EYES ON EUROPE

Progress towards children’s rights in the European Union
a study of the impact of international children’s rights monitoring on European Member States and EU Institutions

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by Madeleine Tearse

Save the Children
Save the Children’s vision is a world in which every child attains the right to survival, protection, development and participation. Save the Children’s mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives. Save the Children EU Office helps to ensure that the European Union (EU) renews and implements its commitments to promoting, protecting, respecting and fulfilling children’s rights in the EU and globally, in line with the EU’s fundamental rights obligations and existing legal basis. The DNA of Save the Children EU Office work consists of the UN Convention on the Rights of the Child and the Charter of Fundamental Rights. This study has been commissioned by Save the Children Sweden on behalf of the Save the Children Europe Group and the Child Rights Governance Global Initiative.

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Contents

1. **Introduction**
   - The purpose of the report
   - Children’s rights
   - Key actors
   - Methodology
   - Summary of the Report

2. **The Committee on the Rights of the Child and the Human Rights Council**
   - UN Convention on the Rights of the Child
   - Universal Periodic Review
   - Synergies between the Committee on the Rights of the Child and the UPR
   - Conclusion

3. **Children’s Rights and the European Union**
   - EU landmarks in children’s rights
   - The legal competence of the EU institutions
   - A strategic approach to children’s rights
   - Determining a programme of action
   - Suggestions for setting priorities
   - Accession to treaties
   - Conclusion

4. **Developing a comprehensive approach to ending violence against children**
   - A priority for the UN
   - A comprehensive strategy
   - Issues arising from examination by the Committee on the Rights of the Child
   - Issues arising from the Universal Periodic Review
   - The Council of Europe
   - The European Union
   - Conclusion

5. **Progress in tackling violence against children: physical punishment**
   - What is corporal punishment?
   - The work of human rights institutions
   - Country examples
   - Advice to countries where it is not yet banned
   - Advice to countries where it is banned
   - The European Union
   - Conclusion

6. **General Conclusions and Recommendations**

7. **Tables**

8. **Bibliography**
1 Introduction

1.1 The Purpose of the Report
This report deals with the response of political institutions to the obligations to children which followed from the adoption by the UN of the Convention on the Rights of the Child in 1989. In the two succeeding decades there have been considerable differences between countries in their internal momentum for the realization of children’s rights.

However, in the report we are concerned with countries, not just as individual states but as part of the European Union, and the extent to which they are achieving change together. The institutions of the European Union had little involvement in children’s rights before 2000 but since then their responsibilities and actions in this field have increased significantly; in particular the Lisbon Treaty has increased the status and centrality of children’s rights. The report will consider these changes.

This study will focus on the impact of human rights reporting mechanisms. The UN Committee on the Rights of the Child and the Human Rights Council (through the process of the Universal Periodic Review) have made observations and recommendations to individual European states about how they should improve the implementation of children’s rights. By means of exploring actions to combat violence against children by European Member States and the EU institutions, the report will assess the extent to which the concerns and advice of the Committee on the Rights of the Child and the Universal Periodic Review have been addressed. The theme of violence will serve as a prism through which to make a general analysis.

• The main aim of the report will be to highlight areas of progress toward the implementation of children’s rights, to identify gaps and to suggest areas requiring more concerted implementation by Member States and the EU.

• The report will consider the process of examination by the Committee on the Rights of the Child, and the first cycle of the Universal Periodic Review that began in 2008; it will offer some general observations on the interaction of these processes and their impact on the implementation of children’s rights in Europe.

• Lastly, the report will offer recommendations on the role of the EU in promoting children’s rights.

In all these areas lessons will be drawn, and recommendations will be made as to how to further strengthen the implementation of children’s rights in the future.

1.2 Children’s Rights
Whilst children’s human rights are safeguarded by frameworks applying to the population as a whole, such as the UN Convention on the Rights of Persons with Disabilities, or the 1951 Refugee Convention, this report largely concentrates on the United Nations children’s rights framework which identifies indicators which are specific to children. This is most coherently
expressed in the UN Convention on the Rights of the Child (CRC), intended to bring about “improvement in the status of and conditions for children”\(^1\) The relevance of other Conventions is very evident in the deliberations of the Committee on the Rights of the Child who frequently ask States parties to sign and ratify other treaties without delay. The process of the Universal Periodic Review (UPR) involves consideration of the States parties’ performance in relation to all the treaties, and so the UPR examination of children’s rights may involve reference to various treaties. All Member States of the EU have ratified the UN Convention on the Rights of the Child, and all are subject to the Universal Periodic Review and have completed their first reporting cycle.

### 1.3 Key actors

Specifically the report will focus on the **UN Committee on the Rights of the Child**\(^2\) and the process of the Universal Periodic Review (UPR) by the **Human Rights Council**\(^3\). In the UN Committee on the Rights of the Child, progress towards the realization of the CRC is examined by a group of experts. In the UPR, the progress of individual countries towards comprehensive realization of international human rights obligations is examined by a Working Group of peers composed of the representatives of other UN Member States.

Another human rights actor which will be referred to in different sections of the report is the **Council of Europe**, which has a significant role in the European region.\(^4\) As the institution which monitors compliance with the European Convention on Human Rights, the Council of Europe has a strong human rights focus, and it has developed an explicit focus on children’s rights. As well as monitoring and examining individual states, it has a wide pan-European view. For the purposes of this study it is interesting for two reasons: it highlights human rights abuses which pertain to individual states, and those which are Europe wide. It contributes to a European overview which is particularly useful given that the UN monitoring bodies do not make comparisons between individual states. It issues policy and practice recommendations and organizes exchanges, it produces tools for promoting good practice, and it takes action to raise awareness.

**The European Union** (EU) is the subject of Chapter 3. Whilst a comprehensive assessment of the record and potential of the EU institutions in promoting the implementation of children’s rights is beyond the scope of this study, this chapter briefly considers key legal texts and other communications which establish the responsibilities and intentions of the EU in relation to children’s rights. The report also identifies actions by the EU asks what else could be done.

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1. Council of Europe, Commissioner for Human Rights, Council of Europe, Viewpoint 2009
2. The monitoring body which examines compliance with the UN Convention on the Rights of the Child
3. The Human Rights Council monitors the overall compliance of states with their international human rights obligations through the process of the Universal Periodic Review.
4. 47 countries in the European region are members. The Council of Europe consists of a Committee of Ministers, a Parliamentary Assembly, The European Court of Human Rights and the Congress of Local and Regional Authorities.
5. European Convention for the Protection of Human Rights and Fundamental Freedoms
**European Member States** are also key actors in this analysis. Eight European Member States are referred to throughout the report. These are Bulgaria, Denmark, Estonia, Finland, Italy, Romania, Spain and the UK – countries drawn from northern, southern, eastern and western Europe. In particular, their actions in relation to violence against children will be examined in Chapters 4 and 5.

Social pressures for change in Europe (and the specific role of civil society organizations and movements) will not be examined in this study even though they are critical to the realization of children’s rights. It must be acknowledged, of course, that by monitoring national governments and providing evidence to the United Nations bodies which monitor the implementation of children’s rights (as well as influencing government reports to those committees) the impact of civil society organisations is evident in these processes.

### 1.4 Methodology

This report will draw heavily on the concluding observations of the UN Committee on the Rights of the Child, and the recommendations of the UPR Working Groups, in order to analyse the performance of individual States parties in implementing the conventions which they have ratified. In the case of the UPR, this report will mainly select the recommendations which concern children’s rights specifically, rather than broader observations.

The EU acquired the possibility of acceding to international human rights treaties only after 2009, and it has not yet acceded to the UN Convention on the Rights of the Child. Therefore its performance in implementing children’s rights has never been scrutinized by a human rights committee. One issue this report will touch upon is whether the actions of the EU institutions appear to be related to observations made by the two UN monitoring processes under consideration regarding Member States’ track record in implementing children’s rights.

When considering how the EU Member States have responded to these observations and recommendations, it is difficult to establish causal links. Even where positive developments follow sequentially from the examination of a country’s record it is not always possible to demonstrate a causal link between the two. In some cases there will be an explicit response, in others change will occur over time as a result of a range of pressures. Certainly, analysis of policy documents and legislation can reveal evidence of correlations between them, but this is as far as it is possible to go. Analysis of political pressures and policy developments in individual countries might shed more light, but these are beyond the scope of this study.

The UPR process tends to make the impact of the examination more explicit as individual countries are required to say whether they intend to accept or reject the recommendations of the members of the UPR Working Group. In contrast, where the Committee on the Rights of the Child is concerned, the only official record of the country’s response comes with the next

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6 See section 3.6 on Accession to Treaties below
7 The UN Committee on the Rights of the Child and the UPR
8 Of course, it remains to be seen whether implementation is achieved.
periodic review, when the Committee considers how far the country has responded to the previous set of recommendations it made. States are expected to present a periodic report every five years.

The process of reporting to the Committee on the Rights of the Child does not readily lend itself to comparative assessment of trends running across different countries. The Committee does not make comparisons nor does it produce comparative reports, although it does produce general discussion and general comment on a range of issues. Comparative assessments are fraught with pitfalls because of the differing contexts within individual states.

In 2006 ChildONEurope\(^9\) was asked by the Austrian EU presidency to produce a comparative report on the Member States.\(^10\) In 2008 Euronet produced a short updated comparative analysis.\(^11\) More recently, Save the Children has published a study on the general measures of implementation in five countries.\(^12\) These studies do provide some useful contextual background on comparative themes. Drawing on those previous analyses, and focusing on eight country examples, this report will endeavour to identify a number of common issues and will suggest some good practice in tackling them, without making comparisons between individual EU countries.

1.5 Summary of the report
Chapter 1 establishes the main lines of inquiry of the report. Its central focus is international human rights reporting through the Committee on the Rights of the Child and the Universal Periodic Review (conducted by the Human Rights Council). The report will consider the impact on European Member States, and the potential to enhance the work of the EU institutions. It will also consider the relationship between the Member States and the EU institutions in the implementation of children’s rights.

Chapter 2 considers some of the relative strengths and weaknesses of the reporting process to the Committee on the Rights of the Child and the Universal Periodic Review (UPR). It concludes that the UPR is complementary to the cycle of reporting to the Committee on the Rights of the Child; it is frequent, thereby maintaining attention on children’s rights. The fact that governments are required to state their intentions regarding implementation of the recommendations is positive. The children’s rights issues raised by the two reporting processes are broadly similar, which adds to their mutual reinforcement. The consistent, thorough, in-

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\(^9\) ChildONEurope is a European Network of National Observatories on Childhood established in 2003. Few Member States have thrown their full weight behind it; only eight countries are full members and there are 18 associate members. ChildONEurope was established within the framework of l’Europe de l’Enfance, a permanent Intergovernmental Group set up in 2000 aiming to introduce the mainstreaming of children throughout EU policies. The meetings are convened by the presidency of the EU once or twice a year in order to discuss specific thematic issues affecting children.

\(^10\) ChildONEurope, June 2006, Survey on the CRC Committee’s Concluding Observations on the last EU countries’ reports

\(^11\) Euronet 2008, Madeleine Tearse, A comparative analysis of the Concluding Observations by the UN Committee on the Rights of the Child on the most recent reports of the 27 EU Member States

\(^12\) Save the Children 2011, Sandy Ruxton, Governance fit for children: To what extent have the general measures of implementation been realised in 5 European countries?
depth approach of the Committee on the Rights of the Child is complemented by the breadth of approach of the UPR. The importance of political will at national level is illustrated by States party decisions to follow, or not to follow, the recommendations of these monitoring mechanisms.

