rights.
10. Studies and data on the challenges affecting children should continue to be undertaken and research, statistics and resulting data should all be made easily available and free to access.

31 Commissioner Jourova launched a comprehensive list of actions on LGBTI at the LIBE Committee in the European Parliament (Dec’ 15).