Consultation Document:
European Commission's Communication on the Rights of the Child
(2011-2014)

Key Questions

I. Questions relating to previous initiatives taken by the Commission

1. The 2006 Commission Communication "Towards an EU Strategy on the Rights of the Child" establishes a comprehensive EU Strategy to effectively promote and safeguard the Rights of the Child in the European Union's internal and external policies and to support Member States' efforts in this field. What is your overall assessment of the Communication?

2. The EU has an obligation to abstain from acts violating children's rights, and to take them into account wherever relevant in the conduct of its own policies (mainstreaming). The Commission has put in place a number of instruments, including legislative action, soft law, financial assistance and exchanges of best practice to take specific action to safeguard and promote children's rights in line with the Treaties and in respect of the principles of subsidiarity and proportionality. What is your overall assessment of these outputs?

Response of the "German National Coalition for the Implementation of the UN Convention on the Rights of the Child" to questions 1 and 2

Preliminary note

As part of the consultation process, the German National Coalition for the Implementation of the UN Convention on the Rights of the Child (hereinafter called NC Germany) hereby states its position concerning the overarching questions (key questions) 1 and 2. In addition, it has requested its member organisations, of which there are about 100, to participate in the consultation exercise in accordance with their expertise and the respective context of their work.

NC Germany welcomes the fact that the public consultation is intended to be used to improve existing measures, and to find new measures, in order to breathe new life into the strategy for the period 2011-2014. The experiences of citizens, organisations, associations and forums, as well as of institutions and experts, who work in the field of the protection and promotion of children's rights from the local level to the international level are an important part of this process. The carrying out of a study in parallel in order to receive feedback from children themselves (for example through focus groups) is likewise important in order to be able to take adequate account of the opinions of children and young people. From the perspective of the NC Germany it is indispensable in this regard to develop uniform, transparent guidelines and standards for such participation and for selecting the parties to be involved at EU level (cf. the following submissions).
Re question 1:

NC Germany has already emphasised in the past that it regards the 6th July 2006 communication as a very positive step. In particular, we welcome the fact that the communication provides for children's rights to be taken into account in all the EU's internal and external measures, and it also welcomes the consequences that are aimed for across all areas of politics in relation to children in Europe. However, children in all countries should also be included in the picture, in particular in the southern regions of the world also. Children's rights are not divisible, and they cannot stop at frontiers. Here it is a question of giving priority to the best interests of the child in all measures concerning children, in accordance with the concordant provisions in Art. 3 of the CRC and Art. 24 of the EU Charter of Fundamental Rights.

NC Germany had already declared at the 1st European Forum in Berlin in June 2007 that it considered the setting up of effective coordination and consultation procedures as provided for by the communication to be very important. It welcomed the involvement of all important participants in one European Forum on the Rights of the Child, not least because this allowed for civil society and children to be involved. NC Germany views the process of involving civil society and children themselves. This has also been successfully practised for years by the UN Committee on the Rights of the Child, as an indispensable precondition for the European Forum being able to make an effective contribution to the goal that is described in the communication of helping towards the development and monitoring of the EU measures and the exchanging of information about proven practices. Still more effort must be devoted to this.

From the perspective of NC Germany the composition and method of working of the European Forum has until now not been sufficiently transparent. The fact that a formula has been negotiated with a group of NGOs that operate at European level and are represented with their own offices in Brussels for deciding to what extent different organisations can attend and have a voice in the forum is to be welcomed. However, children and young people have not yet been included, even though the subject of participation by children was placed on the agenda at the urging of a non-governmental organisation (NGO) at the very first forum. At the previous meetings of the forum even civil society organisations represented by adults have had difficulties making their voice heard.

The topics dealt with at the forum's meetings to date (violence against children, sexual exploitation, social exclusion and child poverty with particular consideration of Roma children, child labour and companies' social responsibility) have doubtless been important. However, the meetings have not been suitable for an open debate and for searching for solutions. They have instead been used for the proclaiming of statements in which representatives of EU institutions, ministers of member states, and occasionally experts of some UN organisations (UNICEF, ILO), the World Bank and of the Council of Europe, do all the talking. Although some of the speeches are available on the internet, it is not clear to what extent they have been debated, or to what extent decisions have been taken, or how binding they are. So far, it has been impossible to avoid the impression that the European Forum has primarily served to legitimise and propagate political guidelines that had long since been established. In NC Germany's view, NGOs and children's and young people's organisations must be able to be more involved, right from the selection of the subjects, and especially in how those subjects are dealt with. More attention should be devoted to the issues of justice in education and the situation of migrant and refugee children.

In view of the requirement of the EU children's rights strategy as set out in the communication that children's rights must be implemented right across the world, NC Germany also considers greater involvement of NGOs and children and young people from the South to be indispensable. In this context, particular consideration must be given to the paramount principle of the best interests of the child in accordance with Art. 3 of the CRC and Art. 24 of the EU Charter of Fundamental Rights.
Beyond the issues already referred to, the European Forum must clarify (cf. statement of the German National Coalition for the Implementation of the UN Convention on the Rights of the Child regarding the European Forum on the Rights of the Child, Berlin 2007):

- How can the EU Commission ensure the independence of the European Forum on the Rights of the Child so that it can fulfil its task of monitoring EU measures?
- How can the continuity of the work of the European Forum on the Rights of the Child be guaranteed under a rotating EU Council Presidency?
- How can the linking of the European Forum on the Rights of the Child to the UN Committee on the Rights of the Child be ensured?
- How can it be ensured that the European Forum makes an appropriate choice of subjects and that it deals with all children's rights on a long-term basis?

