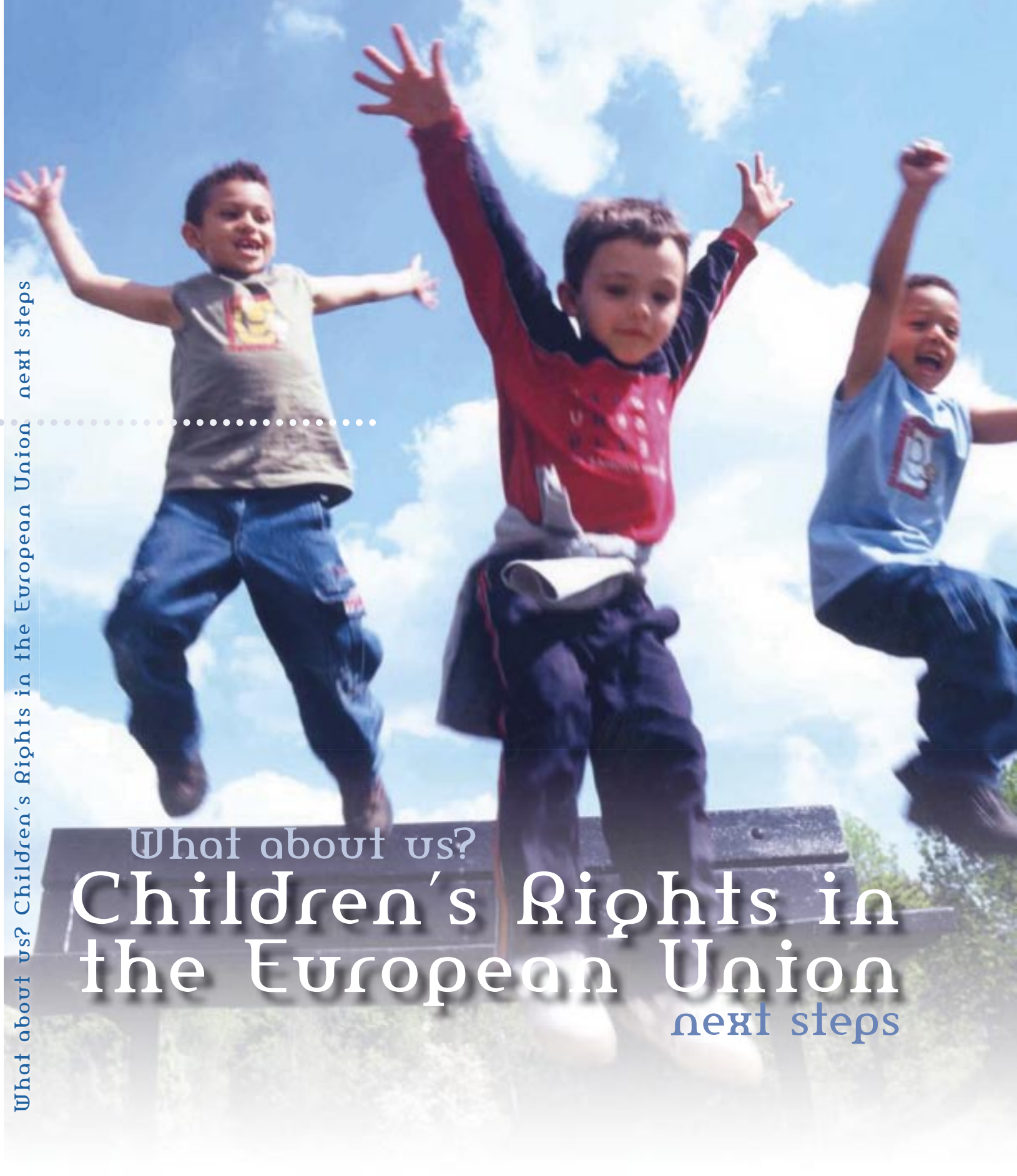


What about us? Children's Rights in the European Union next steps



What about us?
**Children's Rights in
the European Union**
next steps

What about us?

Children's Rights in the European Union

next steps

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Preface

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Just over a quarter of a century ago, in response to an initiative by Poland, the UN Commission on Human Rights decided to set up a Working Group “on the question of a convention on the rights of the child”. Today, fifteen years after the entry into force of the Convention on the Rights of the Child, there is a general acceptance of the fact that children “have” rights.

But, despite the treaty’s pedigree, there still seems to be a problem: these rights are not perceived as children’s inalienable human rights, but simply as... children’s rights.

While children’s special needs and vulnerability are usually acknowledged, responses too often continue to be based on the all-pervasive legacies of the charity approach to children’s issues —conveniently backed up by selective references to the Convention where possible. As a result, the responses are neither systematic as such nor are they systematically inspired and guided by the overall letter and spirit of the Convention. Worse, many children’s rights are still widely contested, even if they are in principle recognised, in other international treaties, as human rights.

The Convention provides a solid and ostensibly shared understanding of obligations towards human beings under the age of 18 years. Promoting and defending the rights that they imply—in one’s own country and elsewhere—is a joint responsibility.

In developing its policy and programme, the European Union clearly has the duty to actively take on these roles of promoter and defender: *vis-à-vis* itself, its individual Member States and those with which it interacts elsewhere in the world.

Through the individual and collective commitments of its Member States and through its own exceptional outreach, it also has a formidable opportunity to do so.

And it has the privilege of being in a position to mobilise unparalleled resources—funds, skills, structures and mechanisms—to that end.

But the issue at stake, and the challenge, is not children’s rights. It is the human rights of children. And that is what should make the difference.

Nigel Cantwell
International Child Protection Policy Adviser
Geneva, November 2005

Executive summary

Challenges facing Children in the EU

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There are approximately 94 million children and young people aged 0-18 living in the European Union (EU) and more than any other group, children will be affected by decisions being taken now that have long-term implications. Children have their own specific rights, as set out in the 1989 United Nations Convention on the Rights of the Child (UNCRC) and deserve attention as citizens of Europe today, not only as the workers of tomorrow.

Yet too often children's interests are ignored, and their voices go unheard in the public arena. This is unsurprising, given that they cannot vote, they have little or no access to the media, and limited access to the courts. Nor are they members of powerful lobbying groups. Without access to these processes that are integral to the exercise of democratic rights, children and their opinions remain hidden from view and they are, in consequence, denied effective recognition as citizens¹.

Since *A Children's Policy for 21st Century Europe: First steps* was published by the European Children's Network (EURONET) in 1999, the EU has experienced dramatic economic and political change, including the introduction of the single currency, enlargement to 25 Member States, and the rejection of the EU Constitutional Treaty by voters in France and the Netherlands. Social changes are also accelerating. For instance, the EU is facing demographic shifts on an unprecedented scale as a result of common trends such as increasing life expectancy, a declining population of working age, and falling birth rates.

Factors such as these are likely to have a huge direct and indirect impact on children living in the EU. For example, although enlargement has provided significant new opportunities, many children in the new Member States will still experience high levels of poverty, discrimination and exploitation. The uncertain political climate may also undermine efforts to strengthen the response of the EU institutions to children's rights. And demographic change brings risks of a steady decline in children's services within Member States.

The circumstances of children in the EU

These challenges must be seen within the context of the difficult circumstances many children currently experience in the EU. For example:

- Many children suffer **violence** within the family, in the community, in residential care and in other settings. In 2003 UNICEF reported that two children die from abuse and neglect every week in Germany and the United Kingdom, and three a week in France² (see *Violence against children*, page 49).

- Although efforts to remove children from **residential care** have increased in recent years (e.g. in Romania), high numbers of children continue to be placed in institutions across the EU. Despite wide agreement that institutionalisation at a young age can be damaging, 23 000 under threes live in residential care settings across Europe³ (see *Residential care and adaption*, page 141). Meanwhile, alternatives such as fostering and adoption remain inadequately resourced.
- Some children are **trafficked** into and between EU states to be exploited for sexual and other purposes (e.g. begging, crime). Although the EU is taking this abhorrent form of abuse more seriously, it continues to grow, fuelled by new media and the internet (see *Violence against children* page 49 and *Media and internet* page 105).
- The rights of children who seek **asylum** are often violated, with many placed in detention or denied access to appropriate food, housing, education, and health care (see *Asylum and migration*, page 69).
- Some groups of children suffer **discrimination**, often on multiple grounds (see *Discrimination*, page 61). For instance, Roma children frequently experience exclusion from education (see *Education*, page 115), and their access to healthcare may be poor. Many disabled children regularly experience prejudice or lack of awareness, and are routinely excluded from participating in decisions that affect them.

More broadly, despite the EU being one of the wealthiest regions in the world, children across the region continue to live in poverty, with around one in ten living in a jobless household. **Child poverty and social exclusion** have increased significantly in some EU countries during the past twenty years, with younger children facing a higher risk of relative poverty than any other group (see *Child poverty and social exclusion*, page 41). Child poverty is also linked to other issues of concern, including health inequality (see *Child health*, page 81) educational disadvantage (See *Education*, page 115), homelessness, institutionalisation, and violence.

Developing a more coherent EU approach

The commitment of Member States and EU institutions to implementing children's policy has undoubtedly strengthened in recent years. At EU level, existing legal bases have been used to develop policies and programmes, notably in relation to child protection, child poverty and social exclusion, and discrimination against children. The EU Charter of Fundamental Rights has been adopted, Article 24 of which specifically addresses children's rights. And although the future of the proposed EU Constitutional Treaty is uncertain, the text adopted by EU Heads of State also contains several clear references to children.

However, this report demonstrates that the existing approach of EU legislation, policy and structures remains insufficient to meet the range of issues children face (see *Part 1*, page 13). Commissioned by EURONET, the report lays out a clear vision for children's rights policy at European level, underpinned by the UNCRC.

Although the primary responsibility for addressing many issues facing children rests with the Member States at national level, there is an EU and transnational dimension to them all. Euronet therefore believes that a coherent European children's policy must be developed. This would have numerous advantages. It would encourage the EU to recognise and implement the core principles of the UNCRC—in particular Articles 2 (non-discrimination), 3 (the best interests of the child), and 12 (the child's right to be heard in decision-making)—and enable the impact of EU policy on children to be assessed systematically. A comprehensive policy would also encourage greater exchange of good practice between EU Member States and ensure that more resources were invested in support for children. It would also improve data-collection and analysis of the impact of economic and social change on children within the EU. Finally this policy would help to strengthen the role of children's NGOs within the "civil dialogue" at EU level, and ensure that the voices of children are heard in EU policy-making.

About the report

The report is divided into two parts. Part 1 explores key challenges facing children in the EU today (see *Context*, page 13). It also describes the EU's current approach to children, and identifies a number of weaknesses, including limited legal bases in the EU treaties, relative invisibility of children's interests, lack of overall policy leadership and co-ordination, minimal resources from the EU budget, and lack of information on children at EU level. Part 2 examines in detail specific policy areas affecting children in the EU.

Here we summarise some of the main recommendations from the report. More detailed recommendations on structural issues (e.g. strengthening political support, building institutional structures, investing in children, and monitoring children's circumstances) are set out in Part 1 (page 30). Recommendations in relation to particular policy themes can be found in Part 2 (page 41). The list below is illustrative of issues covered in the forthcoming chapters and is not exhaustive or placed in order of importance.

Part 1 Examples of core recommendations

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Inserting a clear legal base in the EU Treaties

- In any new revision of the EU treaties or the EU Constitutional Treaty, the Council of Ministers should take a lead in ensuring that children's rights are included, as set out in Article 3 of the EU Constitutional Treaty, and other relevant articles relevant to children⁴. Any initiatives of this kind should be undertaken in cooperation with children's civil society organisations.

Developing an EU children's rights policy

- An ambitious and visionary EU "Children's Strategy" should be set out by the European Commission, setting real and achievable targets. The Strategy must be developed in consultation (including with children and young people), relate to all the rights in the UNCRC, be adequately resourced, and widely disseminated.

Providing leadership on children's rights

- An EU Commissioner or high level representative with responsibility for children should be appointed to provide overall leadership at EU level, supported by a Children's Rights Unit to implement the Children's Strategy and coordinate action across the Commission and between EU institutions, respecting the role of Member States under subsidiarity.

Part 2 Examples of policy recommendations

Tackling violence against children

- In line with Article 19 of the UNCRC, EU Member States should work together to ban all forms of physical punishment of children. Alongside appropriate legal reform, the emphasis should be on ending social acceptance of violence to children, and developing education strategies to strengthen positive non-violent approaches.
- The European Commission should develop a clear legal definition of child trafficking, which would apply to the legislative and policy framework of the EU and all the Member States. This should reflect the special vulnerability and specific rights of child victims, and cover all forms of exploitation experienced by trafficked children.

"[An]...important contribution that could be made by European leaders is that of adding to the menu a specific focus on children."

"The Caring Dimension of Europe",
Discussion Paper for the UK Presidency of the EU,
October 2005. *

* Prepared by Maurizio Ferrara, University of Milan.

"The EU has to be accountable to its citizens —that includes its youngest."

Children at Euronet conference on
"Children and the Future of Europe",
Brussels, 2-3 May 2003.

Eradicating child poverty

- Tackling child poverty and social exclusion should be given high political priority at EU and Member State levels. The European Commission should strengthen references in the EU's Common Objectives to child poverty and social exclusion and seek to ensure more strategic and integrated approaches by Member States.

Institutional care only as a last resort

- In line with the principles of the UNCRC, Member States must ensure that institutional care is only used as a last resort, and for very short periods of time; when used, such care must be of high quality.
- The enlargement process has provided significant leverage for de-institutionalisation reform in countries applying for EU membership. This approach should be applied systematically in the EU's relations with other formal (and potential) candidates for EU membership and countries with Association Agreements.

An end to the detention of asylum and refugee children

- The detention of children on account of their immigration status by EU Member States should be forbidden, in line with the UNCRC (Articles 3.1 and 37).
- Specific guidelines should be developed by the European Commission to assist Member States in assessing children's asylum claims and respecting their rights at all stages of the procedure.

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Tackling Discrimination

- The European Commission should encourage all Member States to address Roma, gypsy and traveller children as a target group within National Action Plans on Social Inclusion. The EU institutions should also explore, with Member States, ways in which EU education policies and programmes can address racial segregation in education and the exclusion of Roma, gypsy and traveller children.
- The EU and Member States should adopt comprehensive legislation to combat discrimination against disabled people (including children) in all areas of EU policy, building upon the draft disability specific directive developed by the European Disability Forum.

Developing children's participation

- The European Commission should develop practical proposals to ensure that children are given a voice in relevant EU meetings, consultations, and processes, both with other children and with adults. This will involve the development of focal points within the Commission to listen to and discuss children's views.

Conclusion

An EU children's rights policy must be developed if the rights and interests of children are to be acknowledged and addressed fully within the EU. While the improved commitment we have seen since 1999 is welcome, children's policy cannot continue to be dealt with in an ad hoc way, addressing only the "extreme" forms of abuse or discrimination. The EU must adopt a holistic and integrated approach if we are to achieve our vision of a society where no child is forgotten or invisible. Only then can the EU become a champion for children on the world stage.

Footnotes

1. LANSDOWN G., *Challenging Discrimination Against Children in the EU*, Euronet, Brussels, 2000.
2. UNICEF, *A league table of child maltreatment deaths in rich nations*, Innocenti Report Card No 5, September 2003, UNICEF, Florence, 2003.
3. BROWNE, K. and al., *Mapping the number and characteristics of children under three in institutions across Europe at risk of harm*, University of Birmingham/World Health Organisation, 2005.
4. See Euronet, *Analysis of the Treaty establishing a Constitution for Europe*, Brussels, 2005.



Introduction

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Against a global background of increasing conflict, insecurity and uncertainty, the European Union's (EU) population is experiencing significant economic, political, environmental and social change. Following the introduction of the single currency in many states, and enlargement from 15 to 25 countries (with further accessions planned), debate continues about how to build Europe's future.

Despite the importance of the issues at stake, the EU's future is rarely considered from children's point of view. The EU's development depends on its 94 million children and young people aged 0-18—over one in five of the overall population—achieving their full potential, and more than any other group, children will be affected by decisions being taken now that have long-term implications. Children also deserve attention as citizens of Europe today, with their own specific rights, as set out in the 1989 United Nations Convention on the Rights of the Child (UNCRC).

Yet too often children's interests are ignored, and their voices go unheard in the public arena. This is unsurprising, given that they cannot vote, they have little or no access to the media, and limited access to the courts. Nor are they members of powerful lobbying groups. Without access to these processes that are integral to the exercise of democratic rights, children and their experience remain hidden from view and they are, in consequence, denied effective recognition as citizens¹.

This invisibility results in children's contributions going largely unrecognised. It is frequently assumed that children are not "competent" to participate in decisions that affect them, and in wider society. But in practice there are plenty of examples that demonstrate children's capacities, particularly as they mature. Many children provide unpaid assistance with caring and other family tasks and some contribute to family earnings (e.g. on farms and in hotels). Many play an important role in a range of community initiatives (e.g. in playschemes, education projects, youth groups, anti-crime strategies and environmental task forces). Many have particular knowledge or skills (e.g. bi-lingualism, computing) that they use to the benefit of their families and friends. Many use new technologies such as mobile phones, text messaging, and the internet to voice their concerns, feelings, and opinions creatively. In these and other ways, children are gaining access to, and exploiting positively, crucial opportunities for empowerment and participation as citizens. Recognising their capacities and valuing their contribution—individually and collectively—is a crucial prerequisite for creating dynamic, participative societies.

"It is the children who pay the highest price of our short-sighted politics, our political mistakes, our wars."

Eglantyne Jebb,
founder of *Save the Children*, 1919.

CHALLENGES FACING CHILDREN IN EUROPE

Key challenges facing children in the EU today include demographic change, poverty and social exclusion, EU enlargement, violence to children, migration, discrimination, and environmental degradation. Within the EU, issues such as these are likely to have a huge direct and indirect impact on children's lives—mediated by factors such as age, race, gender, disability, and sexual orientation—both now and into the future:

- **Demographic change** on an unprecedented scale is facing the Union (see *Early childhood*, page 135), as a result of common EU-wide trends such as increasing life expectancy, a declining population of working age, and falling birth rates². Overall, the proportion of the EU25 population aged between 0 and 14³ is expected to decrease from 16.4 % in 2004 to 13.4 % in 2050⁴. These shifts, together with factors such as political and economic constraints on levels of taxation and public borrowing, falling support for state services, and changes in family structure, are putting increasing strain on the European Social Model—and bringing risks of a decline in children's services.

The European Commission has suggested that Member States should develop further measures to assist parents to reconcile work and family commitments, and that this may help to reverse declining fertility rates—and ultimately foster economic growth and prosperity within the Union⁵. Whilst this perspective can help to focus attention on issues facing children, it tends to overemphasise children purely as “investments” for the future⁶. It also underplays the importance of children's daily lives in the present, their human rights as citizens, and the impact of demographic ageing on childhood. A focus on the latter would highlight, for instance: the consequences for children of growing up with fewer siblings and the increasing separation between generations as fewer adults live with children, which may make it “increasingly difficult to articulate the interests, wants and needs of children?”.

- **Child poverty and social exclusion** have increased significantly in some EU countries during the past 20 years or more, with younger children facing a higher risk of relative poverty than any other group (see *Child poverty and social exclusion*, page 41). This is connected to parental unemployment, family structure (and especially lone parenthood), and to the number of children in the family (large families tend to be poorer). In practice, many children may be going hungry (or their parents may be foregoing meals themselves in order to feed them); children may have insufficient clothing, or be living in overcrowded or temporary accommodation in run-down areas; and children may have no access to their own money, toys, books, school trips and holidays. For those whose parents are on their own, or ill or disabled, or from an ethnic minority—or a combination of all of these factors—the difficulties may be particularly severe. And although economic growth can create new job opportunities and help families out of poverty, for some parents it may mean insecure, temporary and low-paid employment, with negative consequences for family life⁸.
- **EU enlargement** has also focussed attention on child poverty and social exclusion. Ten countries joined the Union in May 2004, and it is anticipated that other states, such as Romania and Bulgaria, will do so from 2007 onwards (see *Acceding Countries*, page 151). During the 1990s people in the former Soviet Union experienced a turbulent and difficult transition to market economies. While some have subsequently seen a radical improvement in their living conditions, many have experienced only moderate advances, and for a minority living conditions have become worse⁹. Although EU entry has provided significant new opportunities, many children have experienced—and continue to experience—high levels of poverty, discrimination and exploitation. NGO participants at a series of Euronet seminars in Warsaw, Prague and Ljubljana in 2005¹⁰ highlighted a range of specific concerns, such as: the conditions facing children in residential institutions (see *Residential care and adoption*, page 141); lack of child participation; failure to address the rights of young offenders, school drop-outs, Roma children, and disabled children; abuse and violence against children;

“The elimination of child poverty is a very important concern for us all, not only because children have the right to grow up in safety and security and to reach their full potential, but also simply because they represent our future.”

Letter to Euronet from the Head of Cabinet,
Office of the President of the European
Commission, March 2005.

children’s poor health (especially HIV/AIDS) (see *Child health*, page 81); the closure of childcare facilities; and funding problems.

- **Violence against children** has been an increasing source of concern within the EU in recent years. It takes a range of forms, from violence in the family, in schools, or in the community, to issues with a transnational dimension, including child trafficking, child sex tourism (see *Violence against children*, page 49), and child pornography and sexual exploitation via the internet (see *Media and Internet*, page 105). The latter have become more prominent since the late 1980s, fuelled by factors such as: cheaper air travel; increasing demand for children for the purpose of sexual exploitation (linked to the emergence of HIV/AIDS and other sexually transmitted diseases); the rise of new technology; the emergence of humanitarian crises and wars; and the global growth of poverty and inequality. There has been strong political and public support for the EU to respond to forms of violence that have a cross-border dimension, which has resulted in a significant child protection focus within the Union’s justice and home affairs agenda.
- **Migration** is another outcome of factors such as those described under “Violence to children” above (see *Asylum and migration*, page 69). Conflict, war and instability, together with serious violations of human rights, continue to have a catastrophic impact on children and their families, affecting millions worldwide; whilst most of the population movement that results is between or within developing countries, since the early 1990s increasing numbers—among them many children separated from their parents or caregivers—have been seeking asylum in EU countries. Other children flee because of extreme poverty and lack of opportunity in their home countries, prompted by the (often unrealistic) hopes of their parents. Some are duped by tales of secure wages abroad, or even abducted by traffickers for the purpose of exploitation. Children in all these groups often face gruelling journeys in order to reach EU territory. Most endure severe hardship on arrival too, facing unsympathetic officials and harsh procedures, and end up working illegally in unregulated sectors as domestic slaves, or in sweatshops or brothels.

In addition, in recent years issues of identity have also come to the fore across Europe. Fuelled by new insecurities and tensions, racism and discrimination have surged, including, for instance, gang violence on the streets, negative imagery in the media, and entrenched discrimination within institutions. Alongside these aspects, hostility towards and fear of “outsiders”, and in particular to people from different religions, to migrants and asylum-seekers, has become increasingly commonplace—and children are easy targets for such racism (see *Discrimination*, page 61). This is providing the backdrop to tougher policy responses, threatening the basic rights of some of the most vulnerable people in society.
- **Environmental degradation** has a disproportionate effect on children and their health (see *Environment*, page 99 and *Child health*, page 81). The World Health Organisation (WHO) estimates that over 40 per cent of the global burden of disease attributed to environmental factors falls on children under the age of five. Within the EU, children are especially vulnerable to damaging risks, including unsafe water, poor sanitation, poor air quality, pollution, chemicals in food, and emerging global threats such as climate change and contagious diseases. Children are less able to resist these risks, owing to their less developed immune, respiratory and nervous systems, and in the early years in particular, are dependent on adults to protect them. Access to outside space is also limited by heavier traffic and increasing urbanisation, an important reason behind the dramatic increase in children’s indoor pursuits (TV, computers). The issues vary between countries, however; in some, outdoor spaces are increasingly “troubled” and parents worry about their children’s safety; in others, children still play in the streets under the supervision of older children or adults. In general, however, it appears that children’s independent mobility has declined, with many being driven to school where ten or twenty years ago they would have cycled or walked¹¹.

THE EU'S APPROACH TO CHILDREN'S RIGHTS

Looking at the major issues facing the Union from a children's perspective therefore raises new questions, and suggests that political action—both to protect children from the risks they face and to promote their full participation in society—is imperative. Although the primary responsibility for addressing many of these issues rests at national level, there is an EU and transnational dimension to them all.

Although in theory children are acknowledged as EU citizens, citizenship rights have been largely restricted to workers within the Union, thereby automatically excluding children. Furthermore, EU citizenship continues to rest upon nationality of a Member State, and the rights and protection afforded to children who are not EU nationals are far more limited.

But in recent years, the EU institutions, working with the Member States, have made some progress in promoting children's rights. Existing legal bases for EU action have been used to develop policies and programmes, notably in relation to child protection, child poverty and social exclusion, and discrimination against children (e.g. through Articles 29 and 137 [Amsterdam Treaty], and Article 13 [EC Treaty], respectively); the EU Charter of Fundamental Rights has been adopted, Article 24 of which specifically addresses children's rights; and, although the future of the proposed EU Constitutional Treaty is uncertain, the text adopted by Member State political leaders also contains several clear references to children.

Nevertheless, in practice, as this reports demonstrates, the existing approach of EU legislation, policy and structures is insufficient to meet the wide range of challenges set out above. For this reason, a specific EU "children's policy" is essential. This recognition lies behind the European Commission's welcome commitment in 2005 to develop its first-ever Communication on children.

WHAT IS CHILDREN'S POLICY?

Children's policy should be rooted in the values and principles of the UNCRC. The UNCRC contains four basic principles which are intended to govern the interpretation of the other Articles, but which also are significant in their own right:

- protection against all forms of discrimination (Article 2);
- the best interests of the child as a primary consideration (Article 3);
- the right to life and development (Article 6);
- the right to express an opinion and to have that opinion taken into account, in any matter of procedure affecting the child. The child's views should be given due weight (Article 12).

Together they form a child rights perspective. These principles constitute a vision of the child as an individual, whose integrity must be respected. Taken seriously this perspective has the potential to achieve radical shifts in the priority afforded to children and their status in the society.

The Convention has obtained near universal ratification internationally, however as yet the EU itself has given limited expression to the UNCRC. The Convention enshrines in international law children's rights to protection, provision and participation. It does not prescribe which structures and policies are the most appropriate to ensure full implementation. However it is an extremely useful and dynamic tool for protecting and promoting children's rights at all levels and helps to focus attention on key elements of an overall children's policy.