Chapter 3 examines the obligations of the European Union institutions concerning children’s rights. The Member States and the EU institutions have complementary jurisdictions and they need to work together. The EU must support Member States in some areas, and lead in other areas where it has greater powers. Both are important. The EU strategy on the rights of the child has never been completed, and the institutions should develop a more strategic approach. The current basis for prioritization is unclear. The EU has committed itself to specific actions, most recently though the 2011 Agenda for the Rights of the Child. This is a positive development, as is closer working with the Council of Europe. The EU institutions should also inform their actions by taking account of children’s rights imperatives in Europe. These are defined through the human rights reporting processes which bring to bear international scrutiny on the implementation of the Convention on the Rights of the Child by European states. The EU should explore accession to CRC. This would help create a focus on its obligations and would lead to external human rights scrutiny which could help the EU institutions to determine their most effective course of action.

Chapter 4 looks at the theme of violence against children, through which it exemplifies and develops the ideas advanced in the previous chapters. Explaining the analysis of the UN Special Representative on violence against children, and the approach of the Committee on the Rights of the Child, the report asks what a comprehensive strategy against violence consists of. It gives examples of advice provided to States parties through the concluding observations of the Committee on the Rights of the Child, and the recommendations arising from the UPR process. It considers the response of specific European states, and concludes that European governments find the elaboration of a comprehensive strategy extremely challenging. It then considers the responses of some countries to the observations of Committee on the Rights of the Child on specific aspects of violence. This presents a mixed picture. Finally the new EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography is considered. This is an important and challenging measure which should be followed up by more EU action. The Agenda for the Rights of the Child contains action on violence against children which can be developed more comprehensively.

Chapter 5 focuses exclusively on efforts to end physical punishment, one strand of violence against children. Whilst not all EU Member states have completely banned physical punishment in legislation, most have done so. But it continues to take place even where it is banned, so ongoing measures are required to address prevalence. The chapter considers the advice given to the individual countries by the Committee on the Rights of the Child and the Universal Periodic Review as well as country responses. The pace of change surrounding this issue has been remarkable. It is a very positive example of what can be achieved which gives grounds for optimism as to the potential realization of children’s rights. The EU institutions should seek to lend increased support to this effort.
In conclusion the report considers why many countries do not respond to the challenges to children’s rights on the scale required.

The report ends with recommendations to NGOs, to Member States to EU institutions.

- NGOs should develop and reinforce their participation in reporting to the Committee on the Rights of the Child and linkages with the Universal Periodic Review

- States parties should make full use of the policy and practice recommendations of the UN and the Council of Europe, and should take every opportunity to share good practice with other Member States

- The EU institutions should develop a full strategy for implementation of the Convention on the Rights of the Child. This should reflect the observations and general comments of the Committee on the Rights of the Child. The EU should work closely with the Council of Europe, and it should investigate the possibility of acceding to the Convention on the Rights of the Child.
2 The Committee on the Rights of the Child and the Human Rights Council

This chapter will consider the operation of these two accountability mechanisms as catalysts to the implementation of children’s rights in European Member States, illustrated with reference to specific country examples. We will ask what the Universal Periodic Review has brought to the monitoring of children’s rights and how it complements the Committee on the Rights of the Child. Based on the evidence of the concluding observations of the Committee on the Rights of the Child, together with the UPR Working Group Recommendations and the responses of individual countries, we conclude that the accountability mechanisms are complementary, and that they can have a positive impact on Member States in different ways.

2.1 UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child came into force in September 1990. Bulgaria, Denmark, Estonia, Finland, Italy, Romania, Spain and the UK ratified it between September 1990 and December 1991. All presented their initial report to the Committee of the Rights of the Child within four years, but since then the frequency of country reporting has been variable, in many cases subject to delays, and the Committee’s examination process has been affected by backlogs. Bulgaria’s first report was examined in 1997, its second in 2008. Denmark and Finland have submitted four periodic reports, the latest being examined in 2011. Italy, Romania, Spain and the UK submitted their fourth reports together with delayed third reports, and these have all been examined. An extreme example of delay can be seen in the case of Estonia. Its initial report was submitted 8 years late and examined in 2003, and since then Estonia has submitted no follow-up periodic report.\(^{13}\) For more information see Table 1 (page 46).

One limitation of the process of examination by the Committee on the Rights of the Child has been the fact that there is no follow-up mechanism between periodic reports, due every five years but in many cases less frequent. This can cause a loss of momentum in national processes for developing the implementation of children’s rights. For example, in 2002 the Committee expressed concern to the UK Government, recorded in the concluding observations, that the Government had no intention of withdrawing a wide-ranging reservation to article 22 on immigration and citizenship, or its reservation to article 37 (c) on detention of minors with adults. It was only after its next periodic report had been submitted, shortly before examination by the Committee in 2008, that the UK Government informed the Committee that it would be withdrawing the reservations. Although the Committee has no enforcement powers, the process of accountability and international scrutiny is an important motivating pressure. In the absence of such scrutiny the UK retained its reservations in the intervening six years between examinations.

On the other hand, some countries have acted swiftly to implement the recommendations of the Committee on the Rights of the Child. Spain is one such example, where, following the 2010 Concluding Observations on the country’s 3\(^{rd}\) and 4\(^{th}\) reports, the Government has acted on many of the Committee’s concerns. In particular the Government undertook legislative reform

\(^{13}\) However, Estonia’s report on implementation of the Optional Protocol on the sale of children, child prostitution and child pornography was examined in 2010. CRC/C/OPSC/EST/CO/1 (29 January 2010)
and strategic policy development. Some of the measures are not thought to go far enough. For example the Development Regulation of the Organic Law of Rights and Freedoms of Foreigners in Spain and their Social Integration does not prioritise the best interests of the child, and offers little to victims of trafficking. Another example is gender-based violence, where the public authorities have expressed concern, but more action is needed. Overall the Government’s action was prompt and positive and it is to be hoped the momentum can be continued. On a more general level, civil society organisations are advocating for effective measures to improve co-ordination and to raise awareness of the need for a consistent children’s rights approach across the Spanish authorities and institutions.

<table>
<thead>
<tr>
<th>Follow-up measures undertaken and progress achieved by the Spanish State party since 2010</th>
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<tbody>
<tr>
<td>• On September 2010, Spain became the first European Country who signed the Optional Protocol to</td>
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<tr>
<td>• Adoption on December 2010 of the Third National Action Plan against Commercial Sexual</td>
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<tr>
<td>Exploitation of Children and adolescents (2011-2013)</td>
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<tr>
<td>• Adoption on April 2011 of the Development Regulation of the Organic Law of Rights and</td>
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<tr>
<td>Freedoms of Foreigners in Spain and their Social Integration (commonly known as the “Immigration”</td>
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<tr>
<td>Organic Law).</td>
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<tr>
<td>• Adoption on October 2011 of the Framework Protocol for the co-ordination of actions in</td>
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<tr>
<td>protecting and helping victims of trafficking.</td>
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<tr>
<td>• Several recommendations about the first National Strategic Plan for Children and Adolescents</td>
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<tr>
<td>(2006-2009) were seriously taken into account. The process of elaborating the second Strategic</td>
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<tr>
<td>Plan for Children and Adolescents has included several workshops in the course of 2011 where</td>
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<tr>
<td>both public authorities and social organizations have participated. This has not yet passed into</td>
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<tr>
<td>law.</td>
</tr>
<tr>
<td>• A proposal to modify the Organic Law on the Legal Protection of Minors has been drafted. This</td>
</tr>
<tr>
<td>includes regulation of the “therapeutic” institutions dealing with social risk or conduct</td>
</tr>
<tr>
<td>disorders, indicators on children’s best interests, but protection provisions remain inadequate.</td>
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</tbody>
</table>

Source: information provided by Save the Children, Spain.

This progress, whilst far from complete, can be viewed as a direct response to the Committee on the Rights of the Child as well as other influences. This also clearly demonstrates political will. It may be significant that the children’s rights issues raised at the UPR examination (held
only five months before the hearing by the Committee on the Rights of the Child), covered a similar span of concerns.

2.2 Universal Periodic Review
The UPR was created by the UN General Assembly resolution 60/251 in December 2006 as a peer-review mechanism established under the Human Rights Council. The first cycle took place between April 2008 and October 2011, with the final UPR Working Group reports to be adopted at the Human Rights Council in March 2012. All countries have now finalized their first examination. As of the second cycle that begins at the 13th session in June 2012, all members of the UN are required to submit their report every 4.5 years.

Finland, Romania and the UK all reported in 2008 and all three submitted mid term reports in 2010. Bulgaria, Italy and Spain reported in 2010 and they may voluntarily submit mid term reports in 2012. Estonia and Denmark reported in 2011.

The UPR process is based on three documents: a national report; a report that compiles the recommendations of treaty bodies, UN Human Rights Council Special Procedures, and in the case of European states, this includes compilations from the Council of Europe; and a report that compiles stakeholder submissions.

The Human Rights Council resolution 7/29 of 28 March 2008 called on the States members of the Human Rights Council to take full account of the rights of the child in the UPR. Moreover, CRC Concluding Observations are included in the OHCHR compilation report, child rights NGOs have made submissions and many States have prioritized questions and recommendations on children’s rights. As a result, a significant proportion of each country’s UPR touches specifically on children’s rights. It does not appear, therefore, that children’s rights are being subsumed by human rights overall. This being the case, there are obvious advantages in setting children’s rights against a background of human rights issues in general, both in terms of national mainstreaming and public engagement.

The State under review is expected to respond to UPR recommendations, declaring whether each recommendation has already been implemented, is accepted or is rejected. If a State under review cannot provide an answer at the UPR Working Group session, the answer is left pending. The State under review is then encouraged to engage in national consultations in order to provide a clear response. During this period there is an opportunity for civil society to advocate for the acceptance of the pending recommendations. The response is either presented in the form of a report or as part of the State’s opening statement at the adoption of the UPR Working Group outcome report at the next Human Rights Council session. This requirement means that the state has to make commitments as soon as possible. The UPR process is also innovative in that it allows States under review to put on record voluntary

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pledges and commitments. Many states have also voluntarily reported on the follow-up and implementation of the UPR recommendations in mid-term review reports after two years. Therefore, in terms of process alone, the UPR may prove highly advantageous in creating momentum for the realization of children’s rights, whereas the gaps which occur between examinations by the Committee on the Rights of the Child can mean momentum is lost.

Above all, however, the fact that many similar children’s rights issues are being raised by both mechanisms is particularly useful in maintaining attention on them. For example, in Bulgaria the process of UPR reporting in 2010 was extremely important in order to follow up on the 2008 examination by the Committee on the Rights of the Child. In particular, this continued the stream of international pressure to end the extensive and inappropriate institutional care of children (notably involving high numbers of children with disabilities and Roma children). At the same time, change came about also as a result of political will, following the formation of a new government in July 2009, which made child care reform one of its priorities.

In February 2010 the Bulgarian Government announced its “Vision for Deinstitutionalisation”, and went on to publish an action plan. It has pledged to end the institutionalization of children within fifteen years. This will take place alongside the development of alternative care services. Currently the Government is consulting on a new Children’s Act which will prohibit the placement of children under 3 years old in institutions. Whilst there is still along way to go, and the care of children in institutions still gives rise to significant concerns, very real progress is now being achieved.

In November 2010 the UPR Working Group made 107 recommendations, of which Bulgaria immediately accepted 95. These covered a range of issues similar to issues previously raised by the Committee on the Rights of the Child – such as the need for independent human rights monitoring, tackling widespread discrimination, increasing the budget for the implementation of children’s rights in health, education and family support, tackling poverty and reforming juvenile justice.