Re question 2:

NC Germany welcomes the measures initiated to date by the European Commission such as:

- the setting up of telephone hotlines for missing children and children seeking help;
- the support provided to member states in creating alarm systems which are intended to uncover and make public cases of child abduction and child abuse;
- the creation of a so-called European Coalition comprising police authorities, banks, internet service providers, NGOs and other organisations which is intended to take measures against child pornography on the internet;
- the work that has started in conjunction with the European Union Agency for Fundamental Rights to draw up indicators for the implementation of children's rights;
- the creation and taking forward of action plans and funding programmes (e.g. for combating child poverty, child trafficking, violence against children, or for upholding children's rights in development cooperation partner countries).

All these are welcome projects, but as initiatives for specific areas only they do not fulfil the requirement for a consistent children's rights strategy which measures and tests all areas of politics against the yardstick of children's rights. The EU's children's rights policies will have to be able to be judged in terms of whether the protection that is claimed, or even the promotion of children's rights, can be reconciled with the policies of the European Union and its member states. This involves amongst other things the issues of consumer protection, child-specific regulations in the field of environmental protection and the protection of health, the just distribution of financial resources between generations, and also the right of asylum in relation to the rights of refugee children.

For example, the "Return Directive" adopted on 5th June 2008 by the EU Interior and Justice ministers raises the question of what is the point and status of the child protection strategy pursued by the EU. This Directive obliges the governments to expel all "illegal" foreigners (about 8 million people according to EU estimates). The people who are to be deported may be taken into custody pending deportation for up to 18 months. Once they have been deported, they are prohibited from returning to any EU country. Although reference is made to safeguarding the best interests of children in relation to refugees who are minors, this does not exclude the possibility of them being taken into custody pending deportation on their own, and of them being deported on their own. By agreeing to this Return Directive with only slight amendments on 18th June 2008, the EU Parliament contradicted one of its own decisions taken a few months previously on 16th January 2008. In this decision the Parliament, having regard to the EU children's rights strategy, had still accorded importance to the idea that "all agreements concerning fundamental human rights apply to children in the same way as they do to adults, as do a series of additional rights, including the rights enshrined in the UN Convention on the Rights of the Child, which was drafted to take
account of the special situation of children and young people. The "Return Directive" is now deemed to be a central element of the European "Immigration Pact" by means of which the external borders of the EU are "secured" and the countries neighbouring the EU in Africa and Eastern Europe are given financial and other incentives (e.g. making it easier for their citizens to obtain visas) to make them intercept refugees already on their own national territory, and if necessary to hold them in camps.

Children's rights are human rights which apply to all people, irrespective of their nationality. The EU's internal and external measures can also not be disassociated from each other in relation to children's rights. An EU children's rights strategy that sees itself only under an obligation to its "own" children and which only points a moralistic finger at the "outside world", or even threatens more stringent border controls, without facing up to its own share of responsibility for breaches of human rights is not in accordance with the spirit of the UN Convention on the Rights of the Child.

The measures taken so far give the impression that children's rights are viewed by the EU institutions not as rights in the establishing and implementing of which children play an active role, but rather as a task of institutions that deal with children's matters. This makes it even more urgent for practical steps to be initiated to enable children and young people also to take part in the development and designing of the EU children's rights policies in a manner that is appropriate for children and sustainable.

NC Germany makes the following suggestions:

- The content of an EU children's rights strategy should – as part of the mainstreaming of children's rights – be linked to and coordinated with all other areas of EU policy, including those areas which are not explicitly related to children.
- Establishing of a monitoring system at EU level. Various institutions should be involved in this, with children and young people also participating.
- Indicators for monitoring children's rights by the EU member states must be drawn up (e.g.: In which EU member states are children's rights enshrined in the constitution? What are the effects of this? In which countries is there a system of children's commissioners or a monitoring system? What has been the experience with these?)
- Children's and young people's counsels should be created in all EU member states and at EU level, and they should be consulted by the governments and the EU Commission in advance of all decisions that affect children (within the meaning of Art. 12 of the UN CRC the opinions of children and young people are taken into account in this process). Here it must be ensured that suitable methods are used to take account also of those young people who, due to their age, level of education or social background, find it more difficult to give expression to their rights. This would accord with the stipulations of the UN Committee on the Rights of the Child, which in its General Comment no. 12 (2009) notes: "10. […] Even when confronting difficulties in assessing age and maturity, States parties should consider children as a group to be heard, and the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively. […] 12. The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation." (http://www.humanrights.ch/home/upload/pdf/091124_CRC_General_Comment_12_Gehr.pdf)
- An EU states report should be drawn up every four to five years and should be forwarded to the UN Committee on the Rights of the Child.

Berlin, August 2010