Children's policy focuses on children as a specific group in society—rather than subsuming them within policy discussions around the family, women, the labour market, or the community/neighbourhood—and seeks to make children's interests visible. Attempts to explore and define the aims, components and boundaries of "children's policy" have increased in recent decades. A number of factors have influenced this development, including: the profound economic and social challenges affecting children in the EU; the development of a post-war "human

"... We must be shamed and activated by the poll's findings that 6 out of 10 children report violent or aggressive behaviour within their families; that one in six children feel unsafe to walk around their neighbourhoods and a third know friends or acquaintances their age who are addicted to at least one harmful or illegal substance; that 4 out of 10 children feel their opinions are ignored by their local government; that a majority of children appear ill-equipped with basic information to protect themselves from HIV/AIDS and nearly half have little or no information about their rights."

UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, Geneva, 2001.

“... The Commission attaches special importance to the issue of the protection of children’s rights and is willing to develop a coherent policy in this field.”

Franco Frattini, vice-president of the European Commission, letter to Euronet, 2 February 2005.

rights” project and growing emphasis on children’s rights globally (especially since the adoption of the UNCRC); and the emergence of a sociology of childhood that views children as social actors and agents within society¹². Although variations exist between countries, children’s policy tends to include several key components:

- it is guided by the goal of developing social and economic policies that are in the “best interests” of the child (Article 3, UNCRC). The interests of children and other social groups will often coincide but an important issue is how any potential conflicts can be reconciled;
- it seeks to ensure that each child within a particular jurisdiction is treated without discrimination of any kind (Article 2, UNCRC);
- It aims to increase investment in children both now and for the future “to the maximum extent of available resources” (Article 4, UNCRC), and to ensure a fair distribution of resources between social groups;
- it produces the overall co-ordination of policy towards children, based on cross-departmental working to agreed strategies;
- it includes policy-making that directly addresses the specific interests of children¹³, as well as other policy areas where the effects of policy on children are indirect¹⁴;
- it involves the systematic collection of information on children as a basis for policy-making;
- it seeks to establish independent bodies to promote and protect children’s rights (e.g. a Commissioner or Ombudsperson for children);
- it encourages the participation of children and children’s NGOs in policy-making (Article 12, UNCRC);
- it strives to ensure that legislation and policy are compatible with the UNCRC.

WHY IS A CHILDREN’S POLICY NECESSARY?

Families, and women in particular, currently play the central role in protecting children and providing for them, and the interests of children are usually closely linked to those of their parents. Whilst there are important areas of overlap between children’s policy and family or gender policy, it is vital to ensure that children’s experiences are not rendered invisible by focussing solely on the circumstances of families, households, or women.

Broader frameworks often result in research and statistics failing to disaggregate the position of children, and therefore the impact of policy on them. The rights of children who are separated from their families, perhaps through homelessness, institutionalisation, or migration, may be forgotten. And although in the majority of cases children’s interests mirror those of their families, there are occasions (such as separation and divorce, or child protection) where children’s interests may differ from those of their parents, and tensions must be reconciled. Increasingly, children have specific interests and needs (e.g. as consumers, or citizens, or recipients of services) which go beyond what the family can do for them. Children today spend more time in institutions such as day care centres, creches, schools and youth groups, increasing the importance of developing policy that addresses their rights as independent social actors.

What is needed instead is an approach that acknowledges children as social actors who must be supported in the gradual transition to adulthood. The purpose of introducing a children’s policy at EU level is to put in place a policy which—recognising that interests of individual family members sometimes differ—renders children’s rights visible, complementing and building on policies towards families and women.

BACKGROUND TO THE REPORT

The European Children’s Network is a coalition of networks and organisations campaigning at European level for the interests and rights of children. Its activities include policy development, research and projects involving children and young people directly. In recent years, it has: campaigned for the inclusion of references to children’s rights in the Charter of Fundamental Rights and the EU Constitutional Treaty; published reports on child poverty and

social exclusion, and on discrimination against children; organised a participation project for children on the Future of Europe; contributed to relevant EU fora; and worked with successive EU Presidencies to promote children's rights.

In 1999, Euronet published the report *A Children's Policy for 21st century Europe: First Steps*, setting out a vision for the future of children's policy in the EU. The report was the culmination of a fifteen month project launched by Euronet with financial support from the European Commission. Based on an audit of EU legislation and policy, the report identified a range of weaknesses in EU policy-making at that time, which resulted in children's rights being ignored, overridden, or addressed incoherently at European level. It argued that the development of a coherent EU children's policy was needed if children's rights and interests were to be taken into account fully, and presented a series of recommendations to this end.

Since then, the EU policy context has changed significantly, important steps forward have been taken and it is essential for Euronet to set out a revised policy agenda for children. The organisation therefore commissioned Sandy Ruxton to update and revise his original report for Euronet with the aim of extending the network's existing analysis of children's policy at EU level and making recommendations for the development of future legislation, policy and structures.

Whilst some of the core analysis of the 1999 report remains in this new edition, the changing context (and in particular the significant increase in the number of countries covered) has necessitated a comprehensive rewrite of many sections and the addition of others. New issues have also emerged, in particular following the removal of frontier controls, and new sections have been added to recognise this. Overall too, although large gaps remain, there is far more data publicly available on children in the EU and a far greater number of references are included this time.

The current report has drawn upon material from a range of sources. These have included: interviews with key officials of the European Commission to explore particular policy areas; the outcomes from three regional seminars in Poland, the Czech Republic and Slovenia in 2005 with children's NGOs from Central and Eastern Europe (organised by Euronet and funded by the European Commission); results from previous Euronet consultations with children on social exclusion and discrimination, and conferences organised with children; specific input from NGOs at Member State level, and European NGOs; and a literature search of reports and papers published by Euronet, other NGOs, international organisations, and the EU institutions. A high-level meeting was held in Brussels in June 2005 to discuss the interim findings with other key stakeholders, including the European Commission, UNICEF, UNHCR, WHO, ILO, UNAIDS, the European Roma Information Office and Euronet members. A consultation process was also undertaken with Euronet members during July-August, and comments obtained from academic and policy experts on specific sections and on the report as a whole.

"Children are not accessories to their parents or passive recipients of parental influence. They are individuals in their own right with their own needs and rights. This means that childhood is not seen solely as preparation for adult life but is seen as a part of life with a value of its own."

Swedish Ministry of Health and Social Affairs,
Strategy to Implement the UNCRC,
Fact Sheet No 6, March 2004.

“The EU has to acknowledge the UNCRC and work to defend and promote children’s rights in all Europe.”

Children at Euronet conference on “Children and the Future of Europe”, Brussels, 2-3 April 2003.

Towards an EU children’s policy?

The development of a coherent and comprehensive EU children’s policy would have numerous advantages. Such a policy would:

- encourage the EU to recognise and implement the principles of the 1989 UNCRC;
- enable the impact of EU policy on children to be assessed systematically, and ensure that a child perspective was included in the drawing up of EU policies;
- encourage greater exchange of good practice between EU Member States;
- consider children as EU citizens in their own right, rather than as dependants of workers or prospective adults;
- ensure that greater resources were invested in supporting children;
- improve data-collection and analysis of the impact of social, economic, and demographic change on children within the EU. This would facilitate effective monitoring of their circumstances and the design and planning of improvements;
- strengthen the role of children’s NGOs within the civil dialogue at EU level, and ensure that the voices of children are heard in EU policy-making;
- help the EU institutions to recognise that children are usually more vulnerable than adults to the damaging impact of poverty, poor living conditions and environmental pollution;
- make visible children’s existing contributions to the family and to society, both within Member States and at EU level.

In this section, we outline the overarching legal context at EU level in relation to children’s rights, explore the extent to which political will is developing for further action, and highlight key policy and structural aspects underpinning a potential EU children’s policy.

Children’s rights and the EU treaties

Unlike the UNCRC, which recognises children as the holders of civil, cultural, political, social and economic rights, the predominant focus within the EU Treaties on the “citizen-as-worker” means that children’s interests are excluded from consideration across the majority of policy areas. Where children have been addressed at EU level, they have been viewed through a narrow lens as the objects rather than the subjects of human rights, and the values underpinning the EU’s approach have been correspondingly limited.

Children are considered primarily as “victims” in need of protection from violence; important though this perspective is, it ignores the importance of children’s active participation in shaping their futures (as in Article 12, UNCRC). Similarly, the EU’s long-standing concern with freedom of movement and with reconciling work and family issues has also placed insufficient emphasis on children’s perspectives. For instance, policy initiatives to meet the childcare needs of parents (and in particular women) as workers in the single market have tended to regard children as “barriers to work” or “dependants” —as burdens on families and society, rather than as actual and potential contributors.

It is possible too to discern the emergence at EU level of a social investment perspective over a social protection agenda—particularly in relation to demography, employment, education, and childcare— which has implications for children¹⁵. Such a perspective places a strong emphasis on the future needs of the economy rather than the present needs of citizens. On the one hand, this can have the positive effect of moving children and families higher up the policy agenda as improving their circumstances is seen to be an investment in society’s future. On the other, it can simultaneously deflect attention from children’s rights and well-being in the present, and prioritise

the interests of children who are likely to become productive workers in the future over the interests of those who are less likely to do so (e.g. disabled children).

This incoherence in the EU's current approach is, at least in part, due to the lack of a clear legal base in the Treaties to enable the EU to address children's issues (whilst respecting subsidiarity and the lead role of the Member States). The insertion of a legal base would ensure that children's rights were much more visible in EU policy-making, and would have several advantages:

- there would be a duty to consider the "best interests of the child" (Article 3, UNCRC) in all relevant legislative initiatives, so legislation would, in effect be "child proofed";
- political actions in favour of children would be given additional weight. At present, only the most extreme cases—for instance, children affected by armed conflict (external policy), and sexual exploitation and trafficking (internal policy)— have resulted in significant EU action;
- there would be stronger justification for increasing expenditure on children beyond the narrow limits of existing EU budget lines;
- EU institutions would no longer be able to justify failure to address children's rights on the lack of a legal base, and would be able to take action on children's rights in areas that fall within community competence;
- politically, it would provide a clear signal from the Member States that they understand that EU policy affects children, and their interests must be addressed¹⁶.

Below we chart the gradual shift recently towards the development of a legal base in the EU Treaties. A legal base would not in itself be a panacea for the weaknesses in the EU's approach. Effective implementation of policy initiatives remains essential. Nevertheless it would provide the bedrock for sustained and coherent action at EU level.

AMSTERDAM TREATY

The Amsterdam Treaty provided the first significant impetus to the development of an EU children's policy¹⁷. For example:

- Article 29 was introduced into the Treaty on European Union (TEU), providing a basis for intergovernmental (rather than EU) co-operation to tackle "offences against children"—the first ever mention of children in the EU Treaties (see *Violence against children*, page 49);
- Article 137 provided a legal basis for combating social exclusion, and tackling child poverty has become a key objective for EU action¹⁸ (see *Child poverty and social exclusion*, page 41);

"We want to participate in discussions about improvement of the educational system, our cities, the environment, and in general in all those decisions made by politicians that will affect the lives of children and young people."

Children at Euronet conference on "Children and the Future of Europe", Brussels, 2-3 April 2003.



“The money and expectations invested by adults in children forces them into a waiting position. It is children’s fate to be waiting — patiently waiting to become an adult, to have their contributions recognized, to have a say in societal matters, to be part of the citizenry. This eclipse of individuality, indeed of authentic participation, is likely to be thought of in terms of protecting the child and preserving and augmenting his/her potentialities for later use.”

QVORTRUP J., “Varieties of Childhood”, in *Studies in Modern Childhood*, Basingstoke: Palgrave Macmillan, 2005.

- Article 13 introduced an extended “non-discrimination” clause into the EC Treaty, enabling the EU to take action on various equality grounds, including “age”¹⁹ (see *Discrimination*, page 61);
- and Article 6(2) was added to the Treaty on European Union, reaffirming the EU’s commitment to fundamental rights in Community law.

In addition, free movement, immigration and asylum issues were transferred to Community competence from the “Third Pillar” (co-operation within Justice and Home Affairs on an intergovernmental basis), prompting subsequent directives affecting asylum seeking and migrant children (see *Asylum and migration*, page 69), and children in transnational divorce cases (see *Family Separation*, page 147).

Some of the secondary legislation based on this legal framework draws upon, and even refers directly to, key principles of the UNCRC such as Article 3 (“the best interest of the child”) and 12 (the child’s right to express views)²⁰. But overall, the framework established addressed children’s rights in a fairly haphazard and unsystematic basis, and does not draw consistently on the standards set out in the UNCRC.

CHARTER OF FUNDAMENTAL RIGHTS

Emerging from growing support for the inclusion of a minimum core of fundamental rights in the EU Treaties²¹, the Charter of Fundamental Rights was adopted by the European Council, European Parliament, and European Commission on 7 December 2000²². The Charter governs the EU institutions, which must conform to the rights and observe the principles enshrined within it; it also applies to all EU Member States, but only when they are implementing EU law²³.

In contrast to the existing Treaties, the Charter includes a statement of children’s basic rights²⁴. It goes well beyond the rights for children set out in the 1950 European Convention on Human Rights (ECHR), which only refers directly to education²⁵. In addition to a general equality provision which states that “everyone is equal before the law”²⁶ (Article 20), the most relevant generic provisions of the Charter that could be applied to children are:

- the right to the integrity of the person (Article 3(2));
- the prohibition against torture and inhuman and degrading treatment or punishment (Article 4)²⁷;
- the prohibition against slavery and forced labour, specifically in the context of human trafficking (Article 5(1) and (3));
- the right to respect for private and family life (Article 7);
- and measures to reconcile professional and family life (Article 33).

These provisions are complemented by other child-specific measures:

- Article 14 provides a right to education²⁸;
- Article 32 prohibits exploitation and safeguards the health and welfare of children in the labour market;
- and Article 21 restates and extends the anti-discrimination provision of Article 13 EC²⁹.

Most importantly, Article 24 is dedicated to children’s rights. The Article does refer specifically to the UNCRC³⁰, however the text includes references to “the best interests of the child”, and to the child’s right to participate, incorporating key principles of the UNCRC. Although Article 24 clause 1 only states that children “may express their views freely” —rather than providing this as a right (as in the UNCRC), the Article still represents an advance towards seeing children not just as in need of protection, but also as independent and autonomous rights holders. Clause 2 suggests that children’s interests should be considered across all policy areas relevant to children; if fully implemented, this would represent a significant step towards “child-proofing” of EU legislation and policy.

Although less comprehensive than the UNCRC, the Charter is significant in the development of children’s rights at EU level, ensuring greater visibility for children’s issues within the Union. The proposed incorporation of the Charter into Part II of the EU Constitutional Treaty would have made it legally binding, but it now appears unlikely that the Constitution in its current form will be fully ratified by the Member States. Despite uncertainty about the

Constitution's future status, the Charter is increasingly regarded as an important guideline for EU action—in relation to children's rights, it provides the foundation, together with existing legal bases (e.g. Articles 13, 29, and 137 of the Treaties) for a consistent EU approach. Important though this is, the Charter is, however, no substitute for a proper legal base in the Treaties.

INTERPRETING CHILDREN'S RIGHTS AT THE EUROPEAN COURT OF JUSTICE

The Charter is part of EU law but it is not yet directly enforceable by the European Court of Justice (ECJ) or national courts. Despite this, the Charter has already become an important reference document, and the Advocates General of the ECJ have referred on several occasions to the Charter in ECJ proceedings.

It is likely that the Court will in future develop increasing case law affecting children. The Court has in the past played an innovative role in interpreting entitlements, particularly in free movement cases. In *Baumbast and "R"*³¹, for instance, the ECJ upheld the right of family members to remain in an EU state, even though their father (whose status as a migrant worker led to their entitlement) had left the Community. The decision was based on the negative impact deportation would have on the children, and on their education³².

Cases such as these are important, in that the judgments were not decided on the basis of the entitlements available to workers (which inevitably exclude children) but on a more inclusive interpretation of EU citizenship³³. However the impact of the Court is limited by its existing competence and by the fact that only a minority of cases involving children ever come before it.

The ECJ's interpretations can also be undermined by political decisions in the Member States. The *Zhu and Chen case*³⁴ (see *Asylum and migration*, page 69), for example, was one factor that caused the Irish government to hold a referendum on the citizenship rights of non-nationals. As a result, these were severely curtailed by the 2004 Irish Nationality and Citizenship Act; children born on or after the 1 January 2005 of non-national parents are not now automatically entitled to Irish citizenship³⁵.

THE EUROPEAN CONSTITUTION

A Treaty establishing a Constitution for Europe was agreed by the EU Heads of State on 18 June 2004, intended to consolidate the EU Treaties in one accessible document, define the boundaries of the EU's competence, and clarify the role of the EU institutions. However following rejection by referenda in France and the Netherlands in 2005, it remains unclear what the eventual status of the Constitution is likely to be.

The Constitution contains references that represent a significant advance for children's rights at EU level, so it is essential that this emphasis is preserved—whether the current text is eventually adopted (with or without amendments), or a new draft is prepared. In the section below, we highlight the key references to children and their potential significance.

Part I, Article 3 contains the objectives of the Union, and includes children's rights in its internal and external objectives: Article 3, paragraph 3, states that the Union "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights". Article 3, paragraph 4, which deals with the Union's relations with the wider world, states that the Union "shall contribute to [...] the protection of human rights and in particular children's rights, as well as to the strict observance and development of international law, including respect for the principles of the United Nations Charter".

The inclusion of children's rights in the internal and external objectives of the Union means that children's rights could be mainstreamed into the legislation, policies and programmes for which the EU has a competence within the Constitution. This would not create a new competence for children at European level and it would not take away competences of national governments in the areas of children's rights. But it would ensure that in the areas

"The Charter of Fundamental Rights... explicitly recognises the fundamental rights of children as being a foundation of our European values. Article 24 of the Charter is based on the New York Convention on the Rights of the Child which was ratified by all the Member States."

Franco Frattini, vice-president of the European Commission, letter to Euronet, 2 February 2005.

Article 24 — Charter of Fundamental Rights

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.
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.
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.

where the EU is allowed to legislate and adopt policies, the rights of the child could be taken into account. This means also that the possible negative effects of EU legislation on children could be considered at the drafting stage. In particular the reference to the "strict observance and development of international law" in the external relations of the EU means that the UNCRC would also need to be taken into account.

Following Part II, which incorporates the Charter of Fundamental Rights in the European Constitution, Part III also includes Articles of direct concern to children. Article 168 concerns immigration policy and covers family reunion and the "combating of trafficking in persons, in particular women and children". For these areas the EU would establish measures by European laws or framework laws, which would be binding on Member States. Article 172 covers judicial cooperation in criminal matters; the Union could establish minimum rules by European framework laws in different areas of crime with cross-border dimensions including "sexual exploitation of women and children". If European laws for judicial cooperation in the area of the sexual exploitation of women and children were made they would also be directly binding for the Member States.

Article 182 covers education, youth and sport. It does not directly refer to children, but to youth. Until now youth has been defined by the EU as young people aged 15 until 25 years. Article 182(e), in particular, encourages "the participation of young people in democratic life in Europe". The EU would encourage cooperation between Member States in this area and it would, if necessary, support and complement their action. This means that no European laws would be made on young people's participation, but that participation could be stimulated and good practices exchanged. Article 47 of Part I on the principle of participatory democracy is also important for children's participation. It sets out that a million citizens (which would include children) who are nationals of a significant number of Member States may invite the Commission to submit a proposal on matters where they consider that legal action is required by the Union to implement the Constitution.

Based on existing Treaty Article (currently Article 13), Article III-8 on combating discrimination on grounds including age is also relevant to children. Whilst age has in the past been narrowly interpreted by the European Commission to only include older people, more recent indications suggest that this clause could also be applied to children.

Finally, the Constitution would also give the Union a "legal personality" —therefore it could accede to the ECHR and also other international Conventions such as the UNCRC.

The development of political will

Since *A Children's Policy for 21st Century Europe: First steps* was published, the commitment of EU Member States to implementing children's policy at EU level has undoubtedly strengthened. This is demonstrated most clearly by the insertion of references to —and a specific Article on— children's rights within the Charter of Fundamental Rights. And although the EU Constitution has not yet been ratified, again the fact that references to children are included is a positive step forward.

These advances did not, however, take place in isolation from other initiatives to support children's rights —indeed they were rather the outcome of increasing political attention. In this section we outline some of the key developments that have reinforced political will.

THE GLOBAL CONTEXT

THE MILLENIUM DEVELOPMENT GOALS AND A WORLD FIT FOR CHILDREN

In May 2002, governments emphasised their global commitment to children's rights at the landmark Special Session of the UN General Assembly on Children. The Session was attended by more than 7 000 people, including not only Heads of State, prime ministers and high-ranking delegations but also NGOs and —for the first time— children themselves. Whilst mirroring and reaffirming commitment to the Millennium Development Goals, the

outcome document³⁶ adds new elements, highlighting ten broad principles and objectives:

- primary consideration of the “best interests” of the child in all actions related to them;
- the eradication of poverty, and investment in children;
- freedom from discrimination;
- children’s survival, protection, growth and development in good health and with proper nutrition;
- education for all, and elimination of gender disparities;
- protection of children from harm and exploitation;
- protection of children from war;
- combating HIV/AIDS;
- respect for children’s right to participate in all matters affecting them, in accordance with their age and maturity;
- protection of the Earth for children, minimizing the impact of natural disasters and environmental degradation on them.

These processes provide the underpinning for a global strategy to advance children’s rights and build a “World Fit for Children”. This is an agenda to which the EU has also signed up.

EU STATEMENTS AND INITIATIVES ON THE RIGHTS OF THE CHILD

Reflecting the increasing momentum at international level to promote children’s rights, in recent years signs have emerged that the EU is also taking a more proactive approach, especially in relation to external policy. For example:

- In December 2003 the Council of Ministers adopted “EU Guidelines on Children and Armed Conflict”, setting out commitments in relation to: monitoring and reporting by Heads of Missions, EU Military Commanders and Special Representatives of the effects of conflict on children; providing assessments and developing recommendations; and implementing EU action in relation to third countries (e.g. political dialogue, démarches, multilateral co-operation, crisis management operations, and training).
- In 2003, the European Parliament’s Annual Report called upon the Council to adopt a strategy on children and armed conflict, and the EU-ACP Joint Parliamentary Assembly adopted a resolution on children and armed conflict. Other EP resolutions have addressed trafficking of children, and human rights in the world.
- The promotion of children’s rights was one of the priorities for funding under the “European Initiative for Human Rights and Democracy” in 2001 and was mainstreamed in funding for the period 2002-2004. Through the campaign “Promoting a culture of human rights” in 2005-2006, it provides support for training and awareness-raising on children’s rights in third countries.
- A range of EU trade and co-operation Agreements with other countries, in particular the ACP³⁷-EU “Cotonou” Partnership Agreement (2000), contain specific paragraphs on children, conflict prevention, and human rights.
- The European Community Humanitarian Office (ECHO) has in the past supported specific humanitarian operations relating to children (e.g. feeding, vaccination, primary education, reintegration of child soldiers), and has funded relevant NGO research and advocacy activities. Children have also been identified as a priority in ECHO’s last two annual strategic plans, and in ECHO guidelines.

EU PRESIDENCIES AND “L’EUROPE DE L’ENFANCE”

In 2000, the EU Member States agreed that, although there was no clear EU competence in relation to children, it was increasingly important that they should compare the circumstances of children and relevant policies initiatives at national level. Under the French presidency, the Member States therefore established a Permanent Childhood

A World Fit for Us (extract)

“We are not the sources of problems; we are the resources that are needed to solve them. We are not expenses; we are investments. We are not just young people; we are people and citizens of this world... You call us the future, but we are also the present.”

Statement to the UN General Assembly
Special Session on Children by child delegates,
8 May 2002.

“The European Union believes that we need to accelerate our efforts and to develop initiatives, which truly have an impact on the lives of children. We need to ensure that no children are left out and to make particular efforts to reach those who are already marginalised and disadvantaged by their poverty, disability, ethnic origin, gender and social status. Participation of children is vital. Children have the right to be taken into account in matters affecting their own life, and have the right to play a active role and express their opinions in the community and society... ‘business as usual’ is not an option and there is no choice than to step up initiatives to reach agreed goals and targets.”

EU Presidency Statement on the rights of the child, 59th session of the UN General Assembly, 18 October 2004.

and Adolescence Intergovernmental Group (“L’Europe de l’Enfance”), with the aim of mainstreaming children’s rights in all EU policies³⁸. Membership is comprised of government officials with responsibility for childhood policies, and meetings take place on the invitation of the country holding the EU Presidency on an informal basis (outside the formal EU framework). More specifically the initiative set out to:

- better understand the living conditions of children in Europe, the policies and the best practices followed;
- develop comparative studies;
- and develop common investigating and operational methods of approach in order to fight a growing number of transnational phenomena with a negative impact on children (unaccompanied foreign migrant children, paedophilia, sex tourism, illegal and dangerous information on the Internet...).

“L’Europe de l’Enfance” is a welcome initiative, however as the meetings are informal in nature there is no obligation on Member States to attend or implement decisions. This can result in disjointed discussions on some issues and the group may not be fully representative of the Union. Member states also have very different expectations on the outcomes of the meetings, making it difficult to assess progress³⁹.

In order to support “L’Europe de l’Enfance”, it was also agreed between ministers that a scientific body should be established to develop studies, exchange and comparison on childhood and adolescence. In 2001, during the Swedish presidency of the EU, the Belgian Observatory undertook to prepare a feasibility study on a European Network of Centres and Observatories on Childhood, working in collaboration with the Italian National Centre. The Network was officially launched in Florence, 24 January 2003, under the acronym “ChildONEurope”⁴⁰. The aims are:

- exchange of knowledge and information on laws, policies, programmes, statistics, studies, research, best practices regarding childhood and adolescence;
- exchange of knowledge on methodology and indicators in order to obtain comparability of information;
- comparative analysis on specific subjects.

At the Assembly of 3 December 2004 ChildONEurope was composed of 9 members (Belgium, Cyprus, Denmark, France, Ireland, Italy, Luxembourg, Portugal and Spain)⁴¹.

EU policy

CURRENT EU POLICY AND ACTION

According to a European Commission memo of May 2005⁴², around thirty Directives, Framework Decisions or Green Papers were adopted during the last five years in about ten EU policy areas, with children as principal target. These relate to issues such as family reunification, parental responsibilities, trafficking in human beings, sexual exploitation, children in armed conflict, safety of toys, paediatric use of medicinal products. The memo goes on to suggest that: “As a complement, a dozen community programmes fund actions in favour of children and young people, notably against violence against them, for a safer use of the Internet, against trafficking in human beings, against sexual tourism, in favour of the participation of young people in the functioning of democracy, to ensure access of Roma children to education, etc.”

The analysis set out in the rest of this publication suggests, however, that this is an oversimplification. Many of the measures identified have limited and/or only indirect impact on children. For example, some have general application to a range of target groups, rather than treating children “as principal target”. Some are only relevant to children above age 15. Most are only “soft law” measures and have no binding force. Conversely, other significant areas are insufficiently highlighted. For instance: children are identified as a target group of the EU’s strategy to combat social exclusion (see *Child poverty and social exclusion*, page 41); they are an increasing priority within the EU public health strategy (see *Child health*, page 81), and the recently agreed Youth Pact has implications for

children also (see *Education*, page 115).