Estonia is an extreme case of failure to fulfill its reporting obligations to the Committee on the Rights of the Child, but it has been called to account on children’s rights issues through the Universal Periodic Review process. Table 1 (page 46) shows the timing of examinations by both mechanisms in recent years.

### 2.3 Synergies between the Committee on the Rights of the Child and the Universal Periodic Review

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15 There is no mandatory requirement for a mid term review. See: [http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx)

16 The website of the British Embassy in Bulgaria, Child Care Reform, April 2011, [http://ukinbulgaria.fco.gov.uk](http://ukinbulgaria.fco.gov.uk)


18 [www.UPR-info](http://www.UPR-info) Bulgaria
The consistency with which the Committee on the Rights of the Child examines national reports is immediately evident. Despite differences in the nature and quality of the submissions to the Committee by States parties and civil society organizations, the Committee rigorously follows the framework of the Convention on the Rights of the Child, and systematically deals with each issue in every country. Also, the continuity of expert membership of the Committee for a period of years leads to consistency of treatment. Each examination reviews the extent to which the State party has met the Committee’s previous recommendations. The Committee on the Rights of the Child makes quite detailed policy and practice recommendations in relation to each country.

The children’s rights issues raised in the UPR process are far less consistent, however. The children’s rights discussion does not representatively span all sections of the Convention on the Rights of the Child. CRIN has noted that “States, in their reports, raise the issue of education significantly more than any other issue, whereas corporal punishment, for instance, is rarely addressed. Indeed, this trend is often also observed when States issue recommendations.”

Not only the issues, but also the amount of discussion on children’s rights and the numbers of recommendations can be variable from country to country.

However, in the context of our country examples, the questions asked and recommendations made at the UPR do prove to relate reasonably well to the observations of the Committee on the Rights of the Child over the same period, even though they are less comprehensive and less detailed. (Later in this report we shall see how violence against children has been treated by both accountability mechanisms in relation to a number of countries). For the countries considered, the UPR does not seem to raise new issues of child rights which have not previously been explored by the Committee on the Rights of the Child. Table 2 (page 47) sets out the issues raised in relation to our eight example countries by the UPR examination.

It could be argued that the flexibility of the UPR process equips it to include emerging issues more readily than the CRC examination process (to take a hypothetical example non-discrimination against lesbian, gay, bi-sexual and trans-gender persons) but there is little evidence that this is the case in relation to the countries studied.

It would be wrong to suggest that the Committee on the Rights of the Child does not pick up on new issues. One example is the Committee’s recent concern over the use of medication to treat

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20 In our table the issues have been organized according to the framework of the Convention on the Rights of the Child for comparative purposes, even though this framework is not explicitly used in the UPR process.
21 There is evidence that this issue has been raised more readily in relation to developing countries thanks to the advocacy of LGBT coalitions. The Save the Children submission on the Solomon Islands contained a recommendation on decriminalization of same-sex relationships that was included in UPR recommendations and this was raised in the oral statement at the Human Rights Council in September 2011. These were rejected by the Government but they agreed to undertake national consultations to address the issue.
children with Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder (see, for example, Denmark and Finland).

It may also be noted that attention to recent evidence can be seen in both UPR and CRC examinations, and significant recent events may be reflected in the discussions of either committee. Taking Italy, for example, in 2010 the UPR Working Group recommendations addressed the issue of Italian vessels not rescuing migrants and asylum-seekers, whereas the Committee on the Rights of the Child was concerned by reports of substandard conditions for child migrants arriving in Lampedusa in the spring and summer of 2011.22

The emphasis of examinations by the Committee on the Rights of the Child is the degree of progress which has already taken place since the previous report (balanced by advice from the Committee about what should be done in the future). So far the UPR process has only completed its first cycle and so retrospective review has not been possible in the same way. However, the second cycle will be focused on follow-up and implementation of previous recommendations. One useful innovation in the UPR is that governments are formally asked to express their intentions when it comes to implementing the recommendations in the future.

2.4 Conclusion
Examination by the Committee on the Rights of the Child is a thorough, consistent, in-depth process which measures progress since the previous report and which offers detailed prescriptions for future action. Unfortunately many countries have not fulfilled their responsibility to submit periodic reports every five years, and this has been compounded by backlogs in the Committee schedule. As a result, countries do not consistently come before the Committee at regular intervals.

In the countries examined for this report, the UPR has generally reinforced issues raised by the Committee on the Rights of the Child rather than introducing additional issues in children’s rights. This reinforcement is positive. The reporting and examination schedules for the UPR are so far on-track, and this results in useful pressure to maintain the momentum for improvement. In the specific European Member States examined, recommendations on children’s rights have been well-represented in the deliberations of the Working Group, and on the whole they have been quite well-received by governments. Because governments are required to state whether they accept or reject individual recommendations, there is welcome transparency and a clearer commitment to action. As the first reporting cycle ends, organizations such as Save the Children will be evaluating and commenting on the impact of the UPR to date and seeking to reinforce linkages between CRC concluding observations and UPR child rights recommendations.

22 UPR, seventh session, 9th February 2010; CRC/C/ITA/CO/3-4 (31 October 2011) para.64 p.17
3 Children’s Rights and the European Union

Following the previous discussion of children’s rights monitoring in relation to European Member States, attention will now turn to the European Union institutions. After establishing the constitutional basis of fundamental rights in general, and children’s rights in particular, the chapter will comment on the scope for action of the EU institutions. It will be argued that the only way to ensure the successful implementation of children’s rights in the EU is for the institutions to work in partnership with the Member States. The EU’s plans for action will be described, and the question of how prioritization of actions is determined will then be discussed. The report will make the case for EU action being based on the analysis put forward by the Committee on the Rights of the Child in its concluding observations on Member States. Lastly, it is recommended that the EU should accede to the Convention on the Rights of the Child.

3.1 EU landmarks in children’s rights

The scope, membership and powers of the European Union have increased significantly during the past 50 years, but only recently have children’s rights been recognized at EU level. They have been a growing priority for just over 10 years. This section will consider the Charter of Fundamental Rights and the Lisbon Treaty, which are the most significant of the steps leading to the advancement of children’s rights. Neither of these creates a general competence for the EU in the sphere of children’s rights, but they do create a specific obligation on the EU institutions to protect and promote children’s rights in the areas where the EU has competence. The UN CRC is regarded as one of the sources of fundamental rights. As the EU website explains:

“Article 6 of the Treaty on European Union establishes that the Union is founded on the respect of human rights and fundamental freedoms, on the rule of law and on principles which are common to the Member States. Upholding the common European principles enshrined in the Treaty means taking full account of the UN Convention on the Rights of the Child and, similarly, of the provisions of the European Convention on Human Rights that affect children’s rights.

“The EU Charter of Fundamental Rights provides a clear political mandate for action on children’s rights even if it does not establish any new powers or tasks for the Community. It is also worth noting in this respect that EU action has to comply with the principles of subsidiarity and proportionality and should not encroach on the jurisdiction of the Member States. A number of different instruments and methods suggest themselves, including legislative action, “soft law”, financial assistance and political dialogue.”

The European Court of Justice has expressly recognized the need to respect children’s rights and requires EU law to take due account of the UN Convention on the Rights of the Child.

The Lisbon Treaty

The most important step towards prioritizing children’s rights has come with the Lisbon Treaty, which was signed by European leaders in December 2007, and which entered into force in

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December 2009. This was the first treaty which explicitly mentioned children. Article 3 ensures that children’s rights shall be promoted in internal and external policies. The treaty does not create new powers for children’s rights but enables action to protect children’s rights in areas where powers exist. Children’s rights are now placed at the centre of the EU’s objectives. Article 6 of the Lisbon Treaty ensures that the Charter of Fundamental Rights is made binding (with opt-outs for the UK, Poland and the Czech Republic). EU legislation and action must be consistent with the Charter, and Member States must take the Charter into consideration when applying EU law. Article 6 also commits the European Union to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**The Charter of Fundamental Rights**
The Charter of Fundamental Rights of the European Union was adopted in 2000. The charter sets out a number of fundamental rights which apply to adults and children alike. These include the right to life, prohibition of torture and inhuman or degrading treatment or punishment, the right to education and non-discrimination for example (all of these rights are represented in the UN convention on the Rights of the Child). In addition the Charter contains an explicit reference to the rights of the child (that is to say rights which pertain specifically to children). This reference in article 24 is extremely important although quite limited.

<table>
<thead>
<tr>
<th>European Charter of Fundamental Rights</th>
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<tr>
<td><strong>Article 24</strong> The rights of the child</td>
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<tr>
<td>1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.</td>
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<tr>
<td>2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.</td>
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<tr>
<td>3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.</td>
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**3.2 The legal competence of the EU institutions**
The European institutions are limited by subsidiarity, proportionality and the principle of conferral in their potential to act for children’s rights; this is a reflection of the “division of competences” between the European Union and the Member States. The EU has greatest power in cross-border issues, and less jurisdiction in matters of domestic policy in individual

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24 See also Fundamental Rights Agency, November 2010, Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, p.12
states. This will change only if the Member States themselves agree to concede autonomous powers and extend the competence of the EU.

With limited powers of intervention in Member States, the leadership shown by the EU institutions is frequently addressed through activities such as setting objectives, articulating common approaches, facilitating exchange of information, and providing funding for action, for example. This is of itself a useful role. For example, the EU is providing funding for Bulgaria’s deinstitutionalization process, mentioned earlier. The Open Method of Co-ordination (OMC) presents Member States with opportunities to participate in policy and practice sharing in thematic areas such as child poverty. To make the most of the OMC, national governments should ensure the lessons are applied in their countries, and that the objectives and process of the OMC is well-understood at national level. The Social OMC could provide a platform for exchanging good practice in implementing children’s rights if it had a more explicit focus on them. The structure of the OMC lends itself to the development of new ideas and comparative learning which would be advantageous in the field of children’s rights.

In most areas of policy affecting children, the European Union cannot guarantee implementation of children’s rights. Thus, whilst the European Union can, for example, encourage its Member States to improve access to health or education services, it cannot oblige them to ensure each child’s entitlement to quality health and education services. There are notable exceptions such as asylum and immigration policy where the European Union has greater powers and can ensure the rights of individuals. In Chapter 5 we shall examine the Directive on Combating Sexual Abuse and Sexual Exploitation of Children and Child Pornography, which Member States will be obliged to incorporate into national legislation.

Morten Kjaerum, Director of the Fundamental Rights Agency (FRA) acknowledged that “There remains a large gap between the rights proclaimed in human rights law on the one hand, and the ability of people to exercise these rights on the other. To close this implementation deficit, good interaction between the European, national and local levels is crucial. We must ensure that each level of government adds value to the protection of vulnerable groups in our societies.”

It is essential that the EU institutions and the Member States work together in partnership for children’s rights. The European Union should do more to apply children’s rights approaches and standards to all aspects of its work. Much of the work of the EU institutions is inevitably piecemeal and lacking in strength when viewed in isolation from Member States which have most authority and responsibility in terms of legislation. Only by working together will full implementation of children’s rights be achieved in the EU. This means that the EU institutions must find the balance between a leadership role and a supporting role.

3.3 A strategic approach to children’s rights?

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27 European Union Agency for Fundamental Rights, Conference 13 November 2010, press release
The European Commission has produced a series of communications, setting out the intentions of the European Union in promoting children’s rights. These communications can be said to serve as a statement of intent for the EU and reflect the expectations of the EU with regard to its Member States. Whilst some do apply to external policy, this report section only details communications relevant to European domestic policy.