The lack of a clear legal base in the EU treaties to protect and promote children's rights undermines the development of a comprehensive EU strategy in favour of children. Nevertheless, it is important to acknowledge what can be—and is being—achieved through the existing legal bases (summarised briefly in the section on the 1997 Amsterdam Treaty' above), and the significance of the actions that have been implemented so far.

THE EUROPEAN COMMISSION'S "COMMUNICATION ON CHILDREN"

Building on the political momentum provided by the above initiatives, the European Commission began work in 2005 on a Communication on Children, intended to provide a comprehensive strategy on the protection of children. Development of the Communication has been led by Commissioner Frattini of Directorate General "Freedom, Justice and Security", and is backed by a group of Commissioners from across Commission directorates (see below).

In May 2005 an inventory was launched of the measures that have been taken or are underway at EU level to protect children's rights, and an initial consultation exercise has been undertaken with officials from other DGs, and representatives of UN agencies and civil society. The Communication is expected in 2006.

The Communication is likely to be a significant advance for children's rights at EU level, setting out both a long-term vision for the future, and also concrete practical measures that can be taken in the short- to medium-term. However important questions must be addressed during the process of preparing it, including: the compatibility of EU law and policy with the UNCRC; the impact of the absence of a clear legal base in the EU Treaties; the status of the Charter of Fundamental Rights; the role of the Fundamental Rights Agency; possible legal and policy initiatives; policy co-ordination structures; training for officials; child-related data collection; budgetary resourcing; and the participation of children in EU policy development (see *Core Recommendations*, page 30).

Institutional structures

COMMISSIONERS GROUP ON FUNDAMENTAL RIGHTS, EQUALITY AND NON-DISCRIMINATION

The Communication on Children is one initiative being promoted by the new Commissioners Group on Fundamental Rights, Equality and Non-Discrimination, led by European Commission President Manuel Barroso. If the Communication is to make progress, it is essential that this group provides high-level political impetus and support. The Group has also backed the development of a European Pact for the Child, to help Member States in protecting children through legislative or financial support or by an exchange of existing good practice in the field.

A related initiative of the Commissioners Group is the adoption of a new mechanism to ensure that all Commission legislative proposals are systematically and rigorously checked for compatibility with the Charter of Fundamental Rights. In a Communication in 2005⁴³, the Commission sets out a methodology for "ensuring that the Charter is properly implemented in Commission proposals", and notes that all legislative and major policy proposals contained in the annual Legislative and Work Programme will be subject to impact assessment. In addition, the Commission states that it will also monitor the work of the European Parliament and the European Council and that it will reserve the right, based on a "case-by-case political scrutiny", to initiate annulment proceedings in the event of an infringement of fundamental rights.

Other issues being explored by the Commissioner's Group include: proposals for a Fundamental Rights Agency and for an Institute for Equality between Men and Women, and the preparation of proposals for an anti-discrimination strategy and a European Year for equal opportunities for all.

"It is also important to strengthen the Commission's support for the major international Conventions and commitments relating to children—including the UNCRC and its Optional Protocols."

Letter from Commissioner Louis Michel to Save the Children, 19 January 2005.

"... I intend to develop a strategy on how we can further develop and strengthen our efforts to do all that is within our powers to ensure the full respect of the rights of the children and their protection in Europe as well as in the rest of the world."

Presentation by European Commission Vice-President Franco Frattini, Bundestag, Berlin, 14 February 2005.

If all these initiatives are implemented by the Commissioners Group, the consequences could be significant for children's rights. Whilst the Group's support for the Communication is the key priority, the proposed mechanism for pre-legislative scrutiny of the compatibility of legislation with the Charter provides an important opportunity to child-proof new initiatives, in line with Article 24(2) of the Charter.

THE FUNDAMENTAL RIGHTS AGENCY

In 2005, the European Commission will develop proposals to convert the European Monitoring Centre for Racism and Xenophobia into a Fundamental Rights Agency. Although the exact remit and role of the Agency are as yet undecided, the Agency will constitute a point of reference for civil society, promoting dialogue at European level and contribute to raising awareness of fundamental rights within the general public. Other tasks of the Agency will be providing European institutions and Member States with assistance and expertise, collecting and disseminating reliable and comparable information and data, and producing an annual report on fundamental rights. It is anticipated that the Agency will be functional from 2007.

It is unclear at this stage whether, and to what extent, the Agency will have a mandate in relation to children's rights. Euronet has argued⁴⁴ that respect for children's rights should be included in the Agency's field of action, and that the Agency should report on the mainstreaming of children's rights in the work of the institutions. Care should be taken to avoid a conflict of competences between the Agency and other national and international bodies working on human rights, such as the UN Committee on the Rights of the Child.

INTER-INSTITUTIONAL AND INTER-SERVICE WORKING GROUPS

Since 2004, two embryonic structures have existed at EU level to co-ordinate policy in relation to children, though primarily in relation to external affairs—and led by DG RELEX. The main grouping is the "Informal Inter-institutional Group on Children" (which includes representatives from the European Commission, European Parliament, and the Presidency); this has largely superseded the Commission's "Interservice Working Group on Children" which has representatives across directorates.

Within the framework of the Inter-institutional Working Group, an initial training programme on children's rights for European Commission, European Parliament, and Council Secretariat staff has been launched. Supported by UNICEF's Innocenti Research Centre in Florence, the first two day event took place in June 2004 and covered various issues (e.g. trafficking, armed conflict, co-operation between institutions). A further half day on policy within the Union was held in April 2005.

Alongside the Commissioners Group which can provide political backing for the new Communication and for children's rights initiatives at Commission level, the Inter-institutional and Interservice Working Groups are likely to provide increasingly important fora for discussing and co-ordinating policy initiatives in relation to children.

EUROPEAN PARLIAMENT CHILDREN'S RIGHTS ALLIANCE

The European Parliament Children's Rights Alliance brings together MEPs from different political groups and countries, meeting every two months. The group is an informal alliance of MEPs chaired by Glenys Kinnock (UK), Lissy Gröner (Germany) and Zuzana Roithova (Czech Republic). Priority areas have included child pornography on the internet, children and armed conflict, trafficking, and monitoring children's rights. The Alliance has also supported Euronet's campaign for references to children's rights to be included in the EU Constitution. It is likely to play an important role in reviewing and shaping the development of the Commission Communication on Children, and in monitoring its subsequent implementation.

What next for EU children's policy?

Based on the analysis in *Introduction* and *Towards an EU children's policy?* above, this section describes a vision for the future of children's policy in the EU, identifies the main weaknesses in the EU's current approach to children, and sets out a wide range of core recommendations for strengthening the EU's overall commitment and approach to children's rights. Part Two of the report (pages 41-158) goes on to address specific policy areas affecting children where the EU has either taken some action, or has a legal basis for action (even if limited).

A VISION FOR CHILDREN'S RIGHTS IN THE EU

The UNCRC (and its Optional Protocols⁴⁵) provides a clear set of principles and standards to guide the development of a clear and ambitious vision for the realisation of children's rights. The Convention also provides a coherent and comprehensive framework against which to evaluate EU legislation, policy and structures, drawing upon the understanding gained from 15 years of implementation. The UNCRC has been ratified by all EU Member States (and 192 states worldwide), who have all thereby committed themselves to implement it fully.

Guidelines published by the UN Committee on the Rights of the Child⁴⁶ are particularly helpful in setting out key general measures of implementation, and these are reflected in the recommendations set out below. The key elements include:

- ensuring legislation is fully compatible with the Convention;
- implementing the general principles set out in Articles 2 (non-discrimination), 3(1) (the best interests of the child), and 12 (the right to express views);
- developing comprehensive national strategies or plans of action for children, built on the framework of the Convention;
- co-ordinating government to ensure effective implementation;
- monitoring implementation through child impact assessment and evaluation;
- collecting sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights;
- identifying and analysing resources for children in national and other budgets;

"... The challenge is to craft a Communication on the protection of children's rights that comprehensively covers both internal and external actions, that goes beyond stocktaking and that effectively harnesses the current political will and support for protecting children's rights."

UNICEF Statement "Towards a Communication on the Protection of the Rights of the Child", 22 June 2005.



- training and capacity-building for all those involved in the implementation process;
- co-operating with civil society, including children themselves;
- co-operating internationally to implement the Convention;
- establishing independent human rights institutions to monitor independently progress towards implementation.

Drawing on this framework and an audit of the EU's current approach to children, the main recommendations set out below seek to define a coherent vision for the future for children's rights in the EU. At the same time they highlight a range of practical steps that can and should be taken towards the realisation of this vision.

To translate principles into practice requires the further mobilisation of political will among all the relevant actors, including children's organisations and children themselves. The twentieth century has shown what can be achieved with popular support—improvements in the living conditions of working people, progress towards equality between the sexes, and increasing awareness of environmental issues. At the beginning of the 21st century, it is time to realise children's rights at EU level; this will not only benefit children directly, but will also strengthen the position and voice of the EU on the world stage as a champion of children's rights.

AUDITING THE EU'S CURRENT APPROACH TO CHILDREN

The above analysis suggests that political commitment to addressing children's rights at EU level has strengthened significantly in the intervening years. For example, the Charter of Fundamental Rights has been adopted; EU "Guidelines on Children and Armed Conflict" have been adopted⁴⁷; references to children's rights were inserted in the text of the draft EU Constitutional Treaty; and a first-ever "Communication" on children is planned. In spite of this welcome progress, we identify below some continuing concerns in relation to the EU's current approach:

- **Limited legal bases in the EU Treaties.** Although the existing EU Treaties allow some consideration of children's interests across a range of policy areas (notably offences against children, social exclusion, non-discrimination, free movement, education and consumer policy), the EU's overall competence in relation to children's issues is restricted and lacks coherence. The predominant focus within the Treaties on the "citizen-as-worker" means that children's interests are excluded from consideration across the majority of policy areas, even though aspects of EU legislation and policy can have unintended but highly damaging consequences for children.
- **The relative invisibility of children's interests.** Although increasing political priority is now being given to children's rights at EU level, the profile of children's rights has been low for many years. Apart from the child protection agenda that was established following the well-known "Dutroux" sexual abuse case in Belgium in 1996, children's rights issues have only recently begun to emerge in other key policy areas (e.g. child poverty and social exclusion, child health, asylum and migration).
- **Lack of overall policy leadership, direction and co-ordination.** Whilst there are several Commission directorates involved in action which impacts on children and interservice and inter-institutional fora exist to encourage co-ordination of policy at EU level, these mechanisms are insufficiently embedded and are limited in scope. Also, there is no one central unit or directorate that is responsible for developing a coherent overall policy direction and integrating a children's perspective across the Commission. Although there is a newly established "Commissioners Group on Fundamental Rights, Non-discrimination and Equal Opportunities" and DG FJS are taking a lead on children's issues, there is as yet no designated post of EU Special Representative for Children to drive the process forward and represent the EU on children's rights, both internally and externally. The forthcoming Commission "Communication" on children provides an opportunity to remedy these weaknesses.
- **Limited EU action.** The EU has undertaken action that has had benefits for children (e.g. in relation to violence against children, trafficking, sex tourism, internet safety, consumer policy, education and youth employment), and this has increased since the last Euronet report. However in some cases it has been limited by the lack of a suffi-

cient legal base—indeed a previous budgetline “Measures to support families and children” (from DG Employment and Social Affairs, then DG V) was removed following a legal challenge in 1996 by the former UK and Danish governments. Alternatively, children have sometimes been the incidental beneficiaries of action in other areas (e.g. non-discrimination, health) targeted primarily at other groups, but so far the impact has been limited.

- **Minimal resources from the EU budget.** Recent analysis by DG FJS of around 300 projects funded between 1997 and 2003 by the Daphne programme to combat against children and women showed that 48 per cent were dedicated to children and young people, with Community funding amounting to EUR 15 million. There are also a number of other Community programmes funding actions in favour of children. Within the EU these include—in addition to Daphne II— COMENIUS, LEONARDO and SOCRATES (education), Safer Internet Plus, YOUTH, AENEAS and the European Refugee Fund, and AGIS (trafficking). Outside the EU, these include PHARE (especially children in Romania and Bulgaria) and CARDS (democratic participation in candidate countries). However many of these funds are targeted at other groups as well as children, and some are targeted at the 15-25 youth age range rather than children. Whilst the overall proportion of the EU’s budget that is currently spent specifically on children is unknown, this brief summary suggests that it is likely to be minimal—particularly for younger children.
- **Restricted opportunities for child participation.** Despite the gradual development of “civil dialogue” between the EU institutions and NGOs, the EU is still very far from the creation of a “Citizen’s Europe” where children can exercise their rights and participate alongside adults as full European citizens.
- **Lack of information on children at EU level.** The range and depth of quantitative and qualitative data are improving (e.g. through the development of EU-SILC in relation to poverty and social exclusion, through collaboration with international partners [e.g. OECD, UN, WHO] in relation to education and health), yet proper comparative information based on common definitions and indicators is lacking in many areas. It is therefore very difficult to identify children’s wider needs, their perspectives on their living situation, and the issues which require priority political action. This is partly as a result of inadequate funding for organisations such as Eurostat, and partly because of weaknesses in data-collection and co-operation with national statistical offices.

CORE RECOMMENDATIONS

The Recommendations below are divided into eight sections:

- Children and the legal base.
- Strengthening Political Will.
- Developing EU Children’s Policy.
- Incorporating a child rights perspective.
- Building Institutional Structures.
- Co-operating with civil society and international bodies.
- Investing in children.
- Monitoring children’s circumstances.

Children and the legal base

Inserting a clear legal base in the EU Treaties. The UN Committee on the Rights of the Child welcomes the inclusion of sections on the rights of the child in Constitutions, reflecting the key principle that children alongside adults are holders of human rights⁴⁸. Although the inclusion of specific references to children’s rights in the Charter of Fundamental Rights is welcome, its scope is limited compared to the UNCRC, and the provisions have no direct effect within the national context. The proposed EU Constitutional Treaty contains important references to children’s rights that would provide a clearer and simpler legal framework, enabling policy-makers to ensure that children’s

“For us parliamentarians it is essential to get young people involved in the future of Europe. We received negative signals from the European elections and the votes on Constitutional referendums. It’s high time to act in a positive way.”

Lissy Gröner MEP,
personal communication with Euronet,
26 September 2005.

interests are fully respected within EU legislation, policy and programmes. Whilst it appears unlikely that the current EU Constitution will be ratified by the Member States, it is important that the references to children's rights agreed by political leaders are incorporated in any subsequent revision of the EU Treaties.

- *In any new revision of the EU treaties or the EU Constitutional Treaty, the Council of Ministers should take a lead in ensuring that children's rights are included, as set out in Article 3 of the EU Constitutional Treaty, and other relevant Articles relevant to children⁴⁹. Any initiatives of this kind should be undertaken in cooperation with children's civil society.*

Strengthening political will

Providing leadership on children's rights. In March 1999, the European Parliament proposed the creation of an EU "Commissioner for Children's Rights"⁵⁰. The Parliament reiterated this call in 2003 in a resolution on trafficking in children and child soldiers⁵¹, and the 2003 "EU Guidelines on Children and Armed Conflict" suggested the establishment of a focal point, such as a Special Representative, to ensure implementation of the Guidelines. Similarly, a Commissioner designated by the Commission President would help to ensure the Commission can fulfil its commitments to children and to coordinate the EU's approach to issues that affect children in all policy areas. In addition, they would encourage accountability at Commission level for policy development and implementation, monitor results, and give greater visibility for Commission policy on children and their rights both within the EU and internationally.

- *An EU Commissioner with responsibility for children should be appointed to provide overall leadership at EU level. Supported by a Child Rights Unit, linked to focal points in other DGs, their responsibilities should include: integrating a child rights perspective in all EU policy areas; encouraging the participation of children and young people in decisions that affect them; monitoring the impact of EU policy and legislation on children; co-ordinating children's rights initiatives; ensuring inter-service cooperation; promoting cross-sectoral approaches; increasing the visibility and profile of the EU as a children's rights champion on the world stage. An alternative model worth considering would be a "Special Representative" in the Council of Ministers, with a comparable remit and support mechanisms.*

Developing "L'Europe de L'Enfance". "L'Europe de L'Enfance" is a welcome Initiative, and should provide a forum for exchange between Member States on children's issues at EU level. However, commitment from all Member States to this informal process is not uniform. Member States should reaffirm and strengthen their support for this Initiative as the L'Europe de L'Enfance group is in an ideal position to champion cooperation on European children's issues.

- *All Member State Ministers with responsibility for children should meet at least once a year to discuss issues of common concern at EU level and across the Member States, within the framework of the "L'Europe de L'Enfance" initiative. The Commissioner with responsibility for children (or EU "Special Representative for Children") should also attend to ensure co-ordination with the Commission's agenda. Meetings should be planned on a more formal basis and clarity is needed both on what the meetings hope to achieve and how outcomes can be efficiently assessed;*
- *Senior civil servants from the Member States should meet regularly to exchange information on and discuss EU children's policy, through the "L'Europe de L'Enfance" Initiative. EU Child Rights Unit officials should be invited in order to encourage close linkage with the Commission's activities.*

Developing EU children's policy

Establishing an EU children's strategy. In order to promote and respect children's rights, the UN Committee on the Rights of the Child recommends that states define and implement comprehensive and rights-based children's strategies, underpinned by the UNCRC⁵².

- *An ambitious and visionary EU “Children’s Strategy” should be set out in the forthcoming Commission Communication on Children, building on the impetus provided by the Millennium Development Goals and the World Fit for Children agreed at the UN Special Session on Children. In line with UNCRC Guidelines, the Strategy must: relate to the situation of all children, and to all the rights in the UNCRC (and other international and regional instruments relevant to children’s rights); be developed through a process of consultation, including with children and young people; be endorsed by the Council of Ministers; be closely linked to key decision-making processes (including budgets); go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of human rights for all children; seek to strengthen structures to improve co-ordination of EU activity; be adequately resourced, in human and financial terms; and be widely disseminated throughout the EU and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The Strategy must also set out arrangements for monitoring and continuous review, for regular updating and for periodic reports to the European Parliament.*

Reviewing EU legislation and policy. All EU Member States, having ratified the UNCRC, are under an obligation to undertake a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention. At EU level, as part of the process of preparing a Communication on Children, officials in DG FJS have been carrying out a review of legislation and policy that has been initiated across the Commission, and mapping this against the Articles of the Charter of Fundamental Rights. Useful though this exercise is, it is limited in its current scope and depth, and requires further development.

- *The European Commission should ensure future EU legislation, policy and guidelines are considered not only for compatibility with the Charter of Fundamental Rights, but also the UNCRC. This should include considering the Charter and the Convention not only Article by Article, but also holistically, recognising the interdependence and indivisibility of human rights.*

Incorporating a children’s rights perspective

Implementing key children’s rights principles. The development of a child rights perspective within the EU institutions is central to the implementation of the UNCRC at EU level. Of particular importance are the general principles set out in Articles 2 (non-discrimination)⁵³, 3(1) (the best interests of the child)⁵⁴, and 12 (the child’s right to express views)⁵⁵ of the UNCRC, which are reflected (with less force) in Articles 21 (non-discrimination) and 24 (children’s rights) of the Charter of Fundamental Rights.

According to UNCRC Guidelines⁵⁶, “the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures” (e.g. through disaggregation of data to identify discrimination). In practice, for example, EU legislation has tended to prioritise the interests of biological children over others. For example, in relation to the residency of third country nationals, such a distinction is reinforced in the Family Reunification directive (See *Asylum and migration*, page 69). Whilst the directive recognises adopted children, it prioritises biological children over stepchildren, and denies rights to children of unmarried parents. As McGlynn comments: “the Directive has created a wholly discreditable hierarchy of rights dependent on the perceived proximity of the child and the family to the traditional nuclear family⁵⁷”.

The **best interests** principle refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. It requires active measures throughout government, parliament and the judiciary, and systematic consideration of “how children’s rights and interests are or will be affected by their decisions and actions —by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children⁵⁸”. In the EU context, there is evidence to suggest that children’s interests are not always a “primary consideration” when drawing up legislation and policy. For instance, toy safety and television advertising policies have tended to priori-

“Children clearly understand the implications of our present behaviour for future generations. That is why it is so important to harness this wisdom and their concerns to give children a voice in determining the future of Europe.”

EU Commissioner Margot Wallstrom,
Euronet conference on
“Children and the Future of Europe”,
Brussels, 2-3 April 2003.

tise the interests of commercial bodies over those of children (See *Child safety*, page 93). And although the “best interests” principle is positively included in recent asylum and migration legislation, it is sometimes undermined by other specific provisions or inconsistently applied in practice⁵⁹.

Article 12 of the UNCRC highlights the role of children, according to their age and maturity, as active participants in the promotion, protection and monitoring of their rights, and applies to all measures adopted by Governments to implement the Convention. To make **child participation** effective, UNCRC Guidelines⁶⁰ stress the importance of: making documents and processes accessible; developing consistent ongoing arrangements (rather than one-off awareness-raising events); avoiding tokenistic consultation; and ascertaining representative views. There are examples of successful initiatives at EU, national, and local levels to promote the participation of children and young people in decision-making, and an existing framework for the development of participation is available through the “Youth” Programme (see *Youth and employment*, page 121). Such mechanisms should be developed further; this would be fully consistent with the will of European and Member State institutions to engage more actively with citizens, and would support the development of democratic processes across Europe. It would also fulfil children’s expressed desires; the large number of children calling helplines to discuss the issues that concern them have demonstrated the usefulness of such mechanisms.

- *The development of an EU Anti-discrimination Strategy, proposed by the Commissioners Group on Fundamental Rights, Equality and Non-Discrimination, must include an integral child rights perspective, based on Article 2 of the UNCRC. Addressing discrimination against children may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.*
- *The “best interests” principle of Article 3 of the UNCRC (mirrored in Article 24 of the Charter of Fundamental Rights) should be integrated as a primary consideration within all EU and Member State legislation and policy initiatives.*
- *Within the framework of the “L’Europe de l’Enfance” meetings, the EU Presidency should initiate further discussion and exchange of good practice between Member States over approaches to child participation, both within Member States and at EU level, based on Article 12 of the UNCRC.*
- *The EU institutions should develop tools and mechanisms to engage children and young people directly in EU decision-making processes on an ongoing basis, building on positive examples at international, EU, and Member States levels (e.g. opinion polls, children’s parliaments, local youth councils, and school-based initiatives).*
- *The European Commission should extend the funding it currently provides for participation projects for children and young people, and continue to promote exchanges of good practice around children’s participation at EU, national and local levels. In particular, child friendly and accessible spaces for children to express themselves should be developed, for example using technology such as (mobile) telephones and the internet.*

Building institutional structures

Strengthening EU structures to co-ordinate children’s policy. The European Commission’s “Working Group on Children” and the related “Informal Inter-institutional Group on Children” (see above, page 27) provide useful fora for information exchange and discussion, but mainly in relation to external policy. There is therefore a lack of co-ordination on internal legislation, policy and programmes towards children. Further efforts to enhance co-ordination must not only link DGs that have a substantial impact on children, but also extend right across the Commission, including for example, DGs concerned with finance and trade. Given that responsibilities towards children are covered by many DGs, it is also essential to establish a Child Rights Unit within the European Commission, both to make children more visible and to lead co-ordination at institutional level.

- *The European Commission should review the role and functioning of the existing Interservice and Inter-institutional Working Groups on Children, and seek to broaden their remit to include internal as well as external*

policy. To support the development of the Working Groups, focal points (e.g. designated posts) on children's rights should be established in every DG.

- An EU child rights unit should be established centrally, probably within DG FJS, reporting directly to the relevant Commissioner. The Unit should implement the Strategy for Children, ensure that all directorates general of the Commission develop greater awareness of the standards of the UNCRC, and give appropriate priority to children within legislation, policy and programmes. It should also aim to co-ordinate action across the Commission and between EU institutions through an annual workplan, working with the Interservice and Inter-institutional Working Groups on Children, respecting the role of Member States under subsidiarity. It should not take over the responsibilities of other directorates general in relation to children. The unit should also cooperate with children's NGOs/civil society.

Training and capacity-building to support implementation. UNCRC ratification obliges states to develop training and capacity-building for all those involved in the implementation process, including civil servants, parliamentarians and members of the judiciary—and for all those working with and for children. The purpose of training is to emphasise the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions.

- The existing training programme in children's rights for officials within EU institutions should be made more comprehensive and developed on an ongoing basis, drawing on the expertise of international partners (including UN agencies, NGOs, the UNCRC Committee, European Network of Ombudspersons for Children, Council of Europe, OCSE). It should include both initial training and re-training.
- The current training programme should be reviewed and evaluated periodically, exploring not only the extent to which knowledge about the issues has improved, but also whether it has contributed to developing positive attitudes and practices towards the implementation of children's rights.
- Child rights should be included in the job descriptions of EC officials across DGs to ensure child rights are addressed in their performance objectives, workplans, and annual reviews.

Co-operating with civil society and international bodies

Engaging with civil society, including children. Implementing children's rights requires the engagement of all sectors of society, and extends beyond the responsibilities of Member States and the EU institutions. Children themselves should also be involved, as emphasised in Article 12 UNCRC. To develop EU legislation and policy it is therefore essential to encourage liaison between civil society and the EU institutions.

- The Commission should work more closely with civil society organisations and alliances with an interest in promoting children's rights, whilst respecting their independence. Where appropriate, it should support the development of positive formal and informal links with children's and human rights NGOs, and child- and youth-led organisations, family organisations, faith groups, and academic bodies.
- Commission funding should be available to support networks of children's rights NGOs in the same way as the Commission actively supports other sectors.
- A permanent dialogue should be established between a representative European Network of children's NGOs and the proposed Children Rights Unit, to provide views that would have to be taken into consideration on all relevant aspects of EU legislation and policy affecting children.

Developing international co-operation. Article 4 of the UNCRC (along with other Articles⁶¹) highlights the need for international cooperation in implementing the UNCRC. EU Member States support the implementation of the UN Millennium Development Goals, and the outcome of the UN General Assembly Special Session on Children, and have pledged, in particular, to co-operate internationally to eliminate poverty.

"I am convinced that there are shared problems in Europe and that the European institutions do not pay enough attention to children and their rights. To mention just a few: children's poverty, children's health, neglect and violence, pornography and prostitution, xenophobia, asylum-seeking children, participation."

Lothar Krappmann, Member of the UN Committee on the Rights of the Child, speech to Fourth Regional Meeting of NGO Coalitions in Europe, Brussels, 8 March 2005.

- *In addition to co-operating in the sphere of international development, there is also potential for the EU and Member States to draw upon technical assistance from organisations such as United Nations Children’s Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and other UN agencies in relation to children’s rights within the EU. The EU institutions should also foster dialogue with the UN Committee on the Rights of the Child which monitors implementation in states that have ratified the UNCRC —and in particular with the Committee’s European sub-group that is being established.*

Investing in children

Increasing resources for children from the EU’s budget. To fulfil children’s economic, social and cultural rights “to the maximum extent of available resources”, as required under Article 4 UNCRC, it is necessary to identify the proportion of EU budgets allocated to the social sector and, within that, to children (both directly and indirectly). Given the minimal resources that reach children from the EU budget, increasing EU investment in children (whilst maintaining existing support for other disadvantaged groups) would be an investment in the future of the EU.

- *The European Commission should make children’s rights a priority objective within relevant budget lines, both those specifically targeted at children and other general budget lines and programmes (including research), in line with the principle of children’s “best interests” (Article 3 UNCRC). A particular emphasis should be placed on ensuring that marginalised and disadvantaged groups of children are protected from the negative effects of economic policies or financial downturns.*
- *The European Commission should analyse, in the course of regular monitoring and evaluation procedures, the proportion of the EU budget devoted to direct and indirect expenditure on children, and seek to increase this “to the maximum extent of available resources” (Article 4, UNCRC).*

Monitoring children’s circumstances

“Child-proofing” legislation and policy initiatives. A process of “child impact assessment” should be established so that the likely impact of any proposed law, policy or budgetary allocation that affects children and their rights could be assessed. This should be undertaken at an early stage of policy development, to enable proposals to be adjusted as necessary.

- *The proposed Child Rights Unit within the European Commission should have the role of “proofing” significant initiatives to ensure that all proposed EU legislation, policy and programmes are fully compatible with the provisions of the UNCRC. Mirroring the recent initiative of the Commissioners Group on Fundamental Rights, Equality and Non-Discrimination for systematic screening of the likely impact of legislation, “child impact statements” should be prepared and presented to the European Parliament on proposals for legislation, drawing not only on the Charter of Fundamental Rights, but also the UNCRC.*

Independent monitoring of fundamental rights in the EU. The Committee on the Rights of the Child’s “General comment No 2” (2002) (*The role of independent national human rights institutions in the protection and promotion of the rights of the child*⁶²) sets out detailed guidance on the establishment and operation of independent human rights institutions for children. It emphasises that such human rights institutions are complementary to effective government structures for children, and that they must remain wholly free to set their own agendas, determine their own activities, and provide an independent perspective.

- *The establishment of an EU Fundamental Rights Agency is welcome, however it is essential that the detailed guidance set out in the Committee on the Rights of the Child’s General comment No 2 is taken into account in defining its scope, tasks and powers in relation to children’s rights.*
- *The proposed EU Fundamental Rights Agency should include children’s rights within the EU within its remit. Activities in relation to children should be based on the framework of the UNCRC and the acquis of other*

international bodies (e.g. the Council of Europe). A close link should be maintained with the EU Network of Independent Experts on Fundamental Rights, the UN Committee on the Rights of the Child and other relevant international institutions.

Gathering systematic data and information on children in the EU. UNCRC Guidelines suggest that the gathering of sufficient and reliable disaggregated data on children up to age 18 is an essential element in implementing children's rights. They argue that "it is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children⁶³". At present there are significant gaps in information on children in the EU. A dynamic EU children's policy depends on continuous reassessment of changing economic, social and demographic conditions across the EU, and the impact these have on children.

- All Member States should support the development of the European Network of National Observatories on Childhood, ChildONEurope, so that it can play a more significant role in developing studies, exchange and comparison on childhood and adolescence. The European Commission should also collaborate with other appropriate research institutes (e.g. COST Article 19 Children's Welfare Network⁶⁴, the WELLCHI Network⁶⁵) and encourage the development of qualitative as well as quantitative studies on children.
- The European Commission should seek to extend the mandate of Eurostat to include a wider range of basic data regarding children (up to age 18), working with statistical offices in the Member States, and international partners (e.g. UNICEF, UNHCR, other UN agencies, WHO, ILO, Council of Europe, European Network of Ombudspersons for Children, NGOs).
- The European Commission should produce a comprehensive annual publication on the state of children's rights in the EU. The report should be widely disseminated and debated, including in the European Parliament. Translations (including child-friendly versions) should be made available to engage the wider public, and children themselves, in the process of preparing the report.
- The European Commission should explore with research bodies how children can most appropriately be involved in the research process, in particular to ensure that their views are heard and given due consideration, in line with Article 12 UNCRC.
- The European Commission and Member States should draw upon the knowledge and experience of child helplines as resources for gathering data on children's issues at national and international level, and should fund them accordingly.

"The EU has to be accountable to its citizens
—that includes its youngest."

Children at Euronet conference on
"Children and the Future of Europe",
Brussels, 2-3 April 2003.



Footnotes

1. LANSDOWN G., *Challenging Discrimination Against Children in the EU*, Euronet, Brussels, 2000.
2. According to a recent European Commission Communication, ("Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final) "The baby-boomer generation has had fewer children than previous generations, as a result of many factors: difficulties in finding a job, the lack and cost of housing, the older age of parents at the birth of their first child, different study, working life and family life choices".
3. The age categories most commonly used by Eurostat are 0-14, 15-64, and 65+.
4. The largest decreases will be recorded in Cyprus (from 20.0 % to 13.3 %) and Ireland (from 20.9 % to 16.0 %). In 2050 the proportion of young people will range between 11.2 % in Italy and 16.6 % in Luxembourg. For further details, see Eurostat, *Population projections 2004-2050*, STAT/05/48, 8 April 2005.
5. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
6. LISTER R., "An agenda for children: investing in the future or promoting well-being", paper for Conference on *Challenges and Opportunities for European Welfare States: the changing context for child welfare*, Oxford, 7-8 January 2005.
7. JENSEN AN-MAGRITT, BEN-ARIEH ASHER, CONTI CINZIA, KUTSAR DAGMAR, NIC GHIOLLA PHÁDRAIG Máire and NIELSEN Hanne Warming (eds.), *Children's Welfare in Ageing Europe*, Norwegian Centre for Child Research, 2004, <www.svt.ntnu.no/noseb/costa19/>.
8. RUXTON S., BENNETT F., *Including Children? Developing a coherent approach to Child Poverty and Social Exclusion across Europe*, Euronet, Brussels, 2002.
9. European Commission, *The Social Situation in the European Union 2004*.
10. Participants from the new Member States were from Estonia, Latvia, Lithuania, and Poland (Warsaw seminar); Bulgaria, Czech Republic, and Hungary (Prague seminar) and Cyprus, Malta, and Slovenia (Ljubljana seminar).
11. JENSEN AN-MAGRITT, BEN-ARIEH ASHER, CONTI CINZIA, KUTSAR DAGMAR, NIC GHIOLLA PHÁDRAIG Máire and NIELSEN Hanne Warming (eds.), *Children's Welfare in Ageing Europe*, Norwegian Centre for Child Research, 2004, <www.svt.ntnu.no/noseb/costa19/>. Countries covered by this study are Cyprus, Croatia, Israel, Bulgaria, Estonia, Austria, Denmark, Finland, Germany, Ireland, Italy, Norway and UK.
12. See, for instance, QVORTRUP J., BARDY M., SGRITTA G. and WINTERSBERGER H. (eds.), *Childhood Matters*, European Centre Vienna, Aldershot, 1994; JAMES A., JENKS C., PROUT A., *Theorizing Childhood*, Blackwell, Oxford, 1997.
13. E.g. Policies in relation to health; education; social services/child protection; youth justice; social protection; environment and urban policy; citizenship, nationality, identity, asylum and immigration; youth employment.
14. E.g. Regional policy; trade and industrial policy; energy; agriculture and food; media; human rights; defence; finance and economics.
15. ESPING-ANDERSEN G., *Why we need a new welfare state*, OUP, 2002.
16. SUTTON D., "Children's Rights in the Constitutional Treaty", presentation at *Fourth Regional Meeting of NGO Coalitions in Europe*, Brussels, 8-10 March 2005.
17. Prior to the Amsterdam Treaty, there was no specific reference to children within the EU Treaties, and children's status in EU law was largely dependent on that of their parents. See ACKERS L. and STALFORD H., *A Community for Children? Children, Citizenship and Migration in the European Union*, Ashgate, Aldershot, 2004, for an analysis of the development of children's rights under EU law.
18. Article 137 enabled proposals to be agreed by Qualified Majority Voting in the Council of Ministers, enabling swifter progress and undermining the attempts of individual Member States to block particular initiatives.
19. Article 13 does not, however, have "direct effect", and therefore can not be used by an individual in a court of law or in the European Court of Justice. All measures require unanimous agreement by Member States.
20. E.g. in the Family Reunification Directive.
21. COMITÉ DES SAGES, *For a Europe of Civic and Social Rights*, European Commission, Brussels, 1995.
22. The Charter is the first formal EU document to combine and declare all the values and fundamental rights (economic and social as well as civil and political) to which EU citizens should be entitled. Its main aim is to make these rights more visible. The text of the Charter does not establish new rights, but assembles existing rights that were previously contained in a range of other international sources.
23. For details of the history, scope and status of the Charter, see <www.eucharter.org>.
24. According to the European Commission, out of the 50 or so Articles overall, 19 are relevant for children and young people. However Articles 20 (equality before the law) and 21 (prohibition of discrimination) suggest that all Charter rights should be interpreted to include children, and not just those specifically targeted at them (MEMO/05/171, Brussels, 25 May 2005).
25. KILKELLY U., *The Child and the European Convention on Human Rights*, Ashgate, Aldershot, 1999. See also section *Discrimination*, page 61 for details.
26. This Article can be interpreted to include children as independent rights holders, as well as adults. See MCGLYNN C., *European family values: families, law and policy in the EU*, Cambridge University Press, forthcoming 2006.
27. This formulation has previously been applied to cases of physical punishment of children under the ECHR (Article 3).
28. The text mirrors Article 2, Protocol 1 of the European Convention on Human Rights.
29. See section on *Discrimination*, page 61 for details.
30. An explanatory note to Article 24 does however refer to the UN Convention on the Rights of the Child.
31. Case 413/99, *Baumbast and R. vs Secretary of State for the Home Department*, [2002], 3 CMLR.

32. The ECJ's decision was derived from Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers within the Community. Article 12 states that: "The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions."
33. STALFORD H., "Constitutionalising Equality in the European Union: A Children's Rights perspective", in *The International Journal of Discrimination and the Law*, forthcoming 2005-2006.
34. In *Zhu and Chen*, the ECJ held that a child born to a third country national could obtain the status of an EU citizen and the accompanying free movement rights, assuming the child had sufficient financial resources to avoid becoming a burden on the host state.
35. Children are entitled to Irish citizenship if their parents are non-nationals legally resident in Ireland for three out of four years immediately prior to the child's birth. For further details, see *Irish Children's Rights Alliance, Immigration and Citizenship in Ireland, 2004*, <www.childrights.ie/pub/Report.doc>.
36. UN General Assembly, *A World Fit for Children*, Twenty-seventh Special session, 11 October 2002.
37. African, Caribbean and Pacific states.
38. See <www.childoneurope.org/about/history.htm> for further details.
39. The most recent meeting in Luxembourg in 2005 addressed three issues: the European Constitution and the Rights of the Child; the participation of children and mediation; and the presentation of the new and future accession Member States of the EU.
40. The funding of ChildONEurope Secretariat activities for the year 2004 was provided firstly by the Italian Ministry of Labour and Social Affairs (which entirely financed the first year of activities in 2003) and secondly by voluntary contribution from relevant Ministries of Belgium, Denmark, France, Ireland and Luxembourg.
41. Twelve countries have observer status (Austria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Poland, Slovak Republic, Sweden, The Netherlands and UK). Each may decide to form part of the Network at any given time by nominating a national institution able to furnish official public data on the condition of children and adolescents.
42. European Commission, *May 25: Commission's Actions in favour of Children and Young People*, MEMO/05/171, Brussels, 25 May 2005.
43. Communication from the Commission on "Compliance with the Charter of Fundamental Rights in Commission legislative proposals", Commission of the European Communities, Brussels, COM(05)172, 27 April 2005.
44. Euronet, The Fundamental Rights Agency and Children's Rights, response to the public consultation, 2005.
45. Optional Protocol on the sale of children, child prostitution and child pornography, General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force 18 January 2002; and Optional Protocol on the involvement of children in armed conflicts, General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force 12 February 2002.
46. General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), CRC/GC/2003/5, 27 November 2003; General Guidelines regarding the form and contents of periodic reports to be submitted by states parties under Article 44, paragraph 1(b) of the Convention, UNCRC/C/58, 20 November 1996.
47. COUNCIL OF THE EUROPEAN UNION, *EU Guidelines on Children and Armed Conflict*, 15634/03, Brussels, 4 December 2003.
48. General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.
49. See EURONET, *Analysis of the Treaty establishing a Constitution for Europe*, Brussels, 2005.
50. Written Declaration on appointing a Special Commissioner for Children's Rights for the European Union, DOC_EN\RE\373\373634, 8 March 1999.
51. Motion for a resolution on trafficking in children and child soldiers, Doc: B5-0320/2003, adopted 3 July 2003.
52. General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.
53. The obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind.
54. The best interests of the child as a primary consideration in all actions concerning children.
55. The child's right to express his or her views freely in "all matters affecting the child", those views being given due weight.
56. General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.
57. MCGLYNN C., *European family values: families, law and policy in the EU*, Cambridge University Press, forthcoming 2006.
58. General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.
59. E.g. Article 15, Clause 5 of the Asylum Procedures Directive (REF) (in relation to representation, interviewing and medical examinations for separated children) states that "the best interests of the child shall be the primary consideration". Yet these are undermined by the weak and discriminatory provisions set out in Clauses 1-4 (CHECK). See section on "Asylum and Migration" and RUXTON S., *Separated Children and EU Asylum and Immigration Policy, Separated Children in Europe Programme, Save the Children Denmark, Copenhagen, 2003*.
60. General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.

61. E.g. Articles 7 (2); 11 (2); 17 (b); 21 (e); 22 (2); 23 (4); 24 (4); 27 (4); 28 (3); 34 and 35.

62. HRI/GEN/1/Rev. 6, para. 25, p. 295.

63. General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCR/C/GC/2003/5, 27 November 2003.

64. For further details, see <www.svt.ntnu.no/noseb/costa19/>.

65. For further details, see <www.ciimu.org/wellchi/index6.php>.





Child poverty and social exclusion

The impact of poverty and social exclusion on children

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Growing up in a poor household has a significant negative impact on children's lives, both in terms of their present well-being and their future life chances. A detailed transnational study by Petra Hoelscher¹ identifies a range of important influences and outcomes. For example:

- **Health:** Poor children have a higher risk of infant and child mortality, more problems in their later cognitive and physical development and twice the risk of short stays in hospital, than children who are not poor. Health problems may become chronic early in life. Poor children also rate their own health considerably lower and tend to show worse health behaviour than wealthier young people
- **Cognitive development and educational attainment:** Early childhood development is a key factor for later performance at school, and negative outcomes are stronger the lower the family income and the earlier in life poverty occurs. Other factors—parents' education, social status, parenting practices, and mental health; educational resources; family structure; and school exclusions by the school system— can also hinder educational achievement.
- **Psycho-social well-being of children and adolescents:** Many children living on very low incomes can feel ashamed and embarrassed, somehow different and set apart from others. Participation in school and leisure time activities can be negatively affected and this can increase social exclusion. The resulting emotional burdens are stronger the deeper poverty is, the longer it lasts and the more school-aged children live in a family.

However, negative outcomes are not inevitable and the presence of various "mediating factors" explains why some children fare better than others, despite growing up in poverty. Within

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3, and 12** (see *Introduction*, page 16), the following articles are relevant:

Article 24.—The right to the highest level of health possible.

Article 26.—The right to benefit from social security.

Article 27.—The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28.—The right to education on the basis of equality of opportunity.

Article 30.—The right of minority groups to enjoy their own culture, language and religion

Article 31.—The right to play, rest, leisure, recreation and participation in cultural and leisure activities.

the family, such factors include: the depth, timing and duration of financial hardship; the quality of family relations; the extent of family problems and disruptions; and children's age, gender, and levels of development and self-esteem. Beyond the family, schools can be an important influence, through, for example: their ethos and classroom environment; the attitude of teachers to bullying and social exclusion; the availability of personal support that takes account of children's backgrounds; and the extent to which parents are involved. Within communities, the presence of appropriate public services, the level of social cohesion within neighbourhoods, the availability of social and leisure provision, and the existence of informal support networks, can be very important in helping children growing up in poor neighbourhoods.

"Protecting children from the sharpest edges of poverty during their years of growth and formation is both the mark of a civilised society and a means of addressing some of the evident problems that affect the quality of life in the economically developed nations."

ADAMSON P., *Child Poverty in Rich Countries 2005*, Report Card No 6, UNICEF, Innocenti Research Centre, 2005.

The extent of child poverty in the EU

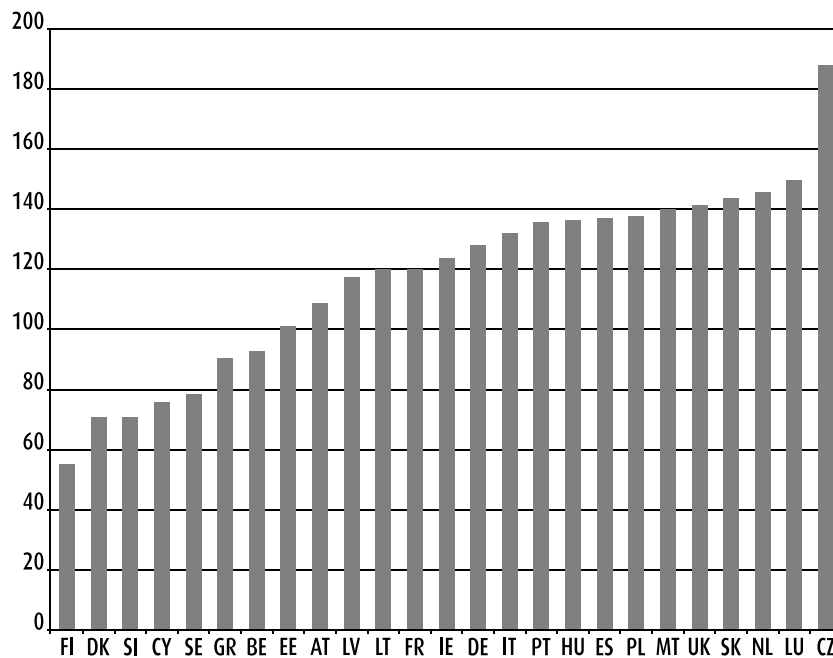
A range of sources exist for comparing child poverty rates across EU Member States². Of these, the European Community Household Panel (ECHP) is EU-specific³, and includes some information on non-monetary indicators of poverty; this will be gradually replaced by the EU Survey of Income and Living Conditions (EU-SILC), which was introduced in 2003⁴.

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In general, however, the available data for measuring child poverty comparatively tend to be out-of-date and unreliable. The "equivalence scales" used (e.g. the way differences in household size and composition are taken into account in comparing income levels) can also be seen as fairly arbitrary⁵. For instance, the ECHP gives a weight of

Figure 1

National Child Poverty Risk Relative to National Overall Poverty Risk for EU-25



Reference year: EU-15=2001 figures, income reference year 2000; EU-10=income reference year 2002 (except for CY, 1997, and MT, 2000).

Source: *European Commission Joint Report on Social Inclusion 2004*, Office for Official Publications of the European Communities, Luxembourg.

"Central to the experiences of children facing poverty and social exclusion is a sense of stigma and shame. Children tend to describe their feelings at being set apart from others as 'sad', 'unhappy', 'embarrassed' or 'ashamed'. Such feelings can be reinforced in a range of direct and indirect ways. By subtle dress codes, fostered by advertisers, which mark out children unable to wear fashionable items. By parents, who may—in many cases for understandable reasons— have low aspirations for their children, or may even be tempted to blame their poverty on their children. By schools, who may pay less attention to children who are seen as less deserving or less likely to achieve. By whole communities, which may marginalise poor neighbourhoods and ascribe 'bad' reputations to them."

RUXTON S., BENNETT F., *Developing a coherent approach to child poverty and social exclusion across Europe*, Euronet: Brussels, 2002.

"Even if social policy currently focuses on the elderly and the sustainability of pensions, we must not forget that many young people are today at risk of poverty in Europe and that they will play a key role in the future of our societies."

Report of the High Level Group on the future of social policy in an enlarged European Union, European Commission, 2004.

1.0 to the first adult, 0.5 to any other household member aged 14 or over, and 0.3 to each child below 14⁶. If this scale under-estimates the weight of each child, the overall figures will under-record child poverty. Possible amendments to the equivalence scale used continue to be discussed, however as yet no consensus has been reached.

The Laeken European Council in 2001 endorsed a set of eighteen common statistical indicators, covering the broad areas of financial poverty, employment, health and education. As yet, the agreed indicators are not particularly "child-friendly". For example, they assume that children's development is primarily dependent on sufficient income, and that resources are distributed equally within the family. Instead, indicators should be developed that are not solely centred on the views of adults, but also take children's perceptions and experiences into account⁷. To address some of these weaknesses, Eurostat is undertaking a survey on child poverty and social exclusion, which will break down indicators for those aged 0-15 years old.

In most EU countries, children experience levels of income poverty that are higher than those for adults (see Figure 1)—indeed in 12 of the 25 the rate is more than 25 % higher⁸. This includes certain countries with a low overall rate of poverty risk, such as the Czech Republic, Luxembourg and the Netherlands.

For the EU (15) as a whole the rate for children⁹ was 19 per cent, compared to 15 per cent overall, based on a poverty line of 60 per cent of the median household income in each Member State (see Table 1). In some countries—for example, Spain, Ireland, Italy, Portugal and the UK— around one in four children were at risk of financial poverty. For the EU (10) the rate for children¹⁰ was 20 per cent, compared to 15 per cent overall, with only three states—Cyprus, Hungary and Slovenia— having higher adult than child poverty rates¹¹.

Table X also shows the differential impact of various types of household on child poverty:

- Around 1 in 10 children in the EU lives in a jobless household, but children in Austria, Cyprus, Luxembourg and Slovenia are less likely to do so¹².
- Children in lone parent households are particularly prone to poverty, though experience varies widely between countries, with some—particularly the Scandinavian states— having a much lower rate than the EU (15) average. Amongst the EU (10), the best performers were Hungary and Slovenia (both 17 %);
- Households with two adults and three or more children have a strongly increased poverty risk across the EU, although Belgium, Finland, Slovenia and Sweden have significantly lower levels.

Table 1

	EU15	EU10
Children living in jobless households 2003	9.9 % (3 % L-17 % UK)	10.3 %
Risk of Poverty Rate*		
0-15	19 % (7 % DK-27 % P)	20% (7 % SI-23 % PL)
all age groups	15 % (9 % S-21 % IRL)	15% (8 % CZ-21 % SK)
single parent households	35 % (11 % FIN-50 % UK)	26% (17 % HU/SI-59 % MT)
2 adults with 3+ children	27 % (5 % FIN-49 % P)	28% (5 % SI-35 % SK)
Persistent Poverty 2001		
0-15	12 % (3 % DK-22 % P)	
all age groups	9 % (6 % DK-15 % P)	

* For EU 15 figures are for 2001, for EU 10 for 2002.

Sources: EUROPEAN COMMISSION, *Joint Report on Social Inclusion 2004*, Office for Official Publications of the European Communities, Luxembourg, 2004.

Links with social exclusion

Living in a low income household is a central aspect of poverty, but focusing on social exclusion highlights the multi-dimensional and dynamic nature of the issues that many children and their parents also face. There is considerable discussion at EU level of how non-monetary indicators of deprivation could supplement information about income. The available evidence on social exclusion experienced by children within the EU suggests that although there are considerable variations between and within countries and for different socio-economic groups, several broad conclusions can be drawn. For instance:

- There is a link between child poverty and ill-health, with Member States with low child poverty rates (e.g. Sweden, Finland) also having low under-5 mortality rates¹³ (see *Child health*, page 81).
- Although all states recognise the connections between educational disadvantage and social exclusion, there are continuing concerns about the availability and quality of early intervention, equal opportunities for all children within schools, reducing the numbers of early school leavers, and improving literacy and basic skills¹⁴ (see *Education*, page 115).
- Child homelessness is difficult to measure as much of it remains invisible, however a range of factors may lie behind it, including truancy, school drop out, family problems, addiction, youth unemployment, and immigration¹⁵.
- High levels of poverty can lead to high rates of institutionalisation of children; the most prominent examples are the acceding countries of Romania and Bulgaria. Some progress has, however, been made in recent years in de-institutionalisation of children, particularly in Romania (see *Residential care and adoption*, page 141).
- Children in groups facing particular risks of social exclusion (e.g. homeless people, travellers, ethnic minorities, asylum-seekers and refugees, people in rural areas, disabled children) often encounter particular obstacles in gaining access to rights which should be available to all citizens (e.g. education, health, welfare and leisure services). Many children within these groups also face significant degrees of discrimination, harassment and even violence on a regular basis¹⁶ (see *Discrimination*, page 61 and *Asylum and migration*, page 69).

Children and the EU social inclusion process

Based on Articles 136 and 137 of the 1997 Amsterdam Treaty, EU action to combat poverty and social exclusion has developed substantially in recent years. At the Lisbon European Council in March 2000, the EU set itself the goal of becoming “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”. An “Open Method of Co-ordination”¹⁷ was also agreed, involving the development of Common Objectives, National Action Plans against poverty and social exclusion (NAPs/incl), agreed indicators, reporting and monitoring, and the exchange of learning; the overall aim was “to make a decisive impact on the eradication of poverty and social exclusion by 2010”.

Significantly, the Lisbon Council identified children as one of the target groups for priority action by Member States. This emphasis was reinforced by the adoption at the Nice Summit in December 2000 of Common Objectives to combat social exclusion¹⁸. Whilst there are aspects of all the Objectives that are relevant to children (e.g. the emphasis on the participation of excluded people, and on mainstreaming into overall policy, in Objective 4), Objective 3 refers in particular to tackling social exclusion among children as one amongst a number of “vulnerable groups” (Objective 3b: “to move towards the elimination of social exclusion among children and give them every opportunity for social integration”). The Common Objectives remain a key aspect of the Social Inclusion process, providing the agreed political framework for further action.

“...if you're poor when you're a child, you don't expect to be rich when you grow up.”

Child quoted in WILLOW C. (2001) *Bread is free: children and young people talk about poverty*, Children's Rights Alliance for England/ Save the Children.

“...in many countries there is no acknowledgement of a rights-based agenda for children and young people. This means in effect that priority is given to basing children and young people's services on an adult understanding of what children and young people need rather than on their “rights” to universally agreed services. Thus there seems to be a particular variability in terms of basic services such as health and education and also broader topics such as ‘age of consent’ and treatment of marginalised groups. Countries that give less emphasis to the rights of children tend to focus on children and young people as future employees rather than on improving their quality of life now.”

European Commission, *Joint Report on Social Inclusion 2004*, Luxembourg: Office for Official Publications of the European Communities.

"It is essential to emphasise that policy measures for fighting child 'poverty' have to be multi-dimensional. They need to cover the various dimensions of social exclusion and should therefore not focus solely on families' financial resources."