In 2006 the European Commission published a Communication “Towards an EU Strategy on the Rights of the Child” which acknowledged children’s rights as having a core place in the European Union. It set out a number of specific measures to be taken, and outlined strategic approaches for developing children’s rights. It could be said that the highly ambitious aspirations of the strategy to “push children’s rights to the forefront of the international agenda” and “promote universal children’s rights at national level” were not matched by the specific measures set out in the communication, but these were important nonetheless. It was welcomed as an important step forward.

Towards an EU Strategy on the Rights of the Child

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<th>Towards an EU Strategy on the Rights of the Child</th>
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<td>This strategy is based on the following specific objectives:</td>
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<td>• taking advantage of existing policies and instruments; establishing the priorities of future EU action;</td>
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<td>systematically taking the rights of the child into account in all EU external and internal policies (“mainstreaming”);</td>
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<tr>
<td>• ensuring efficient coordination and consultation mechanisms;</td>
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<td>• reinforcing competence and expertise on the rights of the child;</td>
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<td>• communicating more effectively on the rights of the child;</td>
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<tr>
<td>• promoting the rights of the child in the field of external relations.</td>
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The announcement of a far reaching approach to developing a future strategy attracted recommendations from civil society organizations, and the European Parliament also made its contribution. Inevitably progress was affected by uncertainties surrounding the ratification of the Lisbon Treaty. However, even since the Lisbon Treaty came into force, the strategy has not been completed. Instead, the EU has developed an EU Agenda for the Rights of the Child, which came into force in February 2011. The absence of a comprehensive strategy surprised and disappointed many stakeholders. This was not the new and innovative strategy to tackle children’s rights in Europe and globally which many had hoped for.

Nonetheless, there are positive aspects to the EU Agenda for the Rights of the Child (The Agenda). It contains a number of bold statements concerning the EU’s commitment to the

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29 15 February 2011, Commission Communication, COM(2011)60 final
implementation of children’s rights. It also sets out a number of important principles such as children’s participation (and refers to Eurobarometer studies into children’s views of their rights).  

The Agenda must be seen in the context of the Strategy for effective implementation of the Charter of Fundamental Rights and Europe 2020: a strategy for smart, sustainable and inclusive growth (the EU’s growth strategy for the coming decade).

3.4 Determining a programme of action
Towards an EU strategy on the Rights of the Child included a list of actions proposed by the Commission to enhance its work on children’s rights. These are set out below. As is immediately apparent, these are disconnected from each other and in some cases the actions are highly explicit whereas in others they are very general and non-specific. Whilst the actions are to be welcomed, their strategic coherence is unclear.

2006 Towards an EU Strategy on the Rights of the Child
......“This strategy envisages a number of measures, namely:
• setting up one single six-digit telephone number (beginning with 116) within the EU for child helplines, as well as a number for a hotline dedicated to missing and sexually exploited children;
• support for the banking sector and credit card companies in combating the use of credit cards when purchasing sexual images of children on the Internet;
• launching an Action Plan on Children in Development Cooperation;
• publication of a consultation document with a view to identifying actions to be implemented in the future;
• setting up a European Forum for the Rights of the Child and an online discussion platform;
• involving children in the decision-making process;
• development of a communication strategy on the rights of the child, helping both children and their parents to improve their knowledge of these rights.

The actions identified in the recent EU Agenda for the Rights of the Child are more explicit, and they are more coherent. The Agenda promotes the protection of children, particularly in cross-border issues. There are 11 specific areas in which action will be taken in the approaching years. These are:

“Adopting a proposal for a directive on victims’ rights, raising the level of protection of vulnerable victims, including children.

30 See especially Qualitative Eurobarometer Study into the Rights of The Child 2010, published by the European Commission, Directorate General Justice “Children’s Rights, as they see them” 2011.
31 19 October 2010, Commission Communication COM(2010)573 final
“Tabling a proposal for a directive on special safeguards for suspected or accused persons who are vulnerable, including children.

“Revising the EU legislation facilitating the recognition and enforcement of decisions on parental responsibility with a view to ensuring, in the interest of the child, that decisions can be recognised and enforced as quickly as possible, including, where appropriate, the establishment of common minimum standards.

“Promoting the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice and taking them into account in future legal instruments in the field of civil and criminal justice.

“Supporting and encouraging the development of training activities for judges and other professionals at European level regarding the optimal participation of children in judicial systems.

“Supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children.

“Supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children.

“Strongly encouraging and providing support to all EU countries to ensure the swift introduction and full functioning of the 116 000 hotline for missing children and the child alert mechanisms.

“Supporting EU countries and other stakeholders in strengthening prevention, empowerment and participation of children to make the most of online technologies and countering cyber-bullying behaviour, exposure to harmful content, and other online risks, namely via the Safer Internet Programme and cooperation with the industry through self-regulatory initiatives.

“Continuing the implementation of the 2007 EU Guidelines on the Protection and Promotion on the Rights of the Child that focus on combating all forms of violence against children. The EU will also evaluate the implementation of the Guidelines, as well as implement the EU Guidelines on Children and Armed Conflict based on the 2010 Revised Implementation Strategy.

“Setting up a single entry point on the EUROPA portal, with information for children about the EU and the rights of the child. The Commission will invite other EU institutions to join this initiative.”

Once again, it is difficult to see on what basis particular actions, however important, have been selected.

The priorities for action on children’s rights seem linked to the general priorities of the EU, and relate more to previously agreed action rather than proposing new and innovative action to tackle children’s rights issues in Europe or globally. Not only should agreed actions reflect broad consensus between the EU institutions and stakeholders, they should also reflect children’s rights priorities as determined by independent analysis, especially by international human rights bodies.

3.5 Suggestions for setting priorities

http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_eu.htm
The concluding observations of the Committee on the Rights of the Child show that similar problems impede the realization of children’s rights across Europe. Inevitably there are differences between countries. Issues may exist on a greater scale, or may take on more extreme forms in some countries. Differing political structures may lead to inconsistencies in the way change is effected. Nonetheless, there are considerable similarities and common challenges. These common challenges invite co-operative action on the part of European states without detracting from the individual responsibility of Member States.

The priorities for EU action should relate to children’s rights imperatives for Europe. The rights set out in the Convention on the Rights of the Child are considered to be indivisible, so it is not a question of establishing a hierarchy of rights. Rather, priorities for action can be determined in terms of the obstacles to children’s rights, or breaches of children’s rights, currently existing in EU Member States. The best way to assess these is on the basis of analysis by human rights institutions, and above all by the examination process conducted by the Committee on the Rights of the Child itself. This is a rich source of information, involving government and independent reports and especially the concluding observations of the Committee. What is more, not only do the concluding observations point to the problems, but they also outline potential solutions – in other words, the actions which must be taken. The work of other treaty monitoring bodies is also relevant, not least the Council of Europe.

**Using the CRC concluding observations**

Currently the concluding observations of the Committee on the Rights of the Child do not appear to influence the priorities for action of the EU institutions. The European Commission should carry out a comparative study of the concluding observations by the Committee on the Rights of the Child in relation to European States parties in order to inform its analysis of what the priorities for action are. The specific nature of the response by the European Union institutions can then be selected according to the competence of the EU in the policy areas prioritised (that is to say by means including legislative action, “soft law”, financial assistance and political dialogue).

A useful comparison may be made with the Council of Europe which is committed to “give specific consideration to the CRC’s General Comments and concluding observations in all of its activities”...and to “assisting its member states ensure effective and consistent follow-up to the CRC’s recommendations”.

A step in the right direction is being taken as the EU works more closely on children’s rights with the Council of Europe. The *EU Agenda for the Rights of the Child* includes a commitment to promote the guidelines of the Council of Europe on child friendly justice and it is to be hoped that such action could be replicated in relation to other aspects of Council of Europe work. Like other human rights bodies, the Council of Europe not only monitors human rights implementation but also provides analysis, advice and tools as to how to tackle the problems.

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34 Such as the inappropriate institutionalization of children, discrimination against national or ethnic minorities, or child poverty, for example.

The Council of Europe itself considers the EU to be a major partner in achieving the objectives of its own strategy for the Rights of the Child. (A draft strategy for the period 2012 to 2015 will go before the Committee of Ministers in January 2012). Co-operation will be particularly important given a number of potential overlaps between the EU Agenda for the Rights of the Child and its own strategy.\textsuperscript{36}

\textbf{3.6 Accession to treaties}

Article 32 of the Lisbon Treaty enables the EU to accede to international treaties. The EU has already acceded to the Convention on the Rights of Persons with Disabilities. Under article 6.2 of the Lisbon Treaty, the EU will accede to the European Convention of Human Rights (ECHR); an accession agreement is currently being negotiated. These developments mean that the EU institutions and the Council of Europe will inevitably work more closely together and EU law and policy will be subject to external human rights scrutiny. Save the Children recommends that, following accession to the ECHR, the EU should embark on further accession to child specific Council of Europe Conventions, including the Convention on the Protection of Children from Sexual Abuse and Sexual Exploitation.\textsuperscript{37}

Save the Children also recommends that the EU should explore accession to the UNCRC as a matter of priority. Whilst this “would not create an extension of the powers of, or create new competence for the EU......it would contribute to more clearly establishing the EU’s obligations regarding children’s rights and potentially lead to a more coherent EU approach to protecting and fulfilling children’s rights.”\textsuperscript{38}

Inevitably accession would present issues to resolve, not least the fact that the CRC is drafted so as to place the obligations on States parties. Before the EU ratified the Convention on the Rights of Persons with Disabilities (CRPD) in December 2010 some matters required resolution. The EU Member States agreed a common code of conduct, which will regulate interaction with the European Commission in matters concerning the CRPD.

If the EU were to accede to the CRC it would have to report to the Committee on the Rights of the Child. This would clarify the children’s rights obligations of the EU, and would produce expert guidance for action. The structure of examination would inevitably be based on the structure of the CRC, and thereby it would mirror and relate to the examination of EU Member States.

\textbf{3.7 Conclusion}

Save the Children believes that the EU, as regional legislator, global promoter of human rights and democracy, and the world’s largest donor, could take a much stronger role in ensuring the implementation of the UN CRC, both within the Member States of the European Union and

\textsuperscript{36} Ibid
\textsuperscript{37} Save the Children 2011, Olivia Lind Haldorsson, op.cit. p.18
\textsuperscript{38} Ibid.
through its role of being a major donor to less and least developed countries. The institutional developments in the EU, including the entry into force of the Lisbon Treaty and the observer status of the EU in the UN General Assembly, open up new possibilities and obligations for the EU to take a much stronger stand on children’s rights. At the end of the day, it is a matter of political will. This political will is required both within the EU institutions themselves, and within the Member States which largely define the role of the EU institutions.
4 Developing a comprehensive approach to ending violence against children

The report will now turn to a thematic example, that of violence against children, in order to examine the work of the actors in our report in more detail, showing how they interact to bring about the implementation of children’s rights. Action to prevent violence against children is a priority for human rights institutions, led by the UN Secretary General. The Secretary General’s global study, published in 2006, revealed the scale of this abuse of children’s rights.39

The approach of the human rights institutions to ending violence against children will be explained; this will involving looking at the interpretations and recommendations advanced by the UN Secretary General, the Committee on the Rights of the Child, and the Council of Europe.

The work of the Member States to implement the recommendations of the Committee on the Rights of the Child in relation to violence will be scrutinized. The recommendations of the Human Rights Council through the UPR process will be noted, demonstrating the analysis advanced in Chapter 3 regarding the synergies between the two committees. The activity of the EU institutions on violence against children will also be examined. This will offer both a critique and an appreciation of the work of the EU and the Member States.

An emphasis will be placed on achieving good practice, although our best examples of good European practice will be found in Chapter 6. Where possible, progress and good models of working will be highlighted. This does not necessarily imply that positive change is straightforward or that concerted effort will make it readily achievable, as will be evident from the section on implementation by Member States. Therefore the chapter will also make recommendations for improvement.

4.1 A priority for the UN

Violence against children has been found to be universally pervasive. This unequivocal conclusion is clear from the UN Secretary General’s Study on Violence against Children, the report of which was presented to the UN General Assembly in 2006.40 Despite concerted action stemming from the report, and evidence of some progress in different areas, violence against children continues to be a major challenge which seriously compromises children’s rights. 41

As recently as April 2011, the Committee on the Rights of the Child issued a general comment on the right of the child to freedom from all forms of violence.42 This included the observation that “the extent and intensity of violence against children is alarming”. It also stated:

40 Ibid.
41 This conclusion can be drawn from, for example, UN Secretary General, 07 August 2007, Promotion and Protection of the Rights of Children, Report of the independent expert for the United Nations study on violence against children. Also see NGO Advisory Council for follow-up to the UN Study on Violence against Children, October 2011, Five Years On: A global update on violence against children.
42 Committee on the Rights of the Child, General Comment no. 13 (2011), The Right of the Child to freedom from all forms of violence (CRC/C/GC/13)
“The Committee acknowledges and welcomes the numerous initiatives developed by Governments and others to prevent and respond to violence against children. In spite of these efforts, existing initiatives are in general insufficient. Legal frameworks in a majority of States still fail to prohibit all forms of violence against children, and where laws are in place, their enforcement is often inadequate. Widespread social and cultural attitudes and practices condone violence. The impact of measures taken is limited by lack of knowledge, data and understanding of violence against children and its root causes, by reactive efforts focusing on symptoms and consequences rather than causes, and by strategies which are fragmented rather than integrated. Resources allocated to address the problem are inadequate.  

Quoting the assumption of the independent expert that “No violence against children is justifiable; all violence against children is preventable” the Committee has adopted a comprehensive approach to tackling violence and it has called for concerted action: “Measures to end violence must be massively strengthened and expanded.”

The Committee on the Rights of the Child proposes that States parties must develop comprehensive strategies in each country. A highly developed framework is set out in the recommendations of the Report of the independent expert, and in the general comment on violence against children by the Committee on the Rights of the Child. The major strands needing to be tackled are:

- Neglect
- Psychological maltreatment or emotional abuse
- Physical violence
- Corporal punishment
- Sexual abuse or exploitation
- Torture and inhuman or degrading treatment
- Violence among children
- Self harm
- Harmful practices
- Violence in the mass media and through ICT
- Institutional and system violations of child rights

The settings in which violence is most likely to occur are the home and family, schools and educational settings, care and justice systems, environments where children are working and in the community. These strands and settings are covered in the Committee’s examination of the performance of individual states in tackling violence against children. Prescriptions for tackling particular aspects of violence against children are presented in parallel with recommendations concerning comprehensive strategies.

4.2 A comprehensive strategy

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43 Ibid. para.2, p.3; para.12, pp. 6-7
44 Ibid. paras.2&3, p.3
45 Ibid. paras.20-32, pp 8-12
What is a comprehensive strategy to tackle violence? This has been encouraged by the Committee on the Rights of the Child in its concluding observations on States parties’ reports over the past 20 years, and recently its remarks have inevitably taken account of the UN Study on Violence. The overarching recommendations of the UN Study were that states should:

1. Strengthen national and local commitment and action (a national strategy)
2. Prohibit all violence against children
3. Prioritize prevention
4. Promote non-violent values and awareness-raising
5. Enhance the capacity of all those who work with and for children
6. Provide recovery and social reintegration services
7. Ensure participation of children
8. Create accessible and child-friendly reporting systems and services
9. Ensure accountability and end impunity
10. Address the gender dimension of violence against children
11. Develop and implement systematic national data collection and research
12. Strengthen international commitment (ratify and implement the relevant international instruments)\

Again, all of these themes appear in the Committee’s Concluding Observations on States parties’ reports. In order to ask States parties to undertake all these actions, the Committee on the Rights of the Child uses a succinct formula. In 2011 this has taken the following expression, as we can see from Denmark, Finland and Italy, which appeared before the Committee over recent months.

“Prioritize the elimination of all forms of violence against children, including by ensuring the recommendations of the United Nations Study on violence against children (A/61/299), taking into account the outcome and recommendations of the Regional Consultations for Europe and Central Asia..., and paying particular attention to gender.

“Provide information concerning the implementation by the state party of the recommendations... in particular

• The development of a national comprehensive strategy to prevent and address all forms of violence against children
• The introduction of an explicit legal ban on all forms of violence against children in all settings
• The consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence and ill-treatment against children.”\

Finland and Denmark were also advised to co-operate with the Special Representative of the Secretary General on violence against children and to seek technical assistance from a number of relevant UN bodies.

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46 UN General Assembly A/61/299 (29 August 2006), Report of the independent expert for the UN study on violence against children, Section VI Recommendations, pp. 25-28
Countries examined in previous years received similar advice, but less consistently worded.

4.3 Issues arising from examination by the Committee on the Rights of the Child: influence on States parties

General strategy
The evidence arising from the concluding observations is that individual countries are making only slow progress toward the realization of a general strategy against violence.

As recently as October 2011, for example, in its concluding observations on Italy, the Committee was “…seriously concerned at the absence of a nationwide common system and framework for the protection and prevention of children from all forms of physical and mental violence and a corresponding monitoring body for implementation”. 48

The Committee recognized specific actions taken by Finland (2005) and the UK (2008) respectively, but in both countries it regarded the prevalence of violence against children as a big problem.

Finland was advised to
- Strengthen awareness-raising and education campaigns
- Increase support to toll-free national helpline
- Encourage reporting of child abuse
- Continue to provide care, physical and psychological recovery and reintegration for child victims

The UK was advised to
- Monitor cases of violence
- Train professionals to report violence and take appropriate action
- Avoid victimization of subjects of violence in criminal proceedings
- Provide services for recovery and reintegration. 49

The efforts of the Spanish government seem to have met with greater approval, especially the first national Strategic Plan for Children and Adolescents 2006-9. In 2002 the Committee had expressed concern at the scale of the problem of violence, but by 2010 there was a sense that the government was addressing it. The Committee made numerous recommendations nonetheless, including the approval of an integral law on violence against children. 50

It is evident from the Committee’s discussion of general measures of implementation in all areas, not merely in relation to violence, that many countries find it difficult to develop comprehensive policies and to implement them consistently. Nonetheless it is to be hoped that the very detailed advice of the Committee on the Rights of the Child will lead to significant progress in this direction. In addition to the need to develop an overall strategy to combat

48 CRC/C/ITA/CO/3-4, 31 October 2011, para.43, p.11
50 CRC/C/ESP/CO/3-4, 29 September 2010, paras.36-38, p.7
violence against children, the concluding recommendations also contain observations on particular strands of violence.

Specific issues
It seems likely that countries find it easier to implement the Committee’s recommendations when these are specific and manageable in scale. In 2002 the Committee criticized the UK for the absence of systematic follow-up on child deaths, but by 2008 child death reviews had been introduced in England and Wales. In 2002 sexually exploited children were criminalized by the legal system but by 2008 steps had been taken to address this.\(^{51}\)

Monitoring governments’ actions
The Committee on the Rights of the Child scrutinizes the extent of the efforts made by governments to tackle violence, and to follow previous recommendations. For example Denmark followed the advice of the Committee and tackled domestic violence in the Faroes; Bulgaria has been following the advice of the Committee in 2008 to address ill-treatment in institutions.

Finland seemed to have got off to a good start in 2005, implementing some of the Committee’s previous recommendations, but then, in the perception of the Committee, progress seemed to falter. Whereas in 2005 the Committee welcomed the introduction of campaigns against violence, and, for example, Finland’s efforts concerning violence in mobile technology, internet, games etc, in 2011 the Committee was concerned by the absence of investigation of this area. The State party produced no information on government policies concerning child abuse and neglect for the 2011 examination.\(^{52}\)

There are clear examples of governments failing to implement the recommendations of the Committee. In its examination of Italy in 2003 the Committee stated it was “Deeply concerned about allegations of ill-treatment by law enforcement officers against children and at the prevalence of abuse, in particular against foreign and Roma children.” Amongst other recommendations, it suggested that the State party should “Incorporate the crime of torture or other cruel, inhuman or degrading treatment or punishment into criminal law.”\(^{53}\) In 2011 the Committee found that the recommendations had not been implemented.\(^{54}\)

A remarkable example arose in the UK concerning the use of restraint techniques on juveniles in conflict with the law. This was referred to in the 2002 concluding observations on Great Britain and Northern Ireland: “…the Committee is concerned at the frequent use of physical restraint in residential institutions and in custody, as well as the placement of children in

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\(^{51}\) CRC/C/15/Add.188 (9 October 2002), paras.39-40, p.9-10, paras.57-58, p.15; CRC/C/GBR/CO/4, (20 October 2008) paras.28-29, p.7, paras.73-4, p.18

\(^{52}\) Finland, CRC/C/15/Add.272, (20 October 2005) paras.24-25, p.5, paras.31-32, p.6; CRC/C/FIN/CO/4, para.37,p.8

\(^{53}\) CRC/C/15/Add.198(18 March 2003) para.32, p.8

\(^{54}\) CRC/C/ITA/CO/3-4 (31 October 2011), paras.18-19, p.5
juvenile detention and in solitary confinement in prisons.” The Committee also noted “with serious concern that the situation of children in conflict with the law has worsened…”55

The issue came under the spotlight after the deaths of two boys aged 14 and 15 in England in 2004. In 2007 the use of two specific restraint techniques was discontinued, but other restraint practices continued.

In 2008, in its concluding observations on the UK, the Committee urged the State party “to ensure that restraint is used only as a last resort and exclusively to prevent harm to the child or others, and that all methods of physical restraint for disciplinary purposes are abolished.”56

The UK Government did not follow the Committee’s advice in this matter, even though it also came under pressure from other human rights institutions.

- A delegation from the European Committee for the Prevention of Torture visited Britain in December 2007 to meet with ministers
- In 2008 the European Human Rights Commissioner, following his visit to Britain, urged “the immediate discontinuation of all methods of restraint that aim to inflict deliberate pain on children”57
- In 2008 the Human Rights Council, conducting the Universal Periodic Review of the UK, asked the Government “To address the high incarceration rate of children, ensure that the privacy of children is protected and put an end to the so-called “painful techniques” applied to children.” This was not accepted by the UK Government.

Clearly it is a matter of political will, and any government which chooses not to follow the advice of the Committee, or of other human rights monitoring bodies, does not have to.

In 2003 the Committee on the Rights of the Child told the Government of Estonia that “there is still insufficient information on and awareness of the ill-treatment and abuse of children” and that it was concerned by “the lack of a comprehensive strategy and the inadequate allocation of resources”.58 Since then Estonia has ratified the Optional Protocol on the sale of children, child prostitution and child pornography (2004). It introduced a Development Plan for Combating Trafficking in Human Beings 2006-9 and a development Plan for the Reduction of Violence 2010-2014. It participates in safer internet activities.59 Examination of Estonia’s report on the Optional Protocol in 2010 drew attention to inadequate information-collection, the absence of a comprehensive plan of action and also inadequate resources, amongst other things.60 Estonia has not been subject to general periodic examination by the Committee on the Rights of the Child for nearly 9 years, and so its overall approach to violence against children

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55 CRC/C/15/Add.188( 9 October 2002), paras.33-34, p.8, para.59, p.16
56 CRC/C/GBR/CO/4 (20 October 2008), paras.38-39, p.9
57 CommDH(208)27, Thomas Hammarberg, Memorandum, following his visits to the UK 5-8 February and 31March-2 April 2008
58 CRC/C/15/Add.196(17 March 2003) para.30, p.8
60 CRC/C/OPSC/EST/CO/1 (29 January 2010)
has not been scrutinized. This lapse is a failure to comply with international human rights monitoring.

**Reduction of prevalence**

In addition to monitoring governmental actions, the Committee on the Rights of the Child also considers the prevalence of violence against children. Even where governments are making considerable efforts to implement the recommendations, progress in reducing prevalence can be slow. The difficulty experienced no doubt owes a great deal to the extent to which toleration of violence is deeply rooted in European social attitudes and cultural norms. This is a matter which acutely concerns the Committee, and causes it to recommend awareness-raising among the general public, training of professionals, as well as the teaching of children about their rights. It urges States parties to carry out research and studies.

Violence amongst children in schools continues to be a problem in countries with very different systems. In 2011 the Committee welcomed Denmark’s initiatives against bullying but was concerned by the prevalence of the problem. Concern was also expressed about the extent of violence and bullying in Italy’s schools. The Committee advised Bulgaria in 2008 to raise teachers’ awareness on peer mobbing and bullying in classrooms and to encourage schools to adopt action plans. In 2001-4 the Estonian Union of Child Welfare carried out a project “Stop Violence” including tackling violence and bullying in 20 Estonian schools. It conducted a survey in basic schools. This indicated that 47% of respondents experienced pushing, poking and mild physical bullying, 40% had experienced mockery, and 16% had been hit or beaten.

**4.4 Issues arising from the Universal Periodic Review**

The UPR has ensured that additional pressure is placed on states to tackle violence against children. However, the UPR recommendations are often very general in nature, and the reports do not contain detailed recommendations about the steps required of governments in the same way as the CRC concluding observations. In this regard they could be less likely to lead to effective implementation than those of the Committee on the Rights of the Child. However, as UPR recommendations are made by the representatives of other states, thereby exerting political pressure, these recommendations are very useful as a prompt to action.

**Bulgaria** was asked to address violence; to safeguard children in Institutions and to prosecute individuals and institutions responsible for child deaths; to prevent and address child abuse and to prevent human trafficking and protect newborns and Roma children especially.

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62 UN Study on Violence against Children, Response to the questionnaire received from the Government of the Republic of Estonia, p 26
63 Quoted in Kaugia, Silvia, Estonian Schoolchildren’s Opinions about Violence and the Possibilities for Preventing It, Juridica International, XV 2008
Denmark was asked to address violence and sexual abuse in families; to strengthen the
capacity of parents with regard to the internet; to prohibit solitary confinement and the
detention of minors with adults; to prevent commercial exploitation and trafficking.

Estonia was asked to prohibit violence against children including corporal punishment; to bring
forward a plan of action on the sale of children, child prostitution and child pornography; to
create a separate independent institution for safeguarding children.

Italy was asked to eliminate and prevent discrimination and abuse; to ban corporal
punishment; and to support child victims of trafficking and prostitution.

Romania was asked to prohibit corporal punishment; to improve police training and witness
protection for victims of trafficking and sexual abuse.

Spain was asked to fight gender violence and develop a national plan of action; combat abuse
in (care) centres; take action on child trafficking and support for victims; to protect children in
prisons, to abolish the death penalty, train police, prison and judicial staff.

The UK was asked to reconsider the legality of corporal punishment; to protect children from
violence; to end painful restraint techniques for children in secure accommodation.64

4.5 The Council of Europe

The Council of Europe has developed a major initiative to tackle violence against children,
which has elaborated policy and practice recommendations, training and information materials,
and campaign tools. It informs children and young people of their rights and raises awareness
more generally. It can thereby support stakeholders in different European countries.65

The initiative takes a comprehensive and integrated strategic approach to violence against
children, no doubt in large part a reflection of the approach taken by the Committee on the
Rights of the Child and the UN General Assembly. Based on the principles of prevention,
prosecution, protection and participation its “Action Programme” addresses schools, family,
media, residential institutions, prisons, and children in the community- including street
children.

Following research and consultation with stakeholders, among them children, its activities have
included training, dissemination of practice information, work with the congress of local and
regional authorities and the development of national policy guidelines. Its guidelines on
integrated national strategies for the protection of children from violence were adopted by the
Assembly of the Council of Europe in 2009, and were based on research including a pilot
scheme involving four European countries including Italy and Romania. The Council of Europe

64 Information about the UPR examinations in different countries can be easily accessed from www.upr-info.org
65 “Building a Europe for and with children” consists of two themes – the promotion of children’s rights and the
protection of children from violence and was launched in 2005
can also draw attention to significant shortcomings on the part of individual states through its human rights monitoring of individual countries.

The practical support provided by the Council of Europe to actors in individual European countries is very relevant to the efforts of the UN Committee on the Rights of the Child, to ensure that states are effective in tackling violence against children. This can be identified as a positive model of working, providing support which is needed by individual countries.

The Council of Europe has provided significant leadership on the issue of violence. It has helped galvanise political action in its Member States, for example through its campaign on corporal punishment, and the creation of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse.

4.6 The European Union
The EU has made commitments to taking action against violence. These are implicit in the Charter of Fundamental Rights and the obligation to promote the rights of the child. More specifically the implementation of the EU Guidelines on the Rights of the Child (which apply to external policy) focus on combating all forms of violence against children, and the EU Agenda for the Rights of the Child includes “concrete actions in areas where the EU can bring real added value, such as child-friendly justice, protecting children in vulnerable situations and fighting violence against children both inside the European Union and externally”. This is very positive although as yet actions do not reflect the scale of the approach required, which was elaborated at the start of this chapter. However, there are important new developments.

In November 2011 the European Council adopted a new Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and replacing the Council Framework Decision 2004/68/JHA. This directive is regarded as something of a landmark. After a long period of lobbying by Save the Children and many NGOs concerned with these issues, both on its basic principles and its detail, the directive is considered comprehensive and forceful. This falls within EU competence since European legislation in the context of police and judicial co-operation in cross-border matters is necessary; many aspects of child sexual abuse and child sexual exploitation operate at European and international levels. The directive deals with all forms of sexual abuse against children, treats them as criminal offences, fills gaps in previous legislation and harmonizes the situation between countries.

The directive must be enacted at national level and introduced within two years. This will ensure that sexual abuse of children, sexual exploitation of children, possessing and producing child pornography, and grooming of children will be treated as criminal offences in all Member States in the same way. The directive sets out the maximum thresholds for a range of offences within each category. It ensures that European nationals who commit offences abroad must be

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66 Approved by the Council 10 December 2007
67 http://ec.europa.eu/justice/fundamental_rights/rights-child
68 Brussels 4 November 2011 (PE-CONS 51/11)
deal with under a European jurisdiction. Governments are obliged to undertake the prompt removal of websites within their territory which carry child pornography, and to attempt to secure the removal of extra-territorial sites. Governments must ensure that people committed of offences are prevented from working with children, and relevant information must be shared between Member States.

In addition to dealing with perpetrators, the directive also deals with the treatment of victims, the capacity of members of the community to recognize and report abuse, and preventative work with potential perpetrators. All in all, it does reflect the overall approach recommended to States parties by the Committee on the Rights of the Child. The directive has also benefited from the structure and content of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) which opened for signing in 2007 and came into force 1 July 2010. This sets out the requirements on individual states based on human rights principles. In some areas, such as awareness-raising and education of children and the public, this Convention is more detailed than the directive. The new directive will ensure that the key elements of the Lanzarote Convention are incorporated into the laws of EU Member States.

Save the Children has welcomed the measure as an example of the EU using its legal competence to legislate in the best interests of children. Save the Children would also wish the EU to facilitate an exchange of good practice on some of its provisions, and to issue non-binding guidelines or minimum standards for Member States.69

Many of the issues at the heart of the draft directive are addressed in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which entered into force in 2002. Parties to the Optional Protocol have been examined on its implementation by the Committee on the Rights of the Child. Those states which have not ratified are urged to do so without reservations as soon as possible. Finland has not ratified the Optional Protocol, and the UK did so only in February 2009. Nonetheless this strand of violence against children is included in the general periodic examination by the Committee, and so all states undergo some degree of scrutiny in this area. The European Union could utilize the concluding observations of the Committee on the Rights of the Child on the European Member States, in order to assess how best to work with them to achieve effective implementation of the directive.

4.7 Conclusion
This chapter has examined the comprehensive framework for tackling violence against children developed by the UN institutions. Implementation of this framework is indeed a massive challenge for Member States, and the gaps are highlighted by the observations and recommendations of the UN Committee on the Rights of the Child and the UPR Working

69 Save the Children, Missing Children Europe, eNASCO, ECPAT & NSPCC, Position paper on the draft directive on combating the sexual abuse, sexual exploitation of children and child pornography, 27 September 2010
Groups. There are many examples of good practice in tackling different aspects of the problem, but unfortunately among some European states there is also insufficient political will.

The actions of the Council of Europe can assist Member States to deliver on their obligations to children’s rights. The new EU Directive on Combating Sexual Abuse and Sexual Exploitation of Children and Child Pornography is a positive catalyst to the realization of children’s rights, and it is to be hoped that the EU institutions will build their work on violence against children. The EU could provide more support if it situated its agenda in the context of the advice and criticisms provided to Member States by the UN. Finally, the apparent high prevalence of violence against children is an on-going concern. This has to be challenged vigorously as it is inevitable that the high degree of historic toleration of violence in Europe will take some time to overcome. However, there are examples which create optimism that this can be achieved. Efforts to end the physical punishment of children are one such example which will be examined in the next chapter.
5 Progress in tackling violence against children: physical punishment

In the preceding chapter, in the context of an overall discussion about tackling violence against children, examples of progress were tempered by challenges. This section will focus on one strand of the violence theme – that of the physical punishment of children – where positive change is apparent. This is largely because many States parties have strongly followed the lead of the UN bodies. Although all countries still have work to do to ensure the eradication of physical punishment, there is massive progress both in the actions which governments have taken, and in the clear reduction of prevalence in many European countries.

5.1 What is corporal punishment?

General Comment by the Committee on the Rights of the Child defines “corporal” or “physical” punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light…. In the view of the Committee, corporal punishment is invariably degrading.”

Corporal punishment can apply in all settings, notably the home and family, schools and educational settings, care and justice systems, the community and environments where children are working. It is likely to be justified by society (as being a necessary tool for disciplining children) and is deeply rooted in cultural norms. Justification of corporal punishment reflects the social toleration of a form of violence against children which is no longer acceptable if applied to adults. In many countries prohibitions of physical punishment in institutionalised settings such as schools or penal systems have been applied more readily than in the home. There is a reluctance to accept that children have rights independently of their parents or carers.

5.2 The work of human rights institutions

The total abolition of the physical (or corporal) punishment of children is a key objective of the human rights institutions. The Committee on the Rights of the Child was the first UN human rights monitoring body to draw attention to this issue consistently, and prior to the adoption of the UN CRC few countries had banned physical punishment. So far 31 states world-wide have introduced legislation banning it completely, 22 of which are Council of Europe Member States, and 16 are also EU Member States.

The concluding observations on States party reports reflect a number of approaches for tackling the physical punishment of children, which are also discussed in the General Comment. Legislation of itself is not sufficient; it also needs to be applied. In addition, behavior and attitudes need to be modified. Although the Committee on the Rights of the Child attaches importance to a legislative ban, it is equally concerned that other complementary strategies should be developed. In particular, alternative methods of disciplining children should be encouraged and taught among professionals and parents, more support should be given to

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70 Committee on the Rights of the Child, General Comment no. 8 (2006) The Right of the Child to protection from corporal punishment and other cruel or degrading forms of punishment , para.11, p.4
71 Ibid. para12,p.5
parents in their parenting role, and a respect for children’s rights and the physical integrity of the child should be engendered through awareness-raising. Children should be informed of their rights, and should be encouraged to participate in decisions about how to develop alternative disciplinary methods. As with all children’s rights, resources should be brought to bear on this matter, and the situation in each country should be carefully researched and monitored. Efforts must not stop with legislation but must continue until the practice of physical punishment ends.