ATKINSON A.B., CANTILLON B., MARLIER E. and NOLAN B., *Taking Forward the EU Social Inclusion Process*, Luxembourg, 2005.

"Social inclusion policy should be pursued by the Union and by Member States, with its multi-faceted approach, focusing on target groups such as children in poverty."

European Council, Presidency Conclusions, Brussels 22 and 23 March 2005.

Children in the National Action Plans

Children have also been an emerging focus of Member State National Actions Plans (NAPs). A European Commission overview in 2001¹⁹ of the first set of Plans for the EU 15 highlighted a key risk factor as "growing up in a vulnerable family" and one of eight core challenges as "preserving family solidarity and protecting the rights of children". A Euronet analysis²⁰ welcomed the NAPs as a significant step forward, but drew attention to several weaknesses. For example: few Member States integrated a concern for child poverty and social exclusion through their NAPs/incl, or used the UNCRC as a shaping framework; children were seen more often in their family context, rather than in their own right; and few Member States addressed the participation of children living in poverty, or consulted children or children's organisations in the preparation of the Plan.

A further Commission overview²¹ of the second round of NAPs/incl reports (2003) identified that child poverty and exclusion were key priorities in a number of existing Member States, including Germany, Ireland, Italy, Luxembourg, Portugal, Sweden and the UK —with some (e.g. Ireland, Portugal and the UK) developing targets for reducing or eradicating child poverty. Although some countries emphasized the importance of the UNCRC, overall the Commission concluded that there was a limited focus on children's rights in most States; this reflected children's very limited involvement in the preparation of the NAPs/incl, and helped to explain the absence of indicators exploring children's own perspectives on their experiences of poverty and social exclusion.

In 2005, the Commission published a first evaluation of NAPs/incl reports from the new Member States²². This showed that high levels of child poverty and social exclusion are widely acknowledged as a key challenge in most of these states. However there are strengths and weaknesses in the approaches adopted in response. For example:

- Some countries (e.g. Estonia, Hungary, Latvia, Malta, Poland Slovakia) have specific policy objectives of preventing and reducing child poverty (and/or promoting/protecting children rights).
- Others (e.g. Czech Republic, Lithuania, Cyprus) target particular groups of children, such as children in institutional care, young offenders, children at risk of violence, pre-school children, and Roma children.
- Only Estonia has specific overall quantified targets for poverty reduction for children, whilst Hungary and Latvia have a range of largely unqualified targets. Cyprus intends to set a target in future.
- Estonia, Hungary, Malta and, to a certain extent, Latvia, recognize the importance of the UNCRC as a guiding framework for policy. But in many countries, children's rights are not acknowledged and children's issues are primarily addressed through policy interventions aimed at families.
- There was little evidence of attempts to engage with children or children's organisations in the preparation of the NAPs/incl, although some structures are established which could assist this process.
- There is a lack of up-to-date child disaggregated data and indicators in relation to child poverty and social exclusion.

The report concludes that "...while there is in general an acknowledgement of the need for an integrated and multidimensional strategy this remains rather underdeveloped in most NAPs/inclusion and generally the scale of what is proposed is not sufficient to make a decisive impact on the eradication of child poverty and exclusion".

A European Parliament report in 2005²³ highlighted a range of general problems, including the low level of employment, shortcomings in health-care provision and the education system, and the problem of social exclusion of minorities, and called on governments —among other things— to devote particular attention to eliminating child poverty.

Towards the EU's future response

Significant progress has been made in developing the EU's Social Inclusion process since 2000. For instance, knowledge about poverty and income inequality in the EU has improved, and Member States have engaged positively with the Open Method of Co-ordination. However in practice, real progress in addressing child poverty and social exclusion within the Member States has been limited.

Child poverty has emerged as a strong theme within the NAPs/incl process, and has been highlighted frequently by Member States in their reports and by the European Commission in its summaries. This focus has been strengthened by the growing emphasis on human rights—and within this framework, on children's rights—within the EU, as exemplified by the inclusion of new articles on children in the proposed Constitutional Treaty.

Despite these positive references, some uncertainty remains, however, as to the future direction of the EU's broader Social Policy Agenda that will cover 2006-2010²⁴. Faced with dramatic economic, social and political change (including EU enlargement, population ageing and the pressures associated with globalisation), tension has emerged at EU level over the present review of the European Commission's "Lisbon Strategy"—and in particular, over Commission proposals to prioritise jobs and economic growth over social policy. At the European Council in March 2005, the Presidency confirmed a strong emphasis on the former, whilst acknowledging the continuing importance of social cohesion²⁵. However it appears that there is still a risk that the EU's social inclusion strategy—and therefore the place of children's rights within it—will be downgraded.

Recommendations

- Tackling child poverty and social exclusion should be given high political priority at EU and Member State levels. Children's rights should be mainstreamed in EU policy making (and in particular a specific focus on children should be ensured within the 2005 reviews of the Lisbon Strategy, and the overarching EU Sustainable Development Strategy). In the longer term, tackling child poverty and social exclusion should be a central aim of the EU's proposed "Year of combating poverty and social exclusion" in 2010.
- The European Commission should strengthen references in the Common Objectives to child poverty and social exclusion and seek to ensure more strategic and integrated approaches by Member States, drawing upon the framework of the UNCRC.
- All Member States should adopt ambitious and achievable targets for reducing—and eventually eradicating—child poverty, linking these to specific strategies and timetables for delivering them. Progress should be reviewed regularly, with the participation of all key stakeholders, to assess whether the targets have been achieved, and further action that may be required.
- Within the Open Method of Co-ordination and the NAPs/incl process, progress in addressing child poverty and social exclusion should be a key policy objective where effort should be concentrated by all Member States. The participation of children and children's organisations in this process should be encouraged at all levels.
- Regional and local level authorities should be more fully involved in the development and implementation of the NAPs/incl. Capacity building at local level should be enhanced, bringing together all key stakeholders—e.g. state and local government, NGOs, experts, people living in poverty—to discuss problems, identify common goals, and take joint action.
- Data and indicators on child poverty and social exclusion should be strengthened at EU and Member State levels to focus more clearly on the socio-economic circumstances of children. This requires, for example: re-examination of existing "equivalence scales"; disaggregation of data on "households" to reveal the spe-

Street children in the new Member States

UNICEF defines a "street child" as "any boy or girl for whom the street in the widest sense of the word has become his or her habitual abode and/or source of livelihood, and who is inadequately protected, supervised or directed by responsible adults." In practice, "street children" can encompass children in a wide range of circumstances, including: those who are homeless; Roma children; children engaged in prostitution; children who have run away from their families or from residential care; or children working in the street—or a combination of the above. Most—around 60%—are between ages of 12 and 16. The issue is particularly significant in the EU (10) and candidate countries, but there are also many street children living in the EU (15). No reliable official comparative statistics are available, however some national statistics exist. In Poland, for instance, police figures indicate that in 2002 there were 5 625 children who had run away from home (4 042 were under 15) and 6 662 who had run away from residential care institutions to go back to the streets. ...

... According to organisations attending a recent seminar organised by the European Foundation for Street Children Worldwide (EFSCW), "...the main reasons for children living in the streets are still low family income, bad emotional relationships and a society that is not sufficiently child-oriented, with a social system that does not provide modern intervention strategies and does not offer appropriate opportunities for the re-integration of children at risk. Poverty is often associated with violence from one or both parents, with the death of a parent or of both, re-marriage of a parent or their living with another partner. Children are most at risk of poverty in these cases. Care institutions often do not offer appropriate solutions...".

European Foundation for Street Children Worldwide, *Street children and youth as a priority of the EU's social inclusion policy for the new Member States in Central and Eastern Europe*, Summary Report of Symposium, 9-10 December 2004, Brussels.

cific circumstances of children; participatory exploration of children's perspectives (in line with Article 12, UNCRC); and more comprehensive analysis of children's well-being across Europe.

- The European Commission should ensure that the new 629 million euro PROGRESS Community Programme for Employment and Social Solidarity (2007-2013), which brings together budget lines for social protection and inclusion (and other issues relevant to children, such as anti-discrimination and diversity, and gender equality), maintains a significant focus on the rights of children, especially those facing poverty, social exclusion and discrimination.
- The European Commission should explore the potential role of the EU's Structural Funds —and in particular the European Social Fund— in tackling child poverty and social exclusion in the new Member States (alongside existing action to promote active labour markets, lifelong learning, and gender equality).
- Consideration should be given to the longer term aim of Member States setting minimum standards for social provision to tackle child poverty and social exclusion, drawing upon the standards of the UNCRC to ensure no child is denied their rights (to adequate resources, housing, health care, social security, education, play and leisure etc.). For example, there is a case for a basic income for children, guaranteeing that financial support for children should reach a specified percentage of the median household income in each country²⁶.



1. HOELSCHER P., *A thematic study using transnational comparisons to analyse and identify what combination of policy responses are most successful in preventing and reducing high levels of child poverty*, University of Dortmund, 2004.
2. These include the "Luxembourg Income Study", OECD's project on income inequalities, The European Community Household Panel (ECHP), and the UNICEF Innocenti Report cards.
3. The ECHP does not include information for Finland and Sweden, nor is there a common data source for the EU (10).
4. EU-SILC is an annual survey and will become the main EU reference source for income and social exclusion statistics, and in particular for indicators of social inclusion. From 2005 it will cover the 25 EU Member States, and Bulgaria, Romania, Turkey, Croatia, Norway and Switzerland.
5. There is, however, nothing to prevent individual countries reporting additional indicators computed using alternative scales if this is considered more relevant to specific circumstances —indeed this is encouraged under the Open Method of Coordination.
6. This is commonly referred to as the modified OECD scale, and is often used internationally.
7. For detailed discussion of indicators, see HOELSCHER P., *A thematic study using transnational comparisons to analyse and identify what combination of policy responses are most successful in preventing and reducing high levels of child poverty*, University of Dortmund, 2004 and ATKINSON A.B., CANTILLON B., MARLIER E. and NOLAN B., *Taking Forward the EU Social Inclusion Process*, Luxembourg, 2005.
8. ATKINSON A.B., CANTILLON B., MARLIER E. and NOLAN B., *Taking Forward the EU Social Inclusion Process*, Luxembourg, 2005.
9. 2001 figures.
10. 2002 figures.
11. It is important to acknowledge that relative measures of poverty need to be treated with caution. This is especially important when comparing poverty and social exclusion figures within the context of the enlarged Union. In practice, there are some new Member States with narrow income distributions which consequently appear to show that relative poverty is low, whereas actual material standards of living are poor; focusing on several indicators may reveal a more accurate picture. See DENNIS I., GUIO A.-C., *Monetary poverty in the new Member States and Candidate Countries*, Population and Social Conditions 12/2004, Eurostat.
12. No figures available for Denmark, Finland and Sweden.
13. MICKLEWRIGHT J. and STEWART K., "Child Well-being in the EU and Enlargement to the East", *Innocenti Working Paper*, 75, UNICEF, Florence, 2000.
14. EUROPEAN COMMISSION, *Joint Report on Social Inclusion 2004*, Luxembourg, Office for Official Publications of the European Communities.
15. FEANTSA, *Youth Homelessness in the European Union*, 1998.
16. LANSDOWN G., *Challenging Discrimination Against Children in the EU*, Euronet, Brussels, 2000.
17. The Open Method of Coordination also covers pensions and healthcare as well as social inclusion.
18. The broad Objectives are: 1. To promote participation in employment and access for all to resources, rights, goods and services; 2. To prevent the risks of exclusion; 3. To help the most vulnerable; 4. To mobilise all relevant actors.
19. EUROPEAN COMMISSION, *Joint Report on Social Inclusion 2001*, Office for Official Publications of the European Communities, Luxembourg, 2002b.
20. RUXTON S. and BENNETT F., *Including Children: Developing a coherent approach to Child Poverty and Social Exclusion across Europe*, Euronet, 2002. Available on <www.europeanchildrensnetwork.org/Information/Information.htm>.
21. EUROPEAN COMMISSION, *Joint Report on Social Inclusion 2004*, Office for Official Publications of the European Communities, Luxembourg.
22. EUROPEAN COMMISSION, *Report on Social Inclusion 2005: An Analysis of the National Action Plans on Social Inclusion (2004-2006) submitted by the 10 new Member States*, Office for Official Publications of the European Communities, Luxembourg.
23. EUROPEAN PARLIAMENT COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS, *Report on social inclusion in the new Member States*, 29 April 2005, A6-0125/2005 final.
24. The EU's current Social Policy Agenda runs from 2000-2005.
25. EUROPEAN COUNCIL, *Presidency Conclusions*, Brussels, 22 and 23 March.
26. This was suggested by the "Report of the High Level Group on the future of social policy in an enlarged European Union", European Commission, 2004, and supported by ATKINSON A.B., CANTILLON B., MARLIER E. and NOLAN B., *Taking Forward the EU Social Inclusion Process*, Luxembourg, 2005.

Violence against children

Forms of violence against children

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Violence to children takes many forms, and may be physical, emotional/psychological, or sexual in nature. Often the forms of violence overlap, and children frequently experience multiple forms of violence. Violence to children can occur in the home, in schools, neighbourhoods, or institutions (see *Residential care and adoption*, page 141 and *Asylum and migration*, page 69). Poverty and stress—along with drug and alcohol abuse—appear to be the factors most closely and consistently associated with child abuse and neglect¹. Racism and xenophobia may also be a cause (see *Discrimination*, page 61). Children may be affected by witnessing violence, for example in the media or on the internet (see *Media and internet*, page 105).

A recent European review of research on violence against children² goes on to suggest that: “The perpetrators are individuals and groups known and unknown to the child, as well as institutions and larger social organisations. The violence occurs with varying degrees of planning, ranging from spontaneously violent responses to children arising out of the immediate situations in which they are engaged, to highly organized and pre-planned violence.”

Data on violence against children

The review cited above concludes that there are a number of problems with the available research and statistics that hinder the construction of any accurate national or European assessment of violence to children. For example, in-depth research (and even official statistics) covering all forms

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3 and 12** (see *Introduction*, page 16), the following Articles are relevant:

Article 6.—The right to life and development.

Article 19.—The right to protection from all forms of violence, injury, abuse, neglect or exploitation.

Article 28.2.—School discipline must respect the personal dignity of pupils.

Article 32.—The right to be protected from economic exploitation.

Article 34.—The right to protection from sexual exploitation.

Article 35.—The duty of the government to prevent the sale, trafficking and abduction of children.

Article 36.—The right to protection from all other harmful forms of exploitation.

Article 37.—The duty of the government to prohibit torture, cruel treatment or punishment.

Article 39.—The duty of the government to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration.

of violence experienced by children is available for very few countries. Data are also not readily comparable across countries because of differences between official data collection and research studies in definitions of key terms, what is considered lawful or unlawful, methods of data collection, and the relative emphases given to criminal or social welfare responses.

Moreover, official statistics concerning child protection registers, violent crime, rates of prosecution and conviction, etc., invariably represent only the tip of the iceberg. They reflect only those cases of violence which have come to the attention of the authorities, usually the extreme end of forms of abuse considered unlawful. In addition, studies usually focus on specific forms of violence in isolation, with little consideration of the associations between these forms of violence or the fact that children frequently experience multiple forms of violence during their lives.

Finally, there are relatively few studies where children themselves have been asked about their experiences and views relating to violence. Retrospective research into adults' childhood experiences is unlikely to reveal the true extent of violence experienced in early childhood that may not be remembered or reported.

The UN Study on Violence against Children

In line with Article 19 of the UNCRC, States have a duty to ensure that they do not perpetrate violence against children directly through their institutions and service providers. States also have the obligation to do all they can to deter and prevent violence and to create the necessary conditions to protect children from violence wherever it occurs. To fulfil these obligations, States are required to: develop clear legislation that prohibits all forms of violence against children, including all corporal punishment; ensure appropriate and effective enforcement of the law; and take all other necessary measures—educational, social and administrative—to prevent and eliminate violence.

The Committee on the Rights of the Children has also made clear that children have a significant role to play in contributing to efforts to prevent and address violence. This involves providing children with appropriate awareness and skills, and establishing suitable mechanisms to ensure their participation in research and monitoring, and in the development of relevant legislation and policy. For example, establishing child helplines is one participatory strategy for protecting and empowering children³.

"Almost 3 500 children under the age of 15 die from maltreatment (physical abuse and neglect) every year in the industrialised world. Two children die from abuse and neglect every week in Germany and the United Kingdom, three a week in France..."

UNICEF, "A league table of child maltreatment deaths in rich nations", *Innocenti Report Card*, No 5, September 2003, Florence: UNICEF*.

* The countries included are Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland and UK.



"In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore, children and young people must be meaningfully involved in promoting and strategizing action on violence against children."

UN Committee on the Rights of the Child, *Guiding Principles on Violence Against Children, Within the Family and in Schools*, Excerpted from /C/111, 28th Session, 28 September 2001.

"The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended."

Recommendation 1666/2004 of the Parliamentary Assembly of the Council of Europe on a Europe-wide ban on the corporal punishment of children in Europe, adopted June 24th, 2004.

Following a recommendation from the UN Committee on the Rights of the Child, in 2001 the UN Secretary-General appointed an independent expert, Paulo Sérgio Pinheiro, to lead a global study on violence against children⁴. The study, rooted in children's right to protection from all forms of violence, aims to promote action to prevent and eliminate violence against children at international, regional, national and local levels. A major report will be published in 2006 and recommendations presented to the UN General Assembly.

The EU's role in tackling violence to children

Participants at the Ljubljana Consultation also agreed to "strengthen and develop further all forms of international and cross-border co-operation, including prevention of criminal activities, in order to prevent and combat all forms of violence against children and to ensure that perpetrators of such violence do not escape justice and receive appropriate treatment."

In line with this conclusion, international and cross-border co-operation has so far been the primary focus of EU legislation and action in relation to violence to children. The 1997 Amsterdam Treaty introduced Article 29, which has encouraged—on an inter-governmental basis—the development of police and judicial co-operation in tackling crimes against children that cross national borders.

Following the 1996 World Congress against Commercial Sexual Exploitation of Children in Stockholm, and public condemnation of the horrendous "Dutroux" sex abuse case in Belgium, the European Parliament established the Daphne Initiative on a pilot basis from 1997-1999. It was intended to support NGOs in tackling violence against children, young people and women, and generated massive interest. The success of the pilot led to a legal basis being found for the Initiative, and the Daphne programme was then funded with EUR 20 million initially until 2003⁵, and then again (Daphne II⁶) with EUR 50 million from 2004-2008.

Since the establishment of the Daphne Programme, action has been taken across a range of fields. Whilst this has been limited in relation to violence to children within the family, and violence in schools (and other settings beyond the family), there have been various initiatives to tackle cross-border issues (particularly those where sexual violence is involved). These areas include: mutual recognition of convictions for offences against children; child trafficking; and child sex tourism. In 2003, the EU also developed "Guidelines on Children in Armed Conflict" (see *Context*, page 24, for details).

Violence to children within the family

Much violence within the family remains hidden, and official data reflect legal definitions of "abuse" rather than the real extent of violence experienced by children. However, children are beginning to voice their opinions about the hurt it causes to them. The largest survey of children's experiences of family violence in Europe and Central Asia was UNICEF's 2001 "Young Voices" study, in which 6 out of 10 children reported violent or aggressive behaviour within their families, and 11 per cent stated it occurred often⁷.

Physical "abuse" of children in the family is almost invariably physical or corporal punishment, violence administered in a context of discipline, punishment or control⁸. Corporal punishment breaches children's fundamental human rights to respect for human dignity and physical integrity. This reality provides an immediate imperative for ending the practice. The Committee on the Rights of the Child has repeatedly recommended that all States should implement legal reforms to prohibit all corporal punishment and public education campaigns to promote positive, non-violent forms of discipline, including within the family⁹. In particular, the Committee has condemned legal formulations that seek to define "acceptable" levels of violence to children¹⁰.

Whilst the human rights arguments are sufficient in themselves to justify outright bans, physical punishment is also dangerous, and has been identified as a significant factor in the development of violent attitudes and action, both in childhood and later life. It also inhibits or prevents positive child development and positive forms of discipline, and can have a significant impact on children's health and education (see *Child health*, page 81 and *Education*, page 115).

In many EU states, public support for legislation to ban corporal punishment has strengthened over time. At present, eight EU Member States (Austria, Cyprus, Denmark, Finland, Germany, Hungary, Latvia, Sweden) and six other European countries (Bulgaria, Croatia, Iceland, Norway, Romania, Ukraine) have introduced legal reforms explicitly banning all corporal punishment of children. And as a result of "collective complaints" registered by the World Organisation Against Torture (OMCT) in 2003 against five more countries, the European Committee of Social Rights has concluded (June 2005) that Supreme Court judgments in Italy and Portugal prohibit all corporal punishment of children. Belgium, Greece and Ireland were also judged in breach of their human rights obligations under the 1996 Revised European Social Charter¹¹ because they have not prohibited all corporal punishment¹². Other EU governments have recently either announced their intention to abolish corporal punishment (e.g. Netherlands, Slovak Republic), or to consider prohibition (Slovenia).

In a 1998 case, the European Court of Human Rights ruled that UK law failed to provide adequate and effective protection from inhuman or degrading punishment (Article 3, European Convention on Human Rights). However the Children Act 2004¹³ still allows the common assault of children to be justified as "reasonable punishment".

Violence in schools

At EU level, the European Commission launched a "Violence in Schools" initiative from 1998-2000 following the publication of Council of Ministers conclusions on safety in schools¹⁴, which called upon the Commission and the Member States to step up co-operation in this field. The programme supported a range of action to prevent and tackle violence, including pilot projects and networks, in-service training, and the exchange of practice and information¹⁵. Much of the learning from these actions is also relevant to other institutional settings beyond the family where violence to children can occur (see *Residential care and adoption*, page 141).

Of the school-violence related projects funded by the Commission, "Tackling Violence in Schools on a European-wide basis" (a "Connect" Initiative project¹⁶) was perhaps the most significant, producing country reports on the situation in 2001 regarding violence in schools in the 15 Member States and Iceland and Norway¹⁷ (few data on the countries of Central and Eastern Europe are available¹⁸). The project highlighted¹⁹:

- differences in the definition of what constituted "violence" (as a result of differences between disciplines and countries);
- variations in the nature of data available (including self-report questionnaires, victim surveys, structured interviews, teacher reports and observations of violent behaviour), and an overall lack of systematic data collection;
- specific legal requirements (in Belgium, Finland, France, Germany, Ireland, Luxembourg, Sweden and the UK) to prevent violence or bullying on the school premises. While providing a useful framework, such policies could, however, be ineffective unless combined with other initiatives;
- a range of targeted programmes (e.g. in Austria, Finland, Germany, Portugal, Spain, Sweden), including curriculum work, individual work with at-risk students, and other measures;
- other related initiatives, including: preventative approaches to promote pupil responsibility and a positive school climate; security measures (e.g. helplines, alarm bracelets, and video surveillance); whole-school approaches; and teacher training;

Summary of Conclusions of the Regional Consultation for the UN Study on Violence Against Children, Ljubljana, Slovenia, July 7th, 2005

At the consultation, participants from all the countries of the European and Central Asia region agreed to take a range of actions at domestic and regional level to tackle violence against children*, including:

- Developing and implementing measures at all levels to prevent violence against children, with the active assistance of civil society organisations.
- Ratifying relevant international treaties, and enacting, amending or repealing all domestic legislation in order to prohibit all forms of violence against children including corporal punishment and humiliating treatment.
- Giving the highest visibility and political importance to the prevention of violence against girls and boys.
- Upgrading technical, legal, procedural and institutional capacity across relevant sectors (e.g. education, health, justice, protection services and labour inspections) to identify violence.
- Seeking to establish, analyse and regularly monitor the extent of different forms of violence against children, collecting disaggregated data by sex, age and other relevant factors.
- Intervening in an early, effective, gender sensitive and child friendly manner to prevent victimisation and re-victimisation.
- Developing systematic and integrated education on child protection.
- Creating opportunities for children and young people to play a more active role in addressing violence.

* The Ljubljana Final Conclusions to Act Now on Violence Against Children, Regional Consultation for the UN Study on Violence against Children, July 7th, 2005, Ljubljana, Slovenia.

"Data confirm that abused children pay a long-term price as they are more likely to take dangerous risks in their own lives. This adds to the price our whole society pays with suicides, depression, drug and alcohol abuse, delinquency, and domestic violence."

Dr Marc Danzon, WHO Regional Director for Europe, "Home sweet home?", WHO/UNICEF press release, March 15th, 2005, <www.unicef.org/media/media_25599.html>.

"...I wouldn't smack any of my children anyway because they will just start smacking other people and if I smack someone then they are going to start smacking other people, because they think grown ups do it and if the law didn't allow smacking I would just send them out to their room and let them have a think about it."

Seven year-old girl quoted in WILLOW C., and HYDER T., *It Hurts You Inside. Children Talking about Smacking*, National Children's Bureau/SCF UK, 1999.

— Overall, there was little systematic evaluation of initiatives that had been taken.

The Council of Europe took up similar themes within the framework of a broader project from 2002-2004 entitled "Responses to violence in everyday life in a democratic society"²⁰. In a summary publication²¹, a Final Declaration agreed by participants at a major conference in Strasbourg (2-4 December 2002) argued that several recent tragic incidents²² had become widely known through media reporting, but actually were relatively few in number. Nevertheless, although it was important not to exaggerate the scale of the problem, such incidents reflected an increasing number of low level violent incidents in schools and communities (mainly perpetrated by boys). It concluded that the circumstances differed markedly between Member States (in terms of the forms that school violence takes and its context and causes) but that there was a general need to implement local inter-institutional strategies for awareness raising, prevention, and response.

Over the past 10-20 years, the issue of the corporal punishment of children at school has been the subject of several decisions by the European Court of Human Rights, which has repeatedly viewed it as a breach of Article 3 of the ECHR. Although only a minority of Council of Europe Member States has taken legal steps towards the total abolition of corporal punishment, nearly all have now prohibited it in schools, including private schools and other educational institutions²³.

Cross-border issues

EXCHANGING INFORMATION ON CHILD SEX OFFENDERS WHO CROSS BORDERS

The importance of the principle of mutual recognition of judicial decisions in criminal matters was highlighted at the Tampere European Council in 1999. Confirmed in the draft EU Constitution, its significance has again been recognised in the 2005 Hague Programme (see *Asylum and migration*, page 69)²⁴, which called on the Commission to put forward proposals with a view to stepping up exchanges of information on the contents of national registers of convictions and disqualifications, particularly on sex offenders with a view to its adoption by the Council by the end of 2005.

Increasing impetus has been provided by the "Fourniret" case in 2004, where a French national who had been imprisoned in France for child sex offences was able to secure work in a school in Belgium—and to commit further serious offences against children; Belgian authorities were unaware of his criminal record at the time of his employment.

In a White Paper in January 2005²⁵, the Commission highlighted some of the different approaches between Member States, including: different methods of organising national criminal records, widespread (but not universal) computerisation of central national registers, varied contents of registers²⁶, different degrees of access to them, and variations in the period of time for which information can be kept.

Currently, exchanges of information on convictions are governed by Articles 13 and 22 of the Council of Europe's 1959 "European Convention on Mutual Assistance in Criminal Matters", which requires state parties to notify each other once a year of all convictions in respect of their nationals. However there are problems²⁷, such as: difficulty in rapidly identifying the Member States in which individuals have already been convicted; difficulty in obtaining information quickly and by a simple procedure²⁸; and difficulty in understanding the information provided. On 13 October 2004 the Commission adopted a proposal for a Council Decision²⁹, designed to secure short-term improvements in the current mechanisms³⁰ (the "Emergency Measure"). Political agreement was reached at the European Council in February 2005, however national parliamentary reservations (e.g. in Sweden) are holding up implementation.

Another issue is that of disqualifications from working with children as a result of a conviction³¹. Here again,

there are even wider variations between Member States. Disqualifications are not always included in national criminal records, and such information circulates in a haphazard fashion. Where information is available, it is not necessarily recognised by another State. In November 2004, the Belgian Government submitted a proposal on mutual recognition of disqualification from working with children as a result of convictions for child sex offences³², which would oblige the Member State where a convicted person is resident to recognise prohibitions handed down abroad and to enforce them on its territory.

In order to address some of the problems outlined above, the White Paper proposes a two stage process. First, a “European index of offenders” would be set up, consisting of personal identification data and the Member State in which the individual concerned had been convicted (but not details of the offence committed or the sentence passed). By consulting the index it would be possible to identify any other Member State in which the individual concerned has previous convictions, and further details could be obtained directly from the Member State. Second, a computerised circulation system would be established, based on a “standardised European format” recognised by all the Member States³³.

In addition to the White Paper, in March 2005 the Commission has proposed a Council “Framework Decision” to determine the circumstances in which convictions should be taken into account in the Member States of the European Union in the course of new criminal proceedings³⁴. It also lays down a series of rules relating to entries in the national judicial record of convictions handed down in another Member State.

Meanwhile, some Member States already have bilateral agreements in place to facilitate better information sharing in criminal matters. For instance, France, Germany and Spain are setting up their own electronic system in 2005.

CHILD TRAFFICKING

It is hard to obtain accurate data on the extent and nature of child trafficking, owing to the lack of standardised information collection systems based on common definitions, and the clandestine nature of the activities involved. However, established trafficking routes into the EU can be identified (e.g. from West Africa countries, such as Nigeria; from China; from Albania, Bulgaria, Moldova, Romania, Russia, and the Ukraine). Within the EU, there is also movement (e.g. from the Baltic States to Scandinavia)³⁵.

As an EU Experts Group on Trafficking recently argued³⁶, children are particularly vulnerable to trafficking as it is easier for traffickers to target them through coercion or deception or manipulation and children have fewer possibilities to escape the exploitative relationship. Children cannot always rely on the protection of their families, who are often terrified of what the traffickers may do. Some groups of children—such as street children, children living in institutions, children from minorities and disadvantaged groups, and girls—are particularly vulnerable to being trafficked, because of the lack of opportunities, education and support.

Children may be abducted by traffickers, or handed over by their parents in the belief that they will be given education or “appropriate” employment, or because of their own poverty and desperation. The children often suffer demanding and dangerous journeys to their destinations. Moreover, “they may be sexually exploited and/or exploited in illegal activities or other forms of economic exploitation, exposed to violence of the exploiters and the clients. They often live on the streets or in inadequate accommodation, with no adult carers and no access to health, education and social services. These children usually have no legal status and therefore are prevented from seeking protection for fear of being returned. When identified by law enforcement authorities they are often treated as illegal migrants, criminalized, held in detention centres (where some children are abused) and finally deported to their country of origin. Families often do not want the child back because of the stigma attached and in the worst cases children are re-trafficked. All these experiences may have devastating long-term consequences for a child, whose protection needs are much greater than those of adults”³⁷.

Action funded by the Daphne Programme

According to information recently released by the European Commission*, of around 300 projects funded by the Daphne programme between 1997 and 2003, 48 % were dedicated to children and young people, with a community funding amounting to EUR 15 million. These projects yielded around 350 outputs of all kinds and involved about 750 organisations in the 25 Member States. The main issues tackled were: family violence (34 % of the projects), sexual violence (27 %), trafficking in human beings (18 %), commercial sexual exploitation (11 %), violence at school (8 %), abuse of Internet and pornographic images of children (7 %). Most projects involved the exchange of good practice, studies, research and data collection, or support to transnational multidisciplinary networks. According to evaluation of the effectiveness of the projects: 83 % of the partner organisations gained expertise, and direct impact on beneficiaries (children and young people) was achieved in 79 % of the projects. It was also estimated that 12 % of the projects had a specific impact on legislation and/or on public authorities, moving Daphne “beyond direct help to victims and those at risk to a longer-term contribution through input to discussions and policy-making**”.

* Commission’s actions in favour of children and young people, MEMO/05/171, Brussels, 25 May 2005.

** Commission’s actions in favour of children and young people, MEMO/05/171, Brussels, 25 May 2005.

"The idea of schools as fortresses, cut off from the neighbouring community, is dangerous... Cutting schools off from their neighbourhoods by erecting walls means cutting them off from citizens, their natural protectors."

Éric Debarbieux, President of the European Observatory on Violence in Schools*, Interview, December 3rd, 2002, <www.violencestudy.org/europe-ca/fieldstory_interview2_CoE.htm>.

* See <www.obsviolence.com/english/index.html> for details.

"Children are not only victims in need of protection but also have rights, consistent with their status under the UN Convention on the Rights of the Child, capable of decisions and actions, whose view should be taken into account consistent with Article 12 of the Children's empowerment —aimed at increasing their resilience as well as at strengthening the protective factors belonging to their environment— is crucial both for the prevention of trafficking and for their recovery and reintegration."

Report of the Experts Group on Trafficking in Human Beings, December 22, 2004, Brussels: European Commission.

In addition to the articles outlined above (and in particular Articles 19, 32, 34-37 and 39), other international instruments are relevant to child trafficking. The "Optional Protocol to the Convention on the Rights of the Child on the sale of children³⁸, child prostitution and child pornography" of 25 May 2000 requires States to prohibit, in their criminal law, the sale of children, child prostitution and child pornography, whether such offences are committed domestically, transnationally, individually or on organised basis (Article 1)³⁹. Article 32 of the UNCRC is also elaborated in ILO Convention No 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour⁴⁰, adopted to give priority to stopping types of child labour that cause particular harm to children⁴¹.

Another relevant international instrument is the "UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime" (the Palermo Protocol, 2000). According to the Protocol, "child trafficking" can be defined as "the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation either within or outside the country". "Exploitation" is defined as including, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3). The Protocol contains a number of special provisions on children (Articles 2, 3, 6, 9, 10)⁴².

At European level, the legally-binding 2005 Council of Europe "Convention on action against trafficking in human beings" has already been signed by 15 European countries⁴³. Significantly, the treaty identifies trafficking as a violation of human rights; extends the scope of the Palermo definition to cover both transnational and internal trafficking, and trafficking not necessarily involving organised criminal groups; contains minimum standards for the protection of the rights of trafficked persons (including a reflection period of 30 days to allow them to consider); and sets out provisions related to the prevention and criminalisation of trafficking. It also establishes an independent body of experts (GRETA) to monitor the implementation of the treaty by those states that have ratified it.

Within the context of the EU, two Council Framework Decisions have been adopted, drawing on the legal basis provided by the Amsterdam Treaty. They provide the underpinning for the EU's legislative approach to child trafficking. The first, on combating trafficking in human beings (2002)⁴⁴, seeks to develop a comprehensive EU approach to trafficking by establishing uniform definitions and common standards of sanctions, liability and jurisdiction⁴⁵. The second, on combating the sexual exploitation of children and child pornography (2003)⁴⁶, seeks to harmonise state laws combating the sexual exploitation of children and child pornography.

In 2004, a Council directive was formally adopted, providing short-term (6 months) residence permits for victims of trafficking⁴⁷ who cooperate with the authorities to prosecute traffickers. The directive is primarily concerned with adults, although Member States can issue residence permits on humanitarian (or other) grounds to child victims; it is for Member States to decide at what age children can be considered sufficiently mature to understand the risks involved, and to co-operate⁴⁸. Article 10 also states that where the residence permit is granted to children Member States must "take due account of the best interests of the child" (in line with Article 3 UNCRC), and other clauses cover issues such as reflection periods, access to education and issues for separated children. Nevertheless, there is a risk that in Member States that exclude children from the proposal, traffickers will be more likely to target them as they will not benefit from short-term permits. Moreover the overall purpose of the directive is explicitly to institute criminal proceedings against traffickers, rather than to protect victims or witnesses; whilst this focus stems from a limited legal basis, in reality many children who are trafficked are too fearful of retribution from the traffickers, or unaware of their legal rights, to support a prosecution if insufficient protection measures are available⁴⁹.

Building on previous policy initiatives within the European Council⁵⁰ and European Parliament⁵¹, and European Commission⁵², the Commission's five-year "Hague Programme" (see *Asylum and migration*, page 69), adopted in 2005, highlights among its priorities the importance of developing a common immigration policy at Union level,

"while further strengthening the fight against illegal migration, smuggling and trafficking in human beings, in particular women and children." It goes on to state that the Commission will develop a Communication on trafficking in human beings in 2005, and that it will review (and where appropriate, further develop) present legislation on trafficking in human beings in 2006. One important influence on the development of the Programme (and the Communication, in particular) will be the report of the "EU Experts Group on Trafficking in Human Beings"⁵³ on actions the European Commission should take. Importantly, the report covers all areas related to trafficking including prevention, migration issues, protection and support, and law enforcement, and takes a strong human rights approach.

Despite the wide range of legislative and policy initiatives outlined above, there are significant weaknesses in the EU's current approach to child trafficking. For instance, the focus has been primarily on concerns of law enforcement and judicial co-operation, rather than prevention, or safeguarding children's rights. Most emphasis has also been on internal rather than external EU policy, and co-ordination between these domains has been lacking. A common definition and terminology has been lacking too, excluding some forms of exploitation for which children are increasingly trafficked (e.g. adoption, organ transplant, marriage or involvement in illegal activities, such as begging and drug smuggling)⁵⁴.

In terms of programmes, although DAPHNE and AGIS can both address particular aspects of child trafficking (e.g. information campaigns, and police co-operation, respectively), there is a lack of a child-specific focus overall. For instance, no programme is able to address child trafficking within development and migration policy, and across all countries involved in trafficking chains.

CHILD SEX TOURISM

The extent of child sex tourism world-wide is unknown, however there is evidence that this phenomenon is well-developed in parts of Asia (e.g. The Philippines, Thailand, Sri Lanka, Vietnam) and Central and South America (e.g. Brazil, Peru, Dominican Republic, Caribbean). More recently, other destinations have also experienced significant rises, including Africa (e.g. South Africa), and states in Central and Eastern Europe (e.g. Estonia, Poland, Romania, Russia, Czech Republic, Ukraine). There are also increasing fears that insecurity and isolation in the aftermath of humanitarian crises such as the Asian tsunami and the earthquake in Pakistan leave children at risk of exploitation.

Many of those who travel abroad to have sex with children come from Western Europe⁵⁵. Research suggests that the problem cannot be reduced to the activities of a small number of "paedophiles"⁵⁶; rather, the main perpetrators are a wider group of people who take advantage of being in another country to ignore the social taboos which would normally govern their behaviour. It is also closely linked to the broader issues of child trafficking and child pornography.

It is widely accepted that child sex tourists are invariably men, but the age span is wide and they can come from any social class. Often offenders have previous convictions in their own countries for sexual offences against children. In most cases, there is more than one crime that has been committed. Child victims can be either male or female, and most are poor, having been driven into exploitative situations by their circumstances⁵⁷.

Over the last decade the EU institutions have been active in the promotion of measures to tackle child sex tourism. In 1996, for instance, the European Commission published a Communication on combating child sex tourism⁵⁸, which identified proposed EU measures to:

- deter and punish child abusers (e.g. by enacting laws to punish offenders for offences and crimes committed against children abroad, and by giving national courts extra-territorial jurisdiction; improving collection and exchange of information on sex tourism; and providing better information for travellers);
- stem the flow of sex tourists from Member States (e.g. through information and awareness campaigns, and

"Bearing in mind my responsibility for Justice, Freedom and Security in the EU, I will consider the prevention of and the fight against the trafficking of children as a political priority."

Franco Frattini, Vice-President of the European Commission, letter to Euronet, February 2, 2005.

"The most widely acknowledged sector in which trafficked children are exploited is commercial sexual exploitation, through both prostitution and pornography. Although this continues to be a major reason for the trafficking of children into and within Europe, children are also trafficked for a range of purposes including labour exploitation, domestic work and illegal adoption. Children are made to beg for money or engage in illicit activities such as theft, pick-pocketing, selling goods in the street and drug dealing."

VAN REISEN M., STEFANOVIC A., *Lost Kids, Lost Futures: the EU's response to Child Trafficking*, Geneva: Terre des Hommes, 2004.

C. is a 16 year old Romanian girl, who was raised by her mother and lived with her and 2 siblings. When the mother remarried, her stepfather abused her sexually. The girl decided to leave, persuaded by a girlfriend who was working as a prostitute. She thought that prostituting herself abroad was a chance to raise money. She was taken to France and Italy, and ended up in Ireland. There she was caught by a group of traffickers who locked her in a flat, together with other girls. She was forced to prostitute herself from 12 p.m. till 4 a.m. After a police raid she was repatriated to Romania, where she has been supported by Save the Children and has returned to education, successfully passing her exams.

Summary of case study quoted in European Network Against Child Trafficking, *A report on Child Trafficking*, Save the Children Italy, Rome, 2004.

"Any measure aimed at preventing trafficking should entail specific measures to address and prevent violence, abuse and exploitation of children. Best practices on the prevention of child trafficking should be developed, implemented and disseminated. Children represent an increasing vulnerable group and should be guaranteed special attention, protection and opportunities. Existing international instruments dealing with children should be enforced."

Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, European Commission, Brussels.

the reinforcement of codes of conduct and self-regulation within the industry);

- help to combat sex tourism in countries of destination (e.g. through political dialogue with countries affected, financial support for the protection of child victims).

In 1997, European Council adopted a Joint Action on combating trafficking in human beings and the sexual exploitation of children⁵⁹. This set out, among other things, that Member States must review existing national law and practice so that sexual offences committed abroad could be tried in the domestic courts (e.g. the principle of extraterritorial legislation). Within the EU, such laws exist in 16 Member States⁶⁰, however the characteristics vary from state to state. For instance, extra-territoriality normally applies to nationals only, but some countries have extended the scope to offenders who are habitually resident (e.g. France, Belgium) or even to people in transit through their territory (e.g. Belgium, Sweden). In line with the Joint Action, most countries require, under "double criminality", that the facts constitute an offence both domestically and in the country where it was committed (e.g. Sweden, Belgium, France, the Netherlands), but it is not required, or has been abolished, in others (e.g. Finland, Germany, Hungary, Italy). The principle of "double criminality" has been consistently criticised by a range of bodies⁶¹. Moreover, the End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes campaign (ECPAT)⁶² has identified that although some prosecutions have been successful, problems remain (e.g. ignorance of [and conflicting] laws, delays, media intrusion, unsympathetic treatment of witnesses, and cultural/language problems). It has therefore argued that: the scope of application of extra-territorial jurisdiction should be extended; the conditions which are formally required for the initiation of a prosecution should be eased; assistance to child victims should be improved; and expertise should be enhanced at all levels.

In 1999, a Communication from the Commission⁶³ highlighted a range of actions that have been initiated by the EU to combat child sex tourism. These included: organising meetings at European level of the main players in the fight against sex tourism; providing funding for research into the links between child sex tourism and the growth of trafficking in young women; and supporting national awareness-raising campaigns and the training of tourism professionals⁶⁴. In particular, a Eurobarometer survey⁶⁵ was undertaken into child sex tourism; this found that 85 % of Europeans were aware of the problem and felt that EU action was "essential" in response.

Since then, the European Commission⁶⁶ has supported further NGO projects (e.g. the development by ECPAT of a certified Code of conduct for tour operators; exploration by the International Federation of Journalists [IFJ] of how to address media coverage of child sex tourism), and the development of an International Campaign against the Sexual Exploitation of Children in Tourism, led by the World Tourism Organisation (WTO), in partnership with ECPAT, the IFJ, and Terre des Hommes. The campaign has included:

- Awareness-raising action targeting host communities and national tourism administrations in destination countries;
- Following-up the certified Code of Conduct for tour operators;
- Developing media awareness of the ethical dimension of responsible tourism;
- Dissemination of WTO Guidelines for National Tourist Administrations;
- Incorporating training modules into tourist operator schools;
- Production of TV and radio spots and maintenance of a web-site;
- Dialogue between media professionals and relevant NGOs, international agencies and trade unions in the tourism sector;
- Presence at tourist fairs and application of the Code of conduct.

No specific EU budgetline now exists to combat child sex tourism, however funding may be available through the AGIS Programme (2003-2007) on police and judicial cooperation in criminal matters, or the DAPHNE Programme (see above, page 51).

Recommendations

- In line with Article 19 of the UNCRC, EU Member States should work together to ban all forms of physical punishment of children. Alongside appropriate legal reform, the emphasis should be on ending social acceptance of violence to children, and developing education strategies to strengthen positive non-violent approaches. Children should participate in this process (e.g. through education in non-violent relationships).
- The European Commission, working with the Council of Europe and OECD, should fund initiatives to prevent all forms of violence to children in the Member States, and develop a database of evaluated projects to facilitate the exchange of learning and good practice.
- EU Member States should seek to improve the availability and coverage of research and statistics on violence to children in all its forms, working together with the ChildONEurope initiative, WHO, Council of Europe, and European Commission. Greater priority should be given to involving children in the research on violence.
- EU Member States should agree to mutual recognition of disqualification from working with children as a result of convictions for child sex offences, and for dangerous or violent offences. Member States should also ensure better information sharing on convicted child sex offenders who cross national boundaries.
- The European Commission should develop a clear legal definition of child trafficking, based on the UNCRC and the Palermo Protocol, which would apply to the legislative and policy framework of the EU and all the Member States. This should reflect the special vulnerability and specific rights of child victims, and cover all forms of exploitation experienced by trafficked children.
- All trafficked children should be perceived as victims rather than criminals and interventions must be informed by child rights principles, rather than the maintenance of crime control or migration policies. Drawing on the UNCRC (especially the core principles of Articles 2, 3 and 12), the 2005 Commission Communication on trafficking should include a strong common protection framework for children who are suspected victims of trafficking⁶⁷.
- All EU states (apart from UK, Ireland and Denmark) are obliged to bring their national law into line with the Council Directive on short-term residence permits for victims of trafficking before 6 August 2006. NGOs should seek to ensure that transposition by Member States safeguards children's rights. Although ideally a child should be granted a residence permit without having to testify against traffickers, a realistic option would involve the extension of "reflection" periods beyond 30 days (as permitted under the directive).
- Alongside measures to stem the flow of sex tourists from the EU, child sex tourism should be addressed in contractual relations between the EU and third countries. In particular, greater pressure should be put on countries that tolerate child sex tourism (especially applicant countries) to take further action.
- All Member States should ensure that effective extra-territorial legislation is in place to ensure that their nationals are prosecuted for any offences against children committed abroad, in line with Article 34 of the UNCRC. Where it exists, the principle of "double criminality" should be abolished.
- Member States should improve assistance to child victims of all forms of sexual exploitation, including both psychological and social support and education measures, in accordance with Article 39 of the UNCRC. Children are not only victims in need of protection, but also subjects of rights, whose views should be taken into account consistent with Article 12 of the UNCRC.

The Code of Conduct for the Protection of Children from Sexual Commercial Exploitation in Travel and Tourism

Suppliers of tourism services adopting the code commit themselves to implement the following six criteria:

1. To establish an ethical policy regarding commercial sexual exploitation of children.
2. To train the personnel in the country of origin and travel destinations.
3. To introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.
4. To provide information to travellers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.
5. To provide information to local "key persons" at the destinations.
6. To report annually.

Until 2004, the Code developed as a project implemented through national ECPAT groups, funded by UNICEF and supported by the World Tourism Organisation. Following a successful Code launch in North America, held at UNICEF in April 2004, the Code became a non-profit organisation, registered in Sweden. The Code has been adopted by over 54 companies in 17 countries. In May 2005, the Code was launched with key partners in Bulgaria and Romania, including state administrations, tourism associations, hotels, trade unions, NGOs and INGOs.

For further details, see <www.thecode.org/>.

Footnotes

1. UNICEF, "A league table of child maltreatment deaths in rich nations", *Innocenti Report Card*, No 5, September 2003, UNICEF, Florence, 2003.
2. RUSTEMIER, S. and NEWELL, P., *Violence Against Children in Europe: A preliminary review of research*, Innocenti Research Centre, UNICEF, 2005.
3. In 2003 child helplines in Europe received over 160 000 calls on abuse and violence against children, made by both children and concerned adults (data supplied by Child Helpline International).
4. The study is a UN-led collaboration, mandated by the General Assembly, to draw together existing research and relevant information about the forms, causes and impact of violence affecting children and young people (up to the age of 18 years).
5. The Daphne Programme (1997-2003): community action to combat violence against children, young people and women.
6. The Daphne II Programme (2004-2008): community action to prevent and to combat violence against children, young people and women and to protect victims and at-risk groups.
7. *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, UNICEF, Geneva, 2001.
8. RUSTEMIER, S. and NEWELL, P., *Violence Against Children in Europe: A preliminary review of research*, Innocenti Research Centre, UNICEF, 2005.
9. E.g. Report on the seventh session, UNCRC/C/34, 8 November 1994; General Discussion on Children's Rights in the Family, UNCRC/C/SR.166, 3 October 1994, § 13; Guidelines for Periodic Reports, October 1996, UNCRC/C/58, § 88; General Discussion day on violence against children, September 2000.
10. See the website of the Global Initiative to End All Corporal Punishment of Children, <www.endcorporalpunishment.org/pages/frame.html>.
11. The "Revised European Social Charter" is the counterpart in the social and economic field to the European Convention on Human Rights. Implementation in ratifying states is monitored by the European Committee of Social Rights. The Revised Charter is not an EU instrument, and is not to be confused with the EU's Charter of Fundamental Rights. The Revised Charter has been ratified by 11 EU states (Belgium, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Portugal, Slovenia, and Sweden).
12. Article 17 provides for the right of children and young persons to social, legal and economic protection.
13. Section 58, Children Act 2004.
14. Council Conclusions of 22 September 1997 on safety at school (97/C 303/02).
15. Further information is available on <europa.eu.int/comm/education/archive/violence/docs_en.html>.
16. See <www.gold.ac.uk/connect/> for details.
17. The reports were published in SMITH P.K. (ed.) (2003), *Violence in Schools: The Response in Europe*, RoutledgeFalmer, London, 2003.
18. BODIN, D., *Violence at School*, background paper for the Regional Consultation for the UN Study on Violence Against Children, 5-7 July, Ljubljana, Slovenia, 2005.
19. SMITH, P., "Violence in Schools: A European Perspective", in *OECD Lessons in Danger*, OECD Publishing, 2004.
20. The project aimed to help decision makers and others implement consistent policies of awareness-raising, prevention and law enforcement to combat violence in everyday life.
21. COUNCIL OF EUROPE, *Violence in Schools: A challenge for the local community*, Council of Europe Publishing, Strasbourg, 2003.
22. E.g. at schools in Dunblane, Erfurt, Barcelona and Paris.
23. BODIN, D., *Violence at School*, background paper for the Regional Consultation for the UN Study on Violence Against Children, 5-7 July, Ljubljana, Slovenia, 2005.
24. Communication from the Commission to the Council and the European Parliament, Brussels, The Hague Programme: Ten priorities for the next five years, 10 May 2005, COM(2005) 184 final.
25. European Commission, White Paper on exchanges of information on convictions and the effect of such convictions in the European Union, Brussels, 25 January 2005, COM(2005) 10 final.
26. For example, some registers contain all convictions; others only indicate the most serious offences.
27. See study carried out in 2000 by the Institute of Advanced Legal Studies (ISLA) under the Falcone Programme (2000/FAL/168), and study carried out in 2001 by the Institute for International Research on Criminal Policy (IRCP) under the Grotius Programme (2001/GRP/024).
28. For instance, owing to protection of privacy, the fears of Member States that their systems will be overwhelmed, and payments in order to obtain records.
29. Commission proposal for a Council Decision on the exchange of information extracted from criminal records, COM (2004) 664 final.
30. By, for instance, requiring an answer from a Member State in ten days, rather than an annual exchange only, and by allowing exchanges of information for purposes other than judicial co-operation (e.g. employment).
31. There are some concerns about low conviction rates in sex abuse cases, which may make disqualification following conviction a less effective preventative measure. For example, in a recent UK case in 2004, a school caretaker murdered two schoolgirls, even though he was known to the police and had faced repeated previous accusations. Because he had no convictions, he was able to gain employment in a school.
32. Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a Framework Decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children, 4 November 2004.
33. The format would include the following: data on the individual concerned by the decision; information relating to the form of the decision; information on the acts which gave rise to the decision; and information on the contents of the decision.
34. Brussels, 17 March 2005, COM(2005)91 final.
35. VAN REISEN, M., STEFANOVIC, A., *Last Kids, Lost Futures: the EU's response to Child Trafficking*, Terre des Hommes, Geneva, 2004.

36. Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, European Commission, Brussels.
37. Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, European Commission, Brussels.
38. "Sale of children" is defined in the Optional Protocol as: offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs for profit, or forced labour; improperly inducing consent, as an intermediary, for the adoption of a child; offering, obtaining, procuring or providing a child for child prostitution; producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography (Articles 2-3).
39. The Optional Protocol has been signed by all but two EU Member States, but only five have ratified it.
40. ILO Convention No 182(1999) on the worst forms of child labour and associated Recommendation No 190.
41. These are defined as: all forms of slavery or slavery-like practices, such as sale and trafficking, debt bondage, serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; hazardous work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (Article 3).
42. The Protocol has been signed by all the 25 Member States of the EU but it has been ratified only by seven.
43. Armenia, Austria, Croatia, Cyprus, Iceland, Italy, Luxembourg, Malta, Moldova, Norway, Poland, Portugal, Romania, Serbia and Montenegro, Sweden.
44. Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (Official Journal L 203 of 1 August 2002).
45. The framework decision on trafficking in human beings does not therefore address prevention, and includes only minimal provisions for protection of victims.
46. Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.
47. Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.
48. The UK, Ireland and Denmark are the only EU countries that are not yet signed up to the directive.
49. RUXTON, S., *Separated Children and EU Asylum and Immigration Policy*, Save the Children Denmark, Copenhagen, 2003.
50. E.g. Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, adopted February 2002, 6621/1/02 and Council Resolution on unaccompanied minors who are nationals of third countries, 26 June 1997, 97/C 221/03 (see section on *Asylum and migration* for details on the latter).
51. E.g. European Parliament Resolution on child trafficking and child soldiers, 3 July 2003, B5-0320/2003.
52. E.g. the Brussels Declaration of September 2002 gives a set of recommendations, standards and best practice relating to the fight against trafficking, and recognises the "special vulnerability and needs of child trafficked victims".
53. Report of the Experts Group on Trafficking in Human Beings, 22 December 2004, European Commission, Brussels.
54. VAN REISEN, M., STEFANOVIC, A., *Lost Kids, Lost Futures: the EU's response to Child Trafficking*, Terre des Hommes, Geneva, 2004.
55. RUXTON, S., *Child Sexual Exploitation: An Action Plan for Europe*, Save the Children Sweden, Stockholm, 2001.
56. O'CONNELL DAVIDSON, J., *Presentation at the First European meeting of the main partners in the fight against child sex tourism*, 24 November 1998.
57. ECPAT EUROPE LAW ENFORCEMENT GROUP, *Extra-territorial legislation as a tool to combat sexual exploitation of children*, Defence for Children International, Amsterdam, 1999.
58. COMMISSION OF THE EUROPEAN COMMUNITIES, *Communication from the Commission on combating child sex tourism*, 27 November 1996, COM(96) 547 final.
59. Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, Official Journal L 63, 4 March 1997. Summary available at <<http://www.europa.eu.int/scadplus/leg/en/lvb/133072.htm>>.
60. Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the UK (see section on *Asylum and migration* for details on the latter).
61. E.g. Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Report on the communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the implementation of measures to combat child sex tourism COM (1999) 262 - C5-0096/1999 - 1999/2097 (COS), A5-0052/2000 final.
62. End Child Prostitution, Child Pornography, and the Trafficking of Children for Sexual Purposes.
63. Communication from the Commission of 26 May 1999 on the implementation of measures to combat child sex tourism, COM(99) 262 final. Summary available at: <<http://www.europa.eu.int/scadplus/leg/en/lvb/133094.htm>>.
64. For example, in 1997-98, Terre des Hommes developed an in-flight spot to make travellers aware of the problem of child sex tourism. A Groupe Développement/ECPAT project aimed to inform travellers by distributing a "luggage tag" accompanied by an information leaflet, and to train the industry by developing teaching tools for lecturers in travel and tourism.
65. INRA Europe, *Europeans and their views on child sex tourism*, Eurobarometer 49, Brussels, 1998.
66. Through the Tourism Unit in DG Enterprise, and the Commission EuropeAid Cooperation Office.
67. This should include, for instance, provisions on: the child's access to health, education, psychological care and welfare services; procedures surrounding co-operation with the authorities; a multidisciplinary framework for child protection; procedures surrounding return and family tracing; and witness protection.

Discrimination

Discrimination is usually considered to affect groups such as women, disabled people, ethnic minorities, and older people—but rarely children. Yet the discrimination members of these groups may experience has some common features with the experiences of children. Often, members of these groups:

- receive different and unequal treatment (and are seen as having more limited rights) compared with that given to the “majority” group against which they are defined (adults, men, the non-disabled, white people etc.);
- have judgements made about their needs and welfare based on what other people consider them to be, rather than being asked directly;
- are seen as in need of protection rather than empowerment, while at the same time experiencing coercive or violent behaviour towards them;
- are seen as “dependants” and “unproductive”; and
- are denied participation in decision-making, whether about their own lives or about broader community interests.

There has as yet been little discussion at national or EU levels of the extent to which age discrimination is relevant to the experience of children¹. More clearcut is the reality that children from particular groups—e.g. those from ethnic minorities, with disabilities, from migrant families (see *Asylum and migration*, page 69), in institutions (see *Residential care and adoption*, page 141), facing poverty and social exclusion (see *Child poverty and social exclusion*, page 41)—can suffer discrimination, often on multiple grounds.

UN Convention on the Rights of the Child

Combined with other key provisions, such as Articles 3 and 12, Article 2 provides a powerful basis for challenging discrimination. Article 2 (the “non discrimination” clause) sets out that:

“1. States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status....”

Article 2, requires governments to ensure that all the rights in the Convention apply without discrimination to all children within the jurisdiction of the state concerned*. Children should have the right to be protected from all forms of discrimination, and under Article 2(2) they should also be protected against discrimination on the basis of their parents’ or guardians’ status, beliefs, activities or opinions.

* International Save the Children Alliance (2000) *Children’s Rights: Equal Rights*, London

Discrimination: the EU legal and policy context

Across Europe, the legally-binding 1950 European Convention on Human Rights (ECHR) applies to children, and has been ratified by all EU Member States. Article 14 requires that all rights in the ECHR must be respected without discrimination; although age is not referred to as a specific ground for discrimination, it is included under "other status"². However, the provisions of the ECHR were not drafted with children in mind, and the only specific reference is in the context of education³. Despite this limitation, rulings of the European Court of Human Rights in individual cases have led to some improvements in protection for children (e.g. the banning of corporal punishment in UK schools, limitations on inter-country adoption in Romania)⁴.

At EU level, the 1997 Amsterdam Treaty included a new Article 13, empowering the Community to tackle discrimination on a range of grounds, including racial or ethnic origin, religion or belief, disability sexual orientation, and, notably, age. Article 13 was modified by the subsequent Nice Treaty, allowing for the adoption of "incentive measures" by qualified majority voting in the Council. This provision is still not directly effective, however, and legislative action continues to require unanimity⁵. Based on Article 13, in 2000 the Council adopted two groundbreaking directives on race equality, and employment equality⁶. In 2004, the Council adopted another directive to implement the principle of equal treatment between women and men in the access to and supply of goods and services⁷.

Alongside a Community action programme to combat discrimination⁸, these directives have promoted a relatively advanced rights-based framework for countering discrimination, and have led to some strengthening of law and policy across EU Member States⁹. But although they are likely to have some positive indirect impact on children, as yet "there has been comparatively little discussion, at either policy or academic level, of the implications of age as a ground for discrimination, in spite of its formal articulation in Article 13. While the employment framework directive contains some provision relating to age-discrimination in the context of retirement, there has been no attempt to apply the equality paradigm to those at the other end of the age spectrum"¹⁰.

In June 2005, the European Commission launched proposals to designate 2007 "European Year of Equal Opportunities for All", supported with EUR 13.6 million of funding and addressing four key themes: rights, representation, recognition, and respect and tolerance. Alongside the draft Decision to set up the European Year, a framework strategy on non-discrimination and equal opportunities for all aims to ensure that EU anti-discrimination legislation is fully implemented and enforced by the Member States¹¹. It remains to be seen what the impact of this strategy will be, and how it will integrate the needs and rights of children and young people.

Fundamental rights and mainstreaming at EU level

In addition to Article 13, the Amsterdam Treaty also confirmed (in Article 6[2] of the Treaty on European Union) the EU's commitment to respecting fundamental rights within the Community legal order. This was reaffirmed by the proclamation in December 2000 of the "Charter of Fundamental Rights". The Equality section contains seven Articles, including a very broad non-discrimination provision, which unlike Article 14 of the ECHR, is free-standing. Article 20 of the Charter sets out the general principle of equality before the law; Article 21 addresses the principle of non-discrimination (covering the six grounds listed in Article 13 of the EC Treaty, and seven others¹²); and Article 24, as has been outlined in the *Introduction* (page 21), incorporates both the key principles of the "best interests of the child", and the "child's right to express views" from the UNCRC (Articles 3 and 12 of the Convention, respectively).

"There is a keen awareness of discrimination in society. While more children from higher socio-economic groups see patterns of discrimination, they themselves generally feel they have been treated fairly. Older children are more likely to identify discrimination than younger children..."

"Asked if they themselves have ever been discriminated against, a third of children report unfair treatment. Children in the transition countries (39 %) are much more likely to say this than their Western European peers (24 %), while girls are less likely than boys to report being discriminated against (63 % vs. 59 %)"¹.

UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, Geneva, 2001.*

* For details of participating countries, see *Children's participation*, page 129.

Since 2004 the Centre for the Study of Childhood and Adolescence in Cyprus has been running a campaign against racism and discrimination, backed by UN funding. For the campaign the Centre produced a video clip and a series of printed materials (including posters, stickers, and bookmarks) with the common slogan "...because no one is born a racist". All the materials were distributed and broadcast to children in both the Greek and Turkish-Cypriot communities of the island. The video shows a group of children from different ethnic backgrounds building a castle on the beach, highlighting diversity in childhood and the collaboration which can take place among children. Most of the TV stations on the island have shown it for free.

The Community action programme to combat discrimination (2001-2006)

This EUR 98.4 million programme covers all Article 13 discrimination strands apart from gender (which has its own gender equality programme). It promotes a range of positive measures to tackle discrimination, by improving understanding and knowledge of discrimination, developing organisational capacity to prevent and address discrimination (e.g. through exchange of information, good practice, networking), and promoting awareness-raising campaigns.

Among the projects supported, a small number have focused on children and young people. For example: the European Social Action Network led a project seeking to increase young people's awareness of stereotypes of Arabs and Muslims; the "Sezione Provinciale dell'Opera Nomadi di Reggio Calabria" led a project to tackle discrimination against Roma in schools; and "Handicap Amerique Latine" led a project to combat all forms of discrimination in primary school*.

From 2007-2013, funding for anti-discrimination actions will be provided through the PROGRESS programme (see section on *Child poverty and social exclusion*, page 41).

*EUROPEAN COMMISSION, *Community Action Programme to Combat Discrimination 2001-2006, Compendium of transnational actions for the exchange of information and good practice*, July 2002.

It seems unlikely that the Charter will be adopted as part of the proposed new Constitutional Treaty. Although the Charter will not therefore acquire binding force, the principles it sets out are still likely to influence the development of policy in the EU and implementation of these policies at national level¹³. Furthermore, the Charter is already becoming an important reference document for the European Court of Justice in interpreting Community law¹⁴.

Where children are concerned, the codification of their rights in the Charter, together with the prohibition of Article 13 age discrimination, amount to a significant step towards ensuring the greater visibility of children's interests within the Union and tackling the inequalities they experience¹⁵. For these instruments to have greatest effect, they need to be bolstered by a proactive strategy to mainstream children's rights within EU policy-making, learning lessons from efforts to mainstream gender equality over several years¹⁶.

Recent initiatives by the European Commission are likely to provide important opportunities to develop mainstreaming of children's rights. These include: the creation of a Group of Commissioners focused on fundamental rights, equality and anti-discrimination; integrated assessments of the likely impact of all important Commission initiatives on respect for fundamental rights (as set out in the Charter); and the establishment of a Fundamental Rights

Agency (for details, see *Context*, page 27).

Discrimination against children from ethnic minorities

Various forms of discrimination against the members of ethnic minorities occur in EU Member States. For instance, access to citizenship rights may be limited. The access of minorities to employment, education (see *Education*, page 115), health care and housing can be restricted¹⁷. And heavy-handed policing can target particular communities over others and can be the source of discrimination¹⁸.

Despite attempts in many states to prohibit racist portrayal of minorities in the media (e.g. through legislation, guidelines for media professionals, the establishment of equality bodies), coverage often presents minorities as the root cause of problems in society. For example, criminal acts may be, either directly or indirectly, associated with young people from particular minority groups. Or, as in the current climate, an atmosphere of "islamophobia", anti-semitism, and racist violence can be fuelled by some insensitive reporting. Feeding on such coverage (and a potent cocktail of related myths and stereotypes), racist activity continues to be a problem in all Member States, prompting growing fear and uncertainty among ethnic minority populations.

Widespread hostility exists towards children from minority groups too, who are often denied access to high standards of health care, adequate housing, quality education, and a safe environment. The experience of children of racism and xenophobia may also differ from that of adults. For instance, children spend significant amounts of time in unsupervised settings such as in school or on the street; this can expose them to distinct experiences of abuse, harassment, and violence. The issues can vary for boys and girls; for example, girls from particular communities may be prevented for cultural reasons from going out, whereas boys may be permitted to do so.

Particular issues arise in relation to faith groups. One of the most prominent has been the wearing of headscarves by Muslim girls in schools, which has prompted continuing debate across Europe¹⁹. Most Member States are moving towards recognising that religious insignia should be tolerated in schools, however in many headteachers have discretion to exclude pupils who do so. In contrast, in France a 2004 Act explicitly prohibits the wearing of any signs or clothing demonstrating adherence to a particular religion; this is intended to facilitate integration for young Muslim girls. However, there is a concern that the ban may lead to children being withdrawn from school altogether.

Discrimination against the Roma

Whilst many different minorities suffer racism, in recent years the circumstances of the Roma, gypsy and traveller communities²⁰ (the EU's largest ethnic minority group) have aroused particular concern. Across Europe, the Roma have experienced a long history of discrimination and persecution, including forcible resettlement, female sterilisation, the removal of children from their families, and state institutionalisation.

Over the past 15 years, hostility and violence towards Roma people has grown markedly, and the difficulties they face have become more evident both in the EU15, and in the EU10 where there are sizeable Roma populations²¹ (this is also true of EU candidate countries such as Romania and Bulgaria). A recent report for the European Commission²² summarised evidence of the impact of continuing discrimination across Europe. For example, housing is often in slum conditions (with risks of eviction and/or police raids, poor or non-existent access to services such as water, electricity etc); unemployment rates are frequently very high (e.g. in Czech Republic, Slovakia, Spain); and eligibility for social assistance may be very limited, or removed altogether (e.g. in Slovakia, Romania, France). These factors impact directly or indirectly upon children.

For children, other issues are also highly relevant. Roma children often suffer exclusion from school (see *Education*, page 115). Access to healthcare may be poor, with low child vaccination rates, and higher prevalence of diseases such as hepatitis A. Access to basic services is also curtailed by the lack of residence permits, birth registration, and identity documents in some countries (e.g. Czech Republic, Slovakia, Germany).

Commitment to tackling Roma issues increased significantly at EU level during accession negotiations with the EU10. In 1997, the European Commission first produced detailed annual assessments of candidates' treatment of minority groups in its Regular Reports on Progress towards Accession, and repeatedly expressed particular concern about discrimination faced by the Roma minority (e.g. in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia, and to a lesser extent in those on Lithuania, Poland, and Slovenia)²³. In many cases they required governments to take appropriate remedial action, and many have done so by, for example, ratifying international minority protection standards²⁴, adopting specific policies²⁵, and improving domestic legislation²⁶.

Many commentators argue, however, that formal compliance at national level does not appear to have been matched by sufficient political will and well-structured and coherent action plans on the ground²⁷. Nevertheless eight governments in Central and Eastern Europe²⁸ (including three EU Members, Czech Republic, Hungary, and Slovakia), backed by the international community²⁹, recently announced the "Decade of Roma Inclusion 2005-2015"³⁰, with each country identifying a limited number of measurable national goals for improvement in relation to employment, health, housing, and education. In particular, a \$42 million Roma Education Fund has been mobilised, which will support programmes and projects to improve educational outcomes.

Much of the responsibility for addressing the discrimination that the Roma face lies at national and local level. But the EU has been seeking, over the past decade, to raise awareness, foster networking and good practice exchange, and support the activities of public authorities and NGOs. In addition to introducing the two anti-discrimination directives (see above)³¹, the EU has provided financial support for Roma inclusion through the pre-accession PHARE programme, education and youth programmes (e.g. Comenius, Socrates, Leonardo and Youth—see *Education and Youth and employment* sections), labour market inclusion programmes (e.g. EQUAL), and more recently, through the EU Structural Funds.

In relation to policy, the social exclusion of the Roma has been a significant and recurring theme within the EU driven "National Action Plans for Social Inclusion"³². To improve policy co-ordination, the European Commission has also set up a Roma inter-service working group³³ in 2004, with the aim of exchanging information, monitoring progress, and mainstreaming the concerns of Roma people into all EU policies. As a follow-up to a Green Paper in

"Thirty-six per cent believe that children from other ethnic groups are treated unfairly in their country... the perception of discrimination is higher in the Western European countries polled than in the countries in transition (44 % vs. 33 %). The perception of ethnic bias is highest in Central Europe (45 %)."

UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, Geneva.

"Around 10000 Roma live in Slovenia. Most of them don't have any citizenship... many people were "erased" from registries and lost their rights (mainly people from the South). The official reason is an administrative mistake, but also they just did not want to register Roma people."

Sanda Libensek, Roma Children, Euronet seminar, Ljubljana, 21 May 2005.

"As in several other European countries, even in the Czech Republic the widespread public opinion is that the Roma are not willing to work. In reality they are willing to work but not in a stable and/or traditional way."

Roman Kristof, La Strada, Euronet seminar, Prague, 23 April 2005.

"For me, it is better to be in a family, because ... the family can support you and give you everything."

Misho (male), 13,
living in an institution, Bulgaria

"I need more [love and affection]. I am in a boarding school. I see my parents rarely."

Eva (female), 12,
living in an institution, Latvia

"I want you to write down that I don't consider myself ill. On the contrary, it is good to live when you are young."

Valya (female), 17,
living at home, Bulgaria

Children quoted in UNICEF, *Children and Disability in Transition in CEE/CIS and Baltic States*, Innocenti Insight no 12, UNICEF, Florence, 2005.

the same year on "Equality and non-discrimination in an enlarged EU"³⁴, the Commission is preparing a Communication for 2005 which will set out next steps for action and will cover the issue of minorities, in particular the Roma.

Despite the fact that some of these activities are likely to have positive indirect consequences for children, an explicit "children's perspective" is lacking. In the absence of more active approaches to the needs of Roma children at EU and national levels, legal remedies are increasingly being sought. In a recent landmark case ("D.H. and Others vs the Czech Republic")³⁵, the European Roma Rights Centre presented the first significant legal challenge before the European Court of Human Rights to systemic discriminatory education of Roma children in the Czech Republic. On 17 May 2005, the Court agreed to consider whether the assignment of disproportionate numbers of such children to substandard, separate schools for the mentally disabled constitutes racial discrimination. The Court unanimously declared admissible the applicants' main complaint of racial discrimination in the enjoyment of the right to education (Article 14 of the ECHR combined with Article 2 of Protocol No 1).

Disabled children in the EU

Many disabled children and young people regularly experience discrimination as a result of prejudice or lack of awareness, and suffer the effects of poverty and social exclusion. They encounter significant barriers in seeking to play a full part in society; public buildings are often not accessible, information is frequently not available in appropriate formats, and they are routinely excluded from participating in decisions that affect them. It can also prove difficult for them to take part in social, cultural, play and sports activities. They still have limited access to mainstream education and high quality training (see *Education*, page 115). If they do subsequently find a job, it rarely corresponds to their interests or aptitudes. Finally, they are disproportionately likely to be confined to institutional care (see section on *Residential care and adoption*, page 141)³⁶.

According to UNICEF research³⁷, the situation is particularly worrying in the 27 countries of Central and Eastern Europe and the Commonwealth of Independent States, where disability rates tripled during the transition years—from about 500 000 disabled children in 1990, to around 1.5 million in 2000. However this surge is largely due to greater recognition of disability rather than to actual increases in the numbers affected. The research also notes that "special education" in segregated facilities is still the overwhelming policy approach across the region, and that families with disabled children tend to be poorer than those without. Although attitudes and laws relating to disabled children are changing, progress is slow, and more needs to be done to protect and support their rights.

EU policy towards disabled people during the 1980s-1990s was characterised by efforts to assist them to enter the labour market. Article 13 of the Amsterdam Treaty strengthened Community's commitment³⁸, forbidding discrimination on the grounds of disability, a provision that should apply to disabled children and young people as well as adults. Further to Article 13, the Charter of Fundamental Rights includes the prohibition of any discrimination on the ground of disability (Article 21), and Article 26 recognises "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community." These provisions entrench the importance of a rights-based approach to disability, mirrored both at national and international levels—and endorsed by recent proposals for a UN Convention in the field of disabilities.

Beyond legislative measures, the European Commission has been seeking to promote equal opportunities for disabled people and to strengthen civil society organisations that support them. Following the European Year of Disabled People 2003, a rolling multi-annual EU Disability Action Plan up to 2010 has been introduced³⁹. The EU Phare Programme has also funded a capacity building programme for disabled people's organisations in the EU10 from 2002-2004.

Important though these initiatives are, the dominant focus on access to employment and the “citizen-as-worker”, linked to the Lisbon Council employment goals (see *Child poverty and social exclusion*, page 41) inevitably excludes the majority of disabled children.

The EU Network of Independent Experts on Fundamental Rights argues⁴⁰ that the Commission should be encouraged to propose a disability-specific directive, a demand that has been called for by the European Disability Forum and supported by, inter alia, the European Parliament, the European Economic and Social Committee, the European Trade Union Confederation, and the Platform of European Social NGOs.

Recommendations

- The European Commission should promote research into the ways in which children may be treated differently on the basis of generalised assumptions and stereotypes in relation to their age, bearing in mind the concept of children’s “evolving capacities” (Article 5, UNCRC)⁴¹.
- The European Council should give renewed attention to the proposal submitted by the European Commission on 28 November 2001 for a Council framework decision on combating racism and xenophobia, aiming at the approximation of the laws and regulations of the Member States regarding racist and xenophobic offences.
- The EU institutions should reaffirm their commitment to protecting the rights of all minority groups, either through an inter-institutional declaration or a Commission Communication, as recommended by the EU Network of Experts on Fundamental Rights. Such an initiative should highlight the circumstances and perspectives of children, and policy options to tackle the discrimination they face, in line with Articles 2, 3 and 12 of the UNCRC.
- The EU institutions should continue to assist Member States to establish effective mechanisms for collecting statistics and information on race and ethnicity aspects of social inclusion (including the position of the Roma). The impact of national legal and policy frameworks on the position of children from ethnic minorities should also be monitored through Member State “National Action Plans on Social Inclusion”.
- The EU and Member States should adopt comprehensive legislation to combat discrimination against disabled people (including children) in all areas of EU policy, building upon the draft disability specific directive developed by the European Disability Forum.
- The current EU Disability Action Plan provides for the production of a report every two years on the overall situation of disabled people in an enlarged EU of 25 Member States. The first report will be produced at the end of 2005, and should, in particular, address the circumstances of disabled children.

Footnotes

1. See O'CONNOR, C., *Age Discrimination and European Law*, European Commission, Office for Official Publications of the European Communities, Luxembourg, 2005.
2. Article 14 specifically mentions the grounds of sex, colour, language, religion, political or other opinion, national or social origin, association with national minority property, birth or other status.
3. KILKELLY, U., *The Child and the European Convention on Human Rights*, Ashgate, Aldershot, 1999.
4. In November 2000, an Additional Protocol to the Convention was adopted, introducing a free-standing equality right, which provides additional protection against discrimination for individuals in ratifying states in the exercise of any right set out in law. It entered into force on 1 April 2005. Among EU states, the Protocol has so far only been ratified by Cyprus, Finland and the Netherlands. Other EU states have signed the Protocol, but not yet ratified it (Austria, Belgium, the Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Portugal, Slovakia, and Slovenia).
5. Note that Article 13 does not have "direct effect". In other words, it cannot be used by an individual in a court of law.
6. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19 July 2000) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ L303 of 2 December 2000).
7. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services (OJ L 373/37).
8. Council decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006), OJ L 303 of 2 December 2000.
9. Transposition has, however, been slow in some Member States; the European Court of Justice has condemned four states (Austria, Germany, Finland, Luxembourg) for failing to pass all necessary legislation in the required time limit.
10. STALFORD, H., "Constitutionalising Equality in the EU: A Children's Rights Perspective", *International Journal of Discrimination and the Law*, special edition, forthcoming 2005.
11. See note 10.
12. Social origin, genetic features, language, political or other opinion, membership of a national minority, property, and birth.
13. Article 51 provides that the provisions of the Charter are addressed to the institutions and bodies of the EU, and to the Member States "only when they are implementing Union law".
14. EUROPEAN COMMISSION, *Equality and non-discrimination in an enlarged European Union*, Green Paper, Office for Official Publications of the European Communities, Luxembourg, May 2004.
15. MCGLYNN, C., "Rights for Children? The potential impact of the European Union Charter of Fundamental Rights", *European Public Law*, 8, 2002.
16. STALFORD, H., "Constitutionalising Equality in the EU: A Children's Rights Perspective", *International Journal of Discrimination and the Law*, special edition, forthcoming 2005.
17. EU Network of Independent Experts on Fundamental Rights, Thematic Comment No 3: *The Protection of Minorities in the European Union*, (Ref.: CFR-CDF.ThemComm2005.en), 2005.
18. EUROPEAN MONITORING CENTRE ON RACISM AND XENOPHOBIA, *Racism and Xenophobia in the EU Member States: Trends, developments, and good practice*, Annual Report 2003/04, Office for Official Publications of the European Communities, Luxembourg, 2005.
19. EU Network of Independent Experts on Fundamental Rights, Thematic Comment No 3: *The Protection of Minorities in the European Union*, (Ref.: CFR-CDF.ThemComm2005.en), 2005.
20. The term "traveller" is commonly used in the UK and Ireland.
21. E.g. five-six per cent of the total population in Hungary, around seven per cent in Slovakia.
22. FOCUS CONSULTANCY, EUROPEAN ROMA RIGHTS CENTRE, EUROPEAN ROMA INFORMATION OFFICE, *The Situation of Roma in an Enlarged European Union*, Office for Official Publications of the European Communities, Luxembourg, 2004.
23. Notably, external pressure has not been applied to the nearly the same degree to existing EU Member States (e.g. Spain, Germany), where government attention and policy has been weak. See EUMAP, *Monitoring the EU Accession Process: Minority Protection*, Open Society Institute, Budapest, 2002, <www.eumap.org>.
24. Such as the Council of Europe's Framework Convention for the Protection of National Minorities (1995).
25. E.g. in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia.
26. E.g. by adapting domestic legislation to meet the requirements of the EU's Race Directive.
27. TOGGENBURG, G.N. (ed.), *Minority Protection and the Enlarged European Union*, Open Society Institute, Budapest, 2004.
28. Bulgaria, Croatia, the Czech Republic, Hungary, FYR Macedonia, Romania, Serbia and Montenegro, and Slovakia.
29. Partners include the Open Society Institute, the World Bank, the European Commission, UNDP, OSCE, the Council of Europe, the Council of Europe Development Bank, and Roma organisations.
30. See <www.romadecade.org> for further details.
31. The EU Network of Experts in Fundamental Rights believes that these directives are inadequate to address the range of problems faced by the Roma, especially in relation to accommodation and education matching their particular needs. They have therefore proposed a Directive specifically aimed at encouraging the integration of Roma, based on Article 13 of the Amsterdam Treaty. See EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS, *Report on the Situation of Fundamental Rights in the European Union in 2003*, 2004, (ref.: CFR-CDF:repEU.2003).
32. See, for example, EUROPEAN COMMISSION, *Report on social inclusion 2005: An analysis of the National Action Plans on Social Inclusion (2004-2006) submitted by the 10 new Member States*, Office for Official Publications of the European Communities, Luxembourg.

33. The Group brings together 14-15 Directorates General that have an interest, and meets three times a year.
34. European Commission, *Equality and non-discrimination in an enlarged EU, Green Paper*, COM(2004) 379 final, Office for Official Publications of the European Communities, Luxembourg.
35. See <www.errc.org> for details.
36. European Disability Forum, Contribution to the Consultation with Civil Society Organisations for the European Commission's White Paper on Youth Policy, 23 January 2001.
37. UNICEF, *Children and Disability in Transition in CEE/CIS and Baltic States*, Innocenti Insight No 12, UNICEF, Florence, 2005.
38. On the basis of Article 13, the Council adopted on 27 November 2000 Directive 2000/78/EC "Establishing a general framework for equal treatment in employment and occupation". With regard to disability, the Directive aims at removing barriers to the participation of people with disabilities in employment
39. COM (2003) 650 final (30 October 2003): *Equal opportunities for people with disabilities: A European Action Plan. Priority themes for 2004-2005 include: access to and retention in employment, access to life-long learning, access to new technologies, and accessibility to the public built environment.*
40. EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS, *Report on the Situation of Fundamental Rights in the European Union in 2003, 2004*, (Ref.:CFR-CDF.repEU.2003) and *Synthesis Report: Conclusions and Recommendations on the Situation of Fundamental Rights in the European Union and its Member States in 2003, 2004*, (Ref.:CFR-CDF.Conclusions. 2003.en).
41. LANSDOWN, G., *The Evolving Capacities of the Child*, UNICEF/Save the Children Sweden, Innocenti Insight, UNICEF, Florence, 2005.



Asylum and migration

Many children flee their country of origin for refugee reasons, having a “well-founded fear of persecution”, in line with the 1951 UN Refugee Convention. Others are trafficked (see *Violence against children*, page 49), displaced by war, or escape from abusive environments or extreme poverty. Others still migrate with their families when family members enter EU territory to work or study.

This section explores the impact on children of the EU’s developing Common Asylum and Immigration agenda. It analyses measures resulting from proposals at the European Council in Tampere (Finland) in 1999, and further initiatives endorsed by the Council in November 2004 which are likely under the “Hague Programme” (and its associated five-year Action Plan for Freedom, Justice and Security¹). The section focuses mainly on the implications for children separated from their parents, legal guardians or habitual care-givers, as the difficulties such children face are especially severe. However the bulk of the analysis set out below is also relevant to children who are not separated from family and friends.

The section is divided into two parts:

- Children seeking asylum.
- Children from third countries in immigration policy.

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3.1, and 12** (See *Introduction*, page 16), **Article 22** sets out the right of refugee children to appropriate protection and humanitarian assistance in the enjoyment of the rights in the UNCRC and other international human rights and humanitarian instruments. The UN Committee on the Rights of the Child’s General Comment No 6 of 3 June 2005 on the Treatment of unaccompanied and separated children outside their country of origin consolidates the standards set out in the Convention. Other UNCRC Articles are also relevant:

Article 8.—The right to preserve identity including name, nationality and family relations.

Article 9.—The right to live with ones family unless this is not in the child’s best interests and, when separation does take place, the right to maintain contact with both parents.

Article 10.—The right to enter the country to be reunited or maintain the child-parent relationship.

Article 37.—Detention or imprisonment only to be used as a measure of last resort, and for the shortest appropriate time.

Article 39.—The duty of the Government to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration.

Children seeking asylum

Among the children who migrate to the EU are many “separated children”. The term “separated child”, preferred to “unaccompanied minor” by UNHCR³ and the Separated Children in Europe Programme⁴, recognises that some of these children may appear “accompanied” when they arrive in Europe but in practice the accompanying adult may be either unable or unsuitable to assume responsibility for their care⁵. Although such children often demonstrate extraordinary qualities of resilience, the removal of emotional and physical security through separation can have hugely damaging social and psychological consequences.

Most migration is between and within states in the global South, and the vast majority of separated children remain within their regions of origin in different parts of the world. However, a relatively small number seek asylum in Europe⁶. When they arrive, the practical problems they are likely to face are immense, including: complex asylum and immigration procedures; probing interviews from uninformed officials; fingerprinting and invasive medical examinations; detention in airport “waiting zones”, reception centres, or even prisons. Throughout this process, they may lack the support of an adult guardian/advisor or legal representative, and may not have access to appropriate food, housing, education, health, social care, and cultural links⁷. According to UNHCR analysis⁸ of the available data⁹:

- Among the 11 countries with comparable data for 2003, about one-third of separated children are below 15 years of age, whereas two-thirds are 16 or 17 years.
- The majority of unaccompanied and separated children seeking asylum are male¹⁰. Very few girls sought asylum in Central Europe in 2003, particularly in Bulgaria (where girls made 1 % of claims by separated children), Hungary (3 %), and Slovakia (5 %).
- In 2003, some 12 800 separated children applied for asylum in 28 industrialised countries with available data. The major receiving countries in the EU were the UK (2 800¹¹), Austria (2 050), the Netherlands (1 220), and Germany (980).
- The number of separated children seeking asylum peaked in 2001. Among the 21 countries for which data are available since 2000, the annual level of applications fell from 2001 to 2002 (-11 %), whereas a sharp drop was recorded from 2002 to 2003 (-40 %).
- While the absolute number of claims by separated children appears to be relatively high in some countries, their overall share in the total number of claims is limited. In 2003, separated children lodged about 4 per cent of the 303 400 new asylum applications submitted in the 28 countries. Among the 22 countries receiving 1 000 or more asylum claims during 2003, the highest numbers of separated children asylum claims were lodged in Bulgaria (10 %) and the Netherlands (9 %), followed by Hungary (8 %) and Slovakia (7 %).
- Asylum flows to most countries in Central and Western Europe have been dominated by children from Asia (particularly Afghanistan and Iraq). Some countries in Western Europe have reported important inflows of children from Africa, in particular Belgium (Democratic Republic of the Congo, Rwanda), Ireland (Nigeria), and the Netherlands (Angola, Sierra Leone and Guinea). Unaccompanied and separated children from Somalia predominantly seek asylum in the Nordic countries.

EU ASYLUM POLICY – THE TAMPERE AGENDA

Prior to the 1997 Treaty of Amsterdam, asylum issues were an issue for domestic immigration legislatures and the EC institutions did not have any competence to impose uniform and binding legislation in this area. Attempts at cross-national co-ordination were approached on a strictly intergovernmental basis under Pillar III (Justice and Home Affairs) of the EU, and gave rise to a number of bi-lateral and soft law measures. The Treaty of Amsterdam transferred many of the migration-related issues (notably, asylum, immigration and visas) from Pillar III into the law-making sphere of the EC (a process of so-called “Communitarisation”)¹².

There are “a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of inter alia sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender based violence, including domestic violence.”

UN Committee on the Rights of the Child, General Comment no 6 on the Treatment of unaccompanied and separated children outside their country of origin, 39th session, 3 June 2005, UNCR/C/GC/2005/6.

“Separated children in Slovenia mainly come from Arab countries, Africa and the Balkans. Slovenia is a transit country for asylum seekers. However, there is a real lack of accommodation facilities to welcome these separated children. This situation may lead to child trafficking.”

Marina Uzelac, Slovene Philanthropy, Euronet Seminar, Ljubljana, 21 May 2005.

Shortly after these changes came into effect, the European Council, meeting in Tampere in 1999, reaffirmed “absolute respect of the right to seek asylum” and agreed to work towards establishing a Common European Asylum system, “based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to face persecution.” Since then, a first phase has set out minimum standards and measures as follows:

Table 1

Legislative measure	State of Play	Transposition into domestic law
Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons.	Adopted by the Council July 2001.	Implemented by 31 December 2002.
Council Regulation establishing the Eurodac system for the comparison of fingerprints.	Adopted by Council Dec. 2000 (and implementing regulation February 2002).	Entered into force 15 January 2003.
Council Regulation determining the Member State responsible for examining an asylum application (Dublin II).	Adopted by Council February 2003.	Entered into force 17 March 2003. Applied to applications lodged from 17 September 2003.
Council Directive on minimum standards for the reception of applicants for asylum in Member States (Reception Directive).	Adopted by the Council January 2003.	Implementation due 6 February 2005.
Commission Proposal for a Directive on minimum standards for the qualification and status of third country nationals as refugees or as persons who otherwise need international protection (Qualification Directive).	Adopted 29 April 2004.	To be implemented by 10 October 2006.
Commission Proposal for a Directive on adoption of common minimum standards on procedures for granting or withdrawing refugee status (Asylum Procedures Directive).	Ongoing inter-institutional consultations.	

“Separated children are still being detained regularly in some countries and deported without necessary safeguards; increasing numbers of separated children disappear either shortly after arrival, during the procedure or after being finally rejected and run a high risk of becoming victims of trafficking and other crime; guardianship systems are inadequate; in several countries specialised reception conditions are still lacking...”

Statement by Raymond Hall, Director, UNHCR Bureau for Europe, 26th meeting of the Standing Committee, 4-6 March 2003.

For many commentators, the Tampere Council set out a positive agenda for those fleeing persecution, and represented a high-water mark in EU asylum policy. Since 1999, debate at EU level has been increasingly dominated by the desire of Member States to tackle perceived abuses of their asylum systems and to keep the number of asylum seekers arriving as low as possible. The scenes at Melilla and Ceuta in 2005 represent a stark and harsh reminder that the migration controls operated by the EU offer refugees little or no regular means of accessing protection in Europe, and that putting pressure on neighbouring countries to control irregular migration can fuel human rights abuses and persecution¹³.

Against a background of growing public hostility towards asylum seekers and refugees, fuelled by frequently irresponsible media reporting, a drive to reduce standards has gained momentum¹⁴. For example, during negotiations between Member States the gap between the proposals set out in the draft Procedures Directive and international law (in relation to the meaning of concepts such as “safe countries of origin”, “safe third countries”, and in access to appeal rights) has widened. This has prompted complaints from UNHCR, and some NGOs have called for the European Commission to withdraw the proposal¹⁵. A European Parliament report is also highly critical¹⁶.

This drive towards the lowest common denominator is also evident in relation to measures directly affecting separated children¹⁷. For instance, the importance of guardianship is recognised in several Directives, but this provision has been weakened in all cases so that a “representative” —potentially an individual with insufficient training or knowledge— is deemed adequate rather than a “legal guardian”. Later drafts of the Asylum Procedures Directive show that even this provision has been watered down further by reference to certain circumstances in which a representative need not be appointed; for instance, if the child is likely to reach age 18 before an initial decision is taken on their case, or if the child is married. The first of these provisions would effectively allow Member States to treat 17 year olds like adults. The second discriminates against young girls from cultures where it may be normal, or even required, that they marry before age 18. Another addition to the draft Directive is that Member States “may refrain from appointing a representative where the unaccompanied minor is 16 years old or older.” Again, this provision allows Member States to treat children over age 16 as adults, contrary to the UNCRC.

Similarly, the first draft of the same Directive set out that authorities that carry out medical examinations to determine the age of a separated child must use “methods that are safe and respect human dignity”, recognising the dangers of unnecessary X-rays and intrusive bodily examinations; this safeguard has been removed from later versions. And the right of separated children to be informed about the possibility of medical examination “in a language which they understand” has been replaced by the weaker reference to “a language they may reasonably be supposed to understand.”

Underpinning these weak standards is the limited legal framework that the EU institutions draw upon. It is largely based on the 1997 Council Resolution on Unaccompanied Minors who are Nationals of Third Countries. Although the resolution provides some protection, it is not legally binding. Nor does it reflect adequately the principles of the UNCRC, and as a result key UNCRC Articles—in particular Articles 2 (non-discrimination), 3 (the “best interests” of the child), and 12 (the right to participate in decisions)—are not integrated throughout all the instruments of the Common Asylum Policy. Key aspects also conflict with UNHCR’s 1997 Guidelines on separated children, the UN Committee on the Rights of the Child General Comment No 6 on the “Treatment of unaccompanied and separated children outside their country of origin”¹⁸ (and the “Statement of Good Practice” developed by the

In September 2005, large groups of migrants attempted to enter Spanish territory by climbing over the razor-wire fences that separate the enclaves of Melilla and Ceuta from Morocco. Several migrants were shot dead by border security forces, and many others were deported by Moroccan authorities and left on the southern border in the Sahara desert, without water or food. Whilst recent events mainly appeared to concern adults, Human Rights Watch revealed, three years earlier, disturbing evidence regarding the treatment of separated children at the same borders:

“Every year thousands of Moroccan children, some as young as ten, enter Spain alone, without proper documentation. Sneaking past Moroccan and Spanish police at ports and border posts, they put their lives at risk to pursue their dreams for a better life. Some flee abusive families; others flee poverty and the lack of educational and employment opportunities at home. All too often they find violence, discrimination, and a dangerous life on the streets of unfamiliar cities. When apprehended in Spain they may be beaten by police and then placed in overcrowded, unsanitary residential centres. Some are arbitrarily refused admission to a residential centre. The residential centres often deny them the health and education benefits guaranteed them by Spanish law; in these centres, children may be subjected to abuse by other children and the staff entrusted with their care. If they are unlucky, they may be expelled to Morocco, where many are beaten by Moroccan police and eventually turned loose to fend for themselves.”

HUMAN RIGHTS WATCH, *Nowhere to Turn: State Abuses of Unaccompanied Minor Children by Spain and Morocco*, 2002, <www.hrw.org/reports/2002/spain-morocco/>.



“In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials, and in other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status which ends when they turn 18, and there are few effective return programmes.”

UN Committee on the Rights of the Child, General Comment no 6 on the “*Treatment of unaccompanied and separated children outside their country of origin*”, 39th session, 3 June 2005, UNCR/C/GC/2005/6.

Separated Children in Europe Programme¹⁹). For example, the Resolution indicates that states may refuse separated children leave to enter EU territory without authorised documentation, whereas UNHCR’s 1997 Guidelines²⁰ recognise that identity papers may have been lost, forged or destroyed—or may not have existed in the first place.

The Resolution also allows states to hold children in detention, a position that has been subsequently endorsed by the Reception Directive; again, this is in conflict with UNHCR’s 1997 Guidelines (para 7.6). In practice, detention of separated children continues in several Member States (and some children are held in prison environments). Detention can be highly traumatic for them—especially in light of the circumstances from which they have fled. It is also less likely to provide effective protection than effective supervision in an open childcare facility. It appears that detention is often used purely for administrative convenience rather than as a measure of last resort, in contravention of Article 37 of the UNCRC²¹.

Nevertheless, some progress has been made in promoting the rights of separated children in EU asylum policy. For example the Qualification Directive recognises not only persecution by “non-state” agents and gender-based persecution, but also the existence of child-specific forms of persecution. Although not defined in the directive (and therefore subject to varying interpretation at Member State level), this should include practices such as the recruitment of children into armies, trafficking for prostitution, female genital mutilation, forced labour, and forced adoption.

There is also some acknowledgement within the European Commission of the need to respond to the particular circumstances of children. There is a designated post in DG Freedom, Justice, Security with responsibility, among other things, for monitoring issues relating to separated children horizontally across all asylum and immigration policies.

THE HAGUE PROGRAMME AND THE INTERNATIONALISATION OF EU ASYLUM POLICY

The Commission’s Action Plan implementing the “Hague Programme” between 2005-2010²² includes a broad range of measures to underpin a harmonised Common European Asylum System, including: adoption of the Asylum Procedures Directive (2005); monitoring of the transposition and implementation of first-phase EU instruments proposed at the Tampere Council; establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection; and amendments to the European Refugee Fund²³.

In addition, the external dimension of EU asylum and migration policies will be developed. This will involve, for example, enhanced cooperation with third countries and with countries of transit, establishment of an integrated management system for external borders, and action on visa policy. In particular, the EU will seek to assist countries in regions where asylum seekers come from and countries of transit through “Regional Protection Programmes” in order to enable them to provide adequate refugee protection. Pilot Protection Programmes are proposed in Ukraine, Moldova, Belarus, and sub-Saharan Africa²⁴.

Overall, there are significant concerns that the Hague Programme prioritises home affairs and security over fundamental rights²⁵. There is also a strong view that improving the asylum process and decision-making in Member States should be a more pressing priority than exploration of joint processing of asylum applications in the EU²⁶. There are fears too that the EU’s recently increased emphasis on “co-operation with third countries” in the area of asylum and migration will go beyond financial assistance for capacity-building, and will provide a means and justification for containment of asylum seekers in their region of origin.

In theory, the “internationalisation” of EU measures will diminish the need for refugees to seek protection elsewhere, and will reduce the dangers that asylum seekers regularly face while attempting to reach a safe country. However there are significant risks in such an approach. External action could become a substitute for fair

and effective domestic asylum procedures, could shift responsibility for asylum processing onto poorer countries outside the EU that cannot guarantee effective refugee protection, and could create new protracted refugee crises in the regions affected²⁷.

Current proposals do not specifically contemplate the establishment of joint asylum claim processing arrangements outside the EU for people who would otherwise seek protection within its borders. However the idea has been discussed at a political level in the recent past²⁸. The Hague Programme calls for a study into the “merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory, in complementarity with the Common Asylum System and in compliance with the relevant international standards”.

The Separated Children in Europe Programme has argued²⁹ that children—and separated children in particular—should be excluded from regional processing systems of this kind. It suggests that: “Forcible removal to processing centres would be very likely to breach the “best interests” principle of the UNCRC (Article 3) and would undermine a range of standards set out in international and EU law.”

Children from third countries in immigration policy

The EU Common Immigration Policy aims to manage migration flows by a coordinated approach, addressing the economic and demographic circumstances of the EU³⁰. Alongside increasing recognition of the needs of European employers for additional workers in certain sectors and regions, and the pressures of an ageing population, increasing resources have been mobilised to fight irregular migration (and in particular to combat human trafficking and smuggling) (see *Violence against children*, page 49).

The Tampere Council in 1999 agreed on the basic components for an EU Immigration Policy³¹, however progress on legal migration and the rights of third country nationals has been slower and less broad-ranging than on asylum or irregular migration³². In practice, action on legal migration has been limited to the development of best practices and benchmarks, while legally binding measures granting rights to third country nationals were either substantially watered down (such as the Directive on the status of third country nationals) or deadlocked in the Council³³. Key aspects are summarised below³⁴.

Table 2

Legislative measure	State of Play	Transposition into domestic law
Council Directive on the right to family reunification.	Adopted September 2003	To be implemented no later than 3 October 2006.
Council Directive concerning the status of third-country nationals who are long-term residents.	Adopted November 2003.	To be implemented by 23 January 2006.
Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.	Adopted 13 December 2004.	To be implemented by 12 January 2007.
Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (“Returns Directive”)	Directive published 1 September 2005.	

“I felt so stressed. It’s horrible being in detention especially with a child. My child wanted to kill himself. He said “mummy we’re in prison.”

AMNESTY INTERNATIONAL, *Seeking Asylum is not a Crime: Detention on people who have sought asylum*, Amnesty, London, 2005.

“The long waiting before a decision is taken on your asylum case is bad for you. It is bad for your health and stressful. I even felt tingling in my chest and feared for a heart attack, and this at such young age. You might have fled from war, but this is also traumatising. The waiting should definitely not take longer than a year before the final decision is made.”

“I lived in a closed centre; in this centre I wasn’t free to contact people on the outside. For me it was a camp that drives people mad. We are protected by confidence not walls.”

Child participants at conference on *Freedom, Security and Justice for Separated Children?* organised by Defence for Children International the Netherlands (DCI-NL), in cooperation with the Separated Children in Europe Programme, Save the Children and DCI-Belgium, Brussels, 3 November 2004.

As with the asylum instruments set out above, a lowering of standards has occurred in negotiations between Member States on a number of immigration proposals. For example, the definition of “family” in the Directive on Family Reunification (and in the “Dublin II” Regulation) was narrowed in the latter stages to privilege the intact nuclear family. Both now only recognise the rights of spouses and their joint children, leaving to Member State discretion issues relating to unmarried partners and their children, and ascending relatives and adult children. Stepchildren are also less favourably treated than biological children. Outside Europe, of course, the notion of the extended family is much more common, and in many countries, as a result of factors such as conflict and AIDS, children are often brought up by relatives and friends rather than biological parents.

Another unsatisfactory aspect of the Family Reunification Directive is that it not only draws upon a limited notion of the “family”, but it also redefines what is meant by the term “child”. Article 4.1 allows Member States —on the insistence of the German Government— to derogate from the principle that “child” should be defined up to age 18. Now, where the child is over 12, he or she may have to meet a vague “integration test” before entry and residence will be authorised, a provision which is in apparent breach of international law (UNCRC, Article 1; Article 8, ECHR “Respect for family life”).

As a result of these weaknesses in the Directive, and questions as to whether it was adopted without adequate consultation with the Parliament, the European Parliament brought an action in December 2003 for annulment of Article 8 and elements of Article 4 before the European Court of Justice. However, the report of the Advocate General, issued on the 8 September 2005, suggested the case (C-540/03 European Parliament vs Council) should be declared inadmissible.

In 2005, the European Commission also published a proposal for a “Returns Directive”³⁵, applicable to any third-country national staying illegally in the EU (whatever the reason for this). The objective is “to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, which take into full account the respect for human rights and fundamental freedoms of the persons concerned.” The proposal promotes the principle of voluntary return by establishing a general rule that a “period for departure” should normally be granted. It establishes, as a general principle, a harmonised two-step procedure, involving a return decision as a first step and —if necessary— the issuing of a removal order as a second step. It also provides for a minimum set of procedural safeguards, and seeks to limit the use of temporary custody.

Although the proposal makes welcome reference to the need for Member States to take account of the UNCRC “best interests” principle, there are risks for children —particularly separated children. For example, it is unclear what “voluntary return” will mean in practice, what “coercive measures” will be permissible to enforce return, and how these provisions will be applied to children. The safeguards are also weak. For example, in relation to detention, Member States need only to ensure that children are not kept “in common prison accommodation”, rather than preventing detention *per se*.

Member States will also postpone the execution of a removal order if there is a “lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.” However there is no indication of the criteria upon which such an assessment should be based. The Committee on the Rights of the Child argues³⁶ that assessments must *inter alia* take into account the:

- Safety, security and conditions, including socio-economic conditions awaiting the child upon return including through home study, where appropriate, conducted by social network organisations;
- Availability of care arrangements for that particular child;
- Views of the child expressed in exercise of his or her right to do so under Article 12 and those of the caretakers;
- The child’s level of integration in the host country and the duration of absence from the home country;

- The child's right "to preserve his or her identity, including nationality, name and family relations" (Article 8);
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Article 20)."

MIGRATION AND THE HAGUE PROGRAMME

The Action Plan implementing the "Hague" Programme³⁷ builds upon the Tampere foundations, outlining further proposals in relation to migration management, and the integration of migrants. This will include:

- Reinforced analysis of the phenomenon of migration (e.g. establishment of a European Migration Monitoring Centre (2006);
- Development of policy on legal migration (e.g. monitoring of the transposition and implementation of first phase directives [2005-2011], debate on the Green Paper on economic migration [2005], and a subsequent Policy Plan on legal migration [2005]);
- Integration of third-country nationals (e.g. Communication on a European framework for integration—2005—, establishment of an Integration Fund [2007]);
- An effective removal and repatriation policy (e.g. a proposal on return procedures [2005], establishment of a Return Fund [2007]);
- Cooperation with third countries (e.g. a Communication on migration and development [2005]).

Whilst the Action Plan remains at an early stage of development, it appears to devote relatively low priority to measures promoting legal migration, and tends to emphasise enforcement measures to tackle irregular migration, control crime and counter terrorism. The specific initiatives set out above should be viewed alongside other large sections of the Programme addressing border controls, introducing biometrics to identity documents, and enhancing information exchange (e.g. through the Visa Information System—VIS—, the Schengen Information System—SIS II— and Eurodac).

In those elements of the new Programme developed so far, there is little consideration of children's rights. For example, the Commission Green Paper on economic migration from third countries³⁸ is driven by the needs of the EU labour market, and downplays the rights of migrants themselves; in particular, the needs of children of migrant workers and young people of legal minimum working age (for instance, in terms of access to protection, health care, education etc.) are not adequately addressed. Attention to the especially vulnerable circumstances of separated children is also missing.

Recommendations

- Specific guidelines should be developed by the European Commission to assist Member States in assessing children's asylum claims and respecting their rights at all stages of the procedure, drawing on the core principles of the UNCRC (Articles 2,3 and 12). The guidelines should highlight appropriate safeguards, including: a clear definition of a "separated child"; the UNCRC "non discrimination", "best interests", and participation principles (Articles 2,3 and 12 respectively); a clear commitment on access to the territory; a prohibition from detention; training on the needs and rights of children; clear statements about guardianship; and a broad definition of "child specific persecution".
- The child's right to participate in decisions affecting him or her (Article 12, UNCRC) should be addressed at all stages of the asylum and immigration process and integrated throughout relevant legislation. States should also fulfil their positive duty to assist children to express their views. To facilitate child participation, consideration should be given to: the early appointment of guardians and legal representatives; the availability of skilled interpreters; access to education; and child-friendly procedures and environments.

- In several European states separated children seeking protection face great difficulty in gaining access to the territory, largely due to a growing range of measures such as visa regimes, gate and pre-boarding checks, and carrier liability legislation. The principle that separated children should never be refused entry or returned at the point of entry should be clearly enshrined in EU legislation, in line with the 1951 Refugee Convention, 1997 UNHCR Guidelines and the SCEP Statement of Good Practice.
- The detention of children—particularly those who are unaccompanied—on account of their immigration status by EU Member States should be forbidden, in line with the UNCRC (the “best interests” principle, and Article 37) and UNHCR’s 1997 Guidelines. EU legislation (e.g. the Reception Directive, the Returns Directive) should not be used to justify this practice, or to lower standards.
- The provisions set out in Article 4.1 of the Family Reunification Directive, which allow Member States to subject children over 12 years to an “integration test” before authorising entry and residence, may represent a breach of international law (UNCRC, Article 1; Article 8, ECHR “Respect for family life”), and should not therefore be transposed by Member States into national law. When reporting on the application of the Directive, the European Commission should propose to the European Parliament and the Council that this clause be deleted.

- Children should neither be forcibly removed from EU territory, nor detained in order to carry out removal. In accordance with the UNCRC, separated children should only be sent back to their country of origin where it is safe and in their best interests. This must be carefully assessed on a case-by-case basis, in line with UNCRC General Comment No 6³⁹.
- All EU Member States should ratify the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (which came into force on 1 July 2003) and apply it to the European context, ensuring that the rights conferred on them do not fall below the levels of protection available to EU nationals⁴⁰.
- All EU Member States should seek to apply comparable definitions and recording practices to the collection of statistics on children, liaising with UNHCR to ensure basic data (numbers, origin, age, gender) are available. Collection of disaggregated data on children should be included in the EU Framework Regulation