The Council of Europe has consistently opposed the use of physical punishment in its Member States, based on the European Convention on Human Rights. Article 17 of the Social Charter is interpreted by the European Committee of Social Rights as requiring the prohibition of corporal punishment. In 2004 the Parliamentary Assembly of the Council of Europe called for a Europe-wide ban. The Council of Europe has also made considerable investment in resources and training on positive parenting. It also advocates for a comprehensive strategy, providing many practical tools.

The European Court of Human Rights and the European Committee of Social Rights have been instrumental in challenging particular Member States. Judgments of the European Court of Human Rights have progressively challenged the corporal punishment of children since the 1970s, first in the penal system, then in schools and in 1998 in the family home. The present Commissioner for Human Rights, Thomas Hammarberg, is also a staunch advocate for ending physical punishment.

5.3 Country examples
Among the countries considered in this report, Finland was the only state to have banned physical punishment prior to the introduction of the CRC (in 1983). Denmark legislated a ban in 1997, Bulgaria in 2000, Romania in 2004 and Spain in 2007. Although a supreme court ruling of 1996 in Italy renders physical punishment unlawful in the home, no legislation has been passed. In the UK it has been prohibited in most settings but it is still lawful in some circumstances within the family where a defence of “reasonable punishment” can be applied. In Estonia it is permitted in the family and in alternative care.

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73 A complaint to the Collective complaints procedure of the European Social Charter resulted in the prohibition of all corporal punishment inn Portugal in September 2007
74 For example, European Court A. versus the UK 1998 , 100/1997/884/1096
76 For information on the 8 examples selected and all EU countries see Progress towards prohibiting all corporal punishment in all European Member States prepared by the Global Initiative to End all Corporal Punishment of Children, www.endcorporalpunishment.org
5.4 Advice by the Committee on the Rights of the Child to countries where it is not yet banned

Italy
Notwithstanding the supreme court ruling which meant a de facto ban on physical punishment, the Committee on the Rights of the Child commented in its concluding observations of 2011 that it was concerned by widespread use of slapping children as a means of discipline, and it called on government to enact a legislative ban and to take other measures. This matter had been brought up in Italy’s examination under the Universal Periodic Review in 2010 at which the Government rejected the recommendation to legislate against all physical punishment of children. The Committee on the Rights of the Child made further observations again in 2011 as the State party had not complied.

“The Committee recommends that the State party reform domestic legislation to ensure the explicit prohibition of all forms of corporal punishment in all settings, including in the home, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence. The Committee further recommends that the State party raise awareness among parents and the general public on the impact of corporal punishment on the well-being of children and on positive alternative methods of discipline in accordance with the rights of the child.”

UK
The UK has progressively banned the use of corporal punishment in most settings but retains a defence in law which permits parents to physically discipline their children provided no actual harm is caused. (The law is slightly different in Scotland). This defence was modified between examinations by the Committee on the Rights of the Child in 2002 and 2008 but it was not removed. In overseas territories and crown dependencies physical punishment is more comprehensively used in homes, schools and alternative care settings. The Committee recommended that the State party

“Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;

“Ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;

“Actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;

77 CRC/C/ITA/CO/3-4 (31 October 2011), para.35, p.9
“Provide parental education and professional training in positive child-rearing.” 78

At the UPR examination in 2008 the UK Government was asked to consider further measures in order to address the problem of violence against children, including corporal punishment, and it accepted this recommendation. In its mid-term report the UK Government gave a very detailed update on this recommendation, but the core of its statement was as follows:

“The UK Government does not condone physical punishment. It does not, however, want to criminalise decent parents who decide to administer a mild smack. Its approach is to provide parents with positive support and guidance to help them manage their children’s behaviour more effectively without physical punishment. For example, the booklet Being a Parent in the Real World, published last August, explains the law on smacking and discourages the practice. This approach works with parents and not against them - and has proved effective.” 79

Such a justification seems to be more about perception than reality as in practice criminalization need not apply other than in extreme circumstances (which would not be allowed under the current law either). It may owe a great deal to an assumption that the public would not favour a ban. Unfortunately the current law blurs the line as to what is permissible, whereas a legislative ban would give out a clear message that the physical punishment of children is wrong.

**Estonia**

In 2003 the Committee on the Rights of the Child called on Estonia to ban corporal punishment. 80 In the course of the UPR examination, Estonia was asked to “Adopt the necessary legislation, and prohibit any kind of violence against children, including corporal punishment” to which it agreed. 81

**5.5 Advice to countries where it is banned**

Bulgaria, Denmark, Finland, Romania and Spain have all banned corporal punishment but the Committee on the Rights of the Child has been urging follow-through measures until the practice falls into disuse.

78 CRC/C/GBR/CO/4 (20 October 2008), para.42, pp.9-10
79 www.UPR-info.org  UK 2008 and UK mid-term report 2010
80 CRC/C/15/add.196 (17 March 2003),para.31(b), p.8
81 www.UPR-info.org Estonia 2011
Bulgaria
In the context of Bulgaria’s examination in 2008 the Committee on the Rights of the Child acknowledged that Bulgaria has banned corporal punishment in all settings but noted that it was still taking place. It urged the government to enforce the ban by

“Undertaking public and professional awareness-raising; Promoting non-violent, positive, participatory methods of childrearing and education and reinforcing knowledge among children of their right to protection from all forms of corporal punishment; and bringing offenders before the competent administrative and judicial authorities.”

At the UPR examination in 2010 Bulgaria was urged to

“Step up its efforts aimed at strengthening its effective implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” and the Government accepted this recommendation.”

Denmark
In its latest concluding observations the Committee noted that despite a ban in the rest of the territory, no ban has been imposed in the Faroe Islands in respect of the home, alternative care, and schools (although the latter is discouraged by a 1994 official circular). The Committee therefore went on to recommend that

“corporal punishment is prohibited in all settings and throughout its territory and to conduct awareness-raising and public education programmes with a view to encouraging the use of alternative disciplinary measures in line with the inherent dignity of the child, while taking due account of the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Finland
The Committee welcomed the National Action Plan for 2010-15 for the elimination of corporal punishment but stated its disappointment that corporal punishment takes place in the home and is tolerated. The Committee advised

“that the State party ensure full implementation of the laws prohibiting corporal punishment in all settings, inter alia, through systematic awareness raising among adults and children, the promotion of appropriate

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82 CRC/C/BGR/CO/2(23 June 2008), para.32, p.8
83 www.UPR-info.org Bulgaria 2010
84 CRC/C/DNK/CO/4 (April 2011), para.39, p.7
positive, non-violent forms of discipline, continuous monitoring paying particular attention to parents of children requiring special support, parents having difficulties in their child rearing practices.”  

Romania
In its concluding observations of 2008 the Committee praised Romania for banning all forms of corporal punishment. However, it noted that corporal punishment persisted in the home, in schools and institutional settings. It urged Romania to

“intensify its awareness-raising and public education campaigns, in order to promote the use of alternative non-violent forms of child-rearing in accordance with the Convention and Council of Europe 2009-2011 Strategy for Building a Europe for and with children.”

In the UPR examination of 2008 Romania was asked to “expressly prohibit corporal punishment in the home, school and institutions and to promote alternative methods of discipline” and it accepted. In its mid-term UPR report, Romania stressed the comprehensiveness of the ban since 2004, but did not refer to alternative measures of discipline, or to awareness raising and public education as previously recommended by the Committee on the Rights of the Child. It seems that the Romanian Government may not be following the advice of the Committee on the Rights of the Child to full effect.

Spain
In Spain physical punishment in schools ended in 1985 and in the home it was ended in 2007. The explanatory memorandum to accompany the legislation states that this was in order to satisfy the requirements of the Committee on the Rights of the Child. Like the UK, Spain previously permitted a legal defence (stated in the civil code) that parents “may administer punishment to their children reasonably and in moderation”. In 1994 and 2002 the Committee asked the government to change the law and in 2002 it also recommended awareness campaigns and alternative forms of family discipline. At the next examination in 2010 the Committee welcomed the change in the law which had taken place and awareness-raising campaigns such as “Corregir no es Pegar”. However, it remained concerned that physical punishment in the home continued to be socially acceptable, and asked the Government

“to continue its efforts through awareness-raising campaigns and parenting education programmes to ensure that positive non-violent forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment.”

5.6 The European Union

85 CRC/C/FIN/CO/4 (20 June 2011), para.36, p.8
86 CRC/C/ROM/CO/4 (30 June 2009), paras.58-59,p.14
87 www.UPR-info.org Romania 2008
88 CRC/C/15/Add.185(13 June 2002), para.31, pp7-8
89 CRC/C/ESP/CO/3-4 (29 September 2010), para.35, p.7
What role could be played by the European Union in supporting the Member States to end physical punishment in the coming years? Physical punishment is an issue which is acknowledged by the EU, as reflected in the child rights indicators developed by the Fundamental Rights Agency. Although physical punishment is considered primarily a matter for Member States, it would be helpful if the EU institutions could expand their focus within the scope of their competence. It should be noted that, in the past, co-financed projects have addressed the issue of corporal punishment; this should be continued. The Commission is developing work on consultation with children, and one suggestion would be that the forthcoming justice review could perhaps investigate children’s views on physical punishment.

On a more ambitious level, it could be argued that there is scope for action on the basis of discrimination against children, as similar levels of violence against adults are not tolerated. In the absence of specific legal defences, the physical punishment of children could amount to assault in all EU Member States: the existence of legal defences in a minority of EU States surely raises very serious equality and discrimination issues concerning Europe’s children, who are among its most vulnerable citizens.

The universal ratification of the UNCRC in Europe, and the strong consensus across the UN human rights monitoring mechanisms (reflected also by the European Committee of Social Rights) that prohibiting and eliminating corporal punishment is an immediate obligation for states, should lead to further examination of the issue in the EU institutions.

Although responsibility lies primarily with Member States, the majority of which have effected a ban in domestic law, it would be positive if the EU institutions could develop action to encourage the general elimination of corporal punishment in all Member States, perhaps working with the Council of Europe. This is a critical issue in the elimination of violence against children.

5.7 Conclusion
The ending of the physical punishment of children is perhaps the best example of European Member States taking concerted action against violence; this action is becoming increasingly successful. Over the last 20 years the Committee on the Rights of the Child has advised states to ban and to prevent physical punishment, and its recommendations are increasingly followed. The UPR examinations over the past four years have reinforced pressure on those states which have failed to take sufficient action on the advice of the Committee on the Rights of the Child. The Council of Europe has provided policy and practice guidance, it has used its legal powers to scrutinize individual countries, and it is campaigning for complete prohibition across its Member States.

This issue does demonstrate, however, how difficult it can be to bring about real change for children – legislating a ban on physical punishment is one thing, and changing deep rooted practice, particularly in the home, is another. The revolutionary nature of the Convention on the Rights of the Child should not be under-estimated. Work to change attitudes and to build

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90 Fundamental Rights Agency, November 2010, op.cit.
91 The Committee on the Rights of the Child has referred to “the principle of equal protection of children and adults from assault” in General Comment no. 8, ibid. para.40, p.10
capacity to deploy other non-abusive methods of child rearing will need to continue for some time, and it appears that more impetus is required on the part of some Member States. This is a work in progress.
6 **General Conclusions and Recommendations**

The implementation of the rights of the child in European Member States is work in progress which is undoubtedly enhanced by accountability mechanisms such as the Committee on the Rights of the Child and the Universal Periodic Review. Within the limited scope of this study it has been evident that governments frequently respond positively to the advice and recommendations they receive. However, there are also examples of reluctance – even resistance; political will can be lacking in some cases.

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, offered some general thoughts as to why this might be the case. He said:

“One possible reason for the delay in implementing the Convention could be the decision-makers’ lack of understanding or acceptance of the obligations arising from it. They may not always have made the distinction between charity and a rights-based approach. ……………

“Several European governments have taken action on these recommendations, for instance, through adopting a national strategy…..Yet, there are glaring gaps which appear to indicate that the governments have not been sufficiently serious. This is also reflected in the continued lack of child protection.”

Piecemeal implementation cannot guarantee the rights of all children, which is essential to the inalienable quality of children’s rights. What Hammarberg describes as charity, we might equally describe as a welfare-driven approach, rather than an approach driven by rights. Whilst all action to end violence is to be welcomed, it may not reach international human rights standards. The Convention on the Rights of the Child demands that every child has the right to protection from all forms of violence. Measures which aspire to anything less are welfare-driven not rights-driven.

It is clear that the UPR is a very useful development which has considerable potential to strengthen the impact of human rights reporting in Europe. So far, in the countries studied, the Universal Periodic Review has reinforced the concerns of the Committee on the Rights of the Child, but has not introduced significant new dimensions to children’s rights reporting. As the first round of reporting now concludes, organizations such as Save the Children will be producing in-depth analysis. It is already evident, however, that campaigners for human rights in general and children’s rights in particular would be advised to engage with the process because the potential for impact on States parties is great.

In order to assess the direct relationship between the deliberations of human rights accountability mechanisms and political action by governments, it would be necessary to undertake in-country studies, which are beyond the scope of this report. However, it is possible

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92 Council of Europe, Commissioner for Human Rights Council of Europe, Viewpoint 2009
to say that the elaboration of advice and guidance by the Committee on the Rights of the Child clearly provides impetus and direction to action by States parties and this has been strongly demonstrated in the case of violence against children.

In Europe, the work of the Council of Europe to provide policy and practice guidelines and practical tools for implementation is an important complementary source of support to countries. The growing ties between the EU and the Council of Europe are to be welcomed. Save the Children strongly urges that the EU should also apply the analysis and lessons learned from the deliberations of the Committee on the Rights of the Child, particularly the analysis of the concluding observations on EU Member States. This would firmly orientate the work of the EU institutions towards the primary children’s rights imperatives which exist in Europe.

The new opportunities for the EU to accede to international treaties are opening up new possibilities. Save the Children urges the EU to explore accession to the UN Convention on the Rights of the Child. Examination by treaty monitoring bodies can assist the EU to define its responsibilities and role, as well as providing direction as to the most effective way of proceeding.

Whilst the phenomenon of violence against children continues to be prevalent, there are reasons to be hopeful. The steps which have been taken towards ending the physical punishment of children, for example, have not yet eradicated the practice even where it has been made unlawful, but they are on the way to a successful conclusion. European society is changing; but we are sailing in uncharted waters, and we cannot know how long it will take to bring about social change on this scale.

**Recommendations**

- **NGOs should make full use of the UPR monitoring mechanism to reinforce scrutiny by the Committee on the Rights of the Child.** They should submit evidence about children’s rights and should publicise and follow up on the UPR Working Group recommendations. They should use the responses of States parties to the recommendations, together with the mid-term reports, to hold governments to account.

- **NGOs should also ensure that they continue to support monitoring by the Committee on the Rights of the Child by the provision of full evidence on the implementation of children’s rights by States parties and refer to relevant UPR children’s rights recommendations in their reports.**

- **States parties should make full use of the policy and practice guidelines issued by the human rights institutions, and especially they should follow the recommendations of**
the Committee on the Rights of the Child more consistently. The Committee is the highest authority in the interpretation of the Convention on the Rights of the Child.

- States parties should make use of the policy and practice guidelines made available by the Council of Europe to assist them to realize different aspects of children’s rights.

- States parties should ensure that reporting obligations are fulfilled in a timely way, and that recommendations by the Committee on the Rights of the Child and the Human Rights Committee are acted on swiftly.

- Member States should consider how the EU could enhance their ability to implement children’s rights in practice. They should take every opportunity to share good practice with other European Member States through the mechanisms such as the Open Method of Co-ordination, and l’Europe de l’Enfance, and should apply the learning in-country. Member States should press for such mechanisms to be effective and to be extended.

- The Institutions of the EU should develop a full strategy for the implementation of the Rights of the Child, paying particular attention to the General Measures of Implementation of the CRC. The strategy should also reflect the concluding observations of the Committee on the Rights of the Child on progress towards implementation made by European Member States, and the Committee’s general comments.

- The EU should investigate the possibility of acceding to the UN Convention on the Rights of the Child.

- The EU should develop its co-operation with the Council of Europe for the promotion of children’s rights.
### Table 1

**Human Rights Reporting: dates of examination of periodic reports by country**

<table>
<thead>
<tr>
<th>Country (+date of accession to EU)</th>
<th>UNCRC latest periodic review</th>
<th>UNCRC previous periodic review</th>
<th>OPAC</th>
<th>OPSC</th>
<th>UPR</th>
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</thead>
<tbody>
<tr>
<td>Italy (1957)</td>
<td>10.2011(3/4)</td>
<td>03.2003(2)</td>
<td>06.2006</td>
<td>06.2006</td>
<td>02.2010</td>
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<td>Romania (2007)</td>
<td>06.2009(3/4)</td>
<td>03.2003(2)</td>
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<td>05.2008</td>
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**KEY TO ABBREVIATIONS**

**UNCRC** – UN Convention on the Rights of the Child

- (1) - Initial report
- (2) - 2nd periodic report
- (3) - 3rd periodic report
- (4) - 4th periodic report
- (3/4) - 3rd & 4th periodic report

**OPAC** - Optional Protocol to the Convention on the involvement of children in armed conflict

**OPSC** - Optional Protocol to the Convention on the sale of children, child prostitution and child pornography

**UPR** – Universal Periodic Review
<table>
<thead>
<tr>
<th><strong>General Measures</strong></th>
<th>Bulgaria</th>
<th>Denmark</th>
<th>Estonia</th>
<th>Italy</th>
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<tr>
<td><strong>Allocate sufficient support for social work and child protection</strong></td>
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<td></td>
<td>Revise reservations to CRC &amp; other HR treaties</td>
<td>Remove reservations to CRC</td>
<td>Create ombuds-person for children</td>
<td>Independent institution for human rights &amp; children</td>
<td>Develop national strategy for human rights education in the school system</td>
<td>Improve human rights education, especially non-discrimination</td>
<td>Remove reservations to CRC</td>
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<td></td>
<td>Bring domestic law in line with international obligations</td>
<td>Protect &amp; promote rights of child</td>
<td>National Plan of Action</td>
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<td></td>
<td>Independent monitoring body</td>
<td>Speed up development plan for children &amp; families</td>
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<td><strong>General principles</strong></td>
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<td><strong>End practical discrimination</strong></td>
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<td><strong>Combat discrimination against minorities</strong></td>
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<td><strong>Roma children should enjoy rights set out in constitution</strong></td>
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<td><strong>Eliminate &amp; prevent discrimination &amp; abuse</strong></td>
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<td><strong>Preserve rights of all children born in Italy</strong></td>
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<td><strong>Tackle discrimination against Roma, children with HIV/AIDS, migrants,</strong></td>
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<td><strong>Equality for migrant children –esp education &amp; health care</strong></td>
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<td><strong>Fight racism, xenophobia, discrimination &amp; gender violence</strong></td>
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<td><strong>Civil Rights and Freedoms</strong></td>
<td>Bulgaria</td>
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<td>Italy</td>
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<td><strong>Address violence and sexual abuse in families</strong></td>
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<td><strong>Strengthen capacity of police &amp; parents re. internet</strong></td>
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<td><strong>Prohibit violence against children including corporal punishment</strong></td>
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<td><strong>Ban corporal punishment</strong></td>
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<td><strong>Tolerance of religions and homosexuality</strong></td>
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<td><strong>Child’s right to civil registration</strong></td>
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<td><strong>Prohibit corporal punishment</strong></td>
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<td><strong>National plan of action on gender violence</strong></td>
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<td><strong>Reconsider legality of corporal punishment</strong></td>
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<td><strong>Civil Rights and Freedoms</strong></td>
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<tr>
<td><strong>Safeguard children in institutions; close social institutions; prosecute individuals &amp; institutions responsible for child deaths; funds for foster care, to train &amp; increase staff in institutions; support parents to prevent abandonment</strong></td>
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<td><strong>Family reunification for children</strong></td>
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<td><strong>Place in institutions as matter of last resort</strong></td>
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<td><strong>Combat abuse in centres</strong></td>
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<td><strong>Use UN Guidelines on Alternative care</strong></td>
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<td><strong>End painful restraint techniques for children in secure accommodation</strong></td>
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<td>Basic health and welfare</td>
<td>Bulgaria</td>
<td>Denmark</td>
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<td>Policies &amp; programmes for children with intellectual disabilities</td>
<td>Equal access of Roma &amp; Sinti to healthcare, education, employment</td>
<td>Strengthen rights of rural communities</td>
<td>Rights of minors with difficulties to the appropriate education &amp; medical support</td>
<td>Protect the children of migrants &amp; refugees</td>
<td>Provide further info on reducing child poverty</td>
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<tr>
<td>Prevent and address child abuse</td>
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<td>Access for Roma children, migrants, children with HIV/AIDS</td>
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<tr>
<td>Combat poverty of single mothers and mothers with disabilities</td>
<td>Universal services to provide adequate standard of living for all families</td>
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<tr>
<th>Education, leisure and cultural activities</th>
<th>Bulgaria</th>
<th>Denmark</th>
<th>Estonia</th>
<th>Italy</th>
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<tbody>
<tr>
<td>Prevent commercial exploitation &amp; trafficking</td>
<td>Specialist teacher training for disabled children</td>
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<td>Protection &amp; assistance to unaccompanied minors</td>
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<tr>
<th>Special protection measures</th>
<th>Bulgaria</th>
<th>Denmark</th>
<th>Estonia</th>
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<th>Romania</th>
<th>Spain</th>
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<tbody>
<tr>
<td>Tackle prostitution</td>
<td>Limit long pre-trial detention</td>
<td>Bring forward plan of action on sale of children, child prostitution &amp; child pornography</td>
<td>Access to asylum procedures for unaccompanied children</td>
<td>Raise minimum age for employment</td>
<td>Protection for unaccompanied children; ascertain age and arrange protection</td>
<td>Address the high incarceration rate of children</td>
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<tr>
<td>Prevent human trafficking &amp; protect victims-esp. newborn &amp; Roma ; End international adoptions</td>
<td>Prohibit solitary confinement &amp; detention with adults; age of criminal responsibility</td>
<td>Child victims of trafficking &amp; prostitution</td>
<td>Child victims of trafficking &amp; prostitution</td>
<td>Improve police training and witness protection for victims of trafficking and sexual abuse</td>
<td>Action on child trafficking &amp; support for victims</td>
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<tr>
<td>Develop an effective juvenile justice system</td>
<td>Prevent trafficking</td>
<td>Raise minimum age for marriage from 15 to 18</td>
<td>Regional training</td>
<td>Children in prisons; abolish death penalty; train police, prison and judicial staff</td>
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<td>Create separate independent institution for safeguarding children</td>
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Table 2 continued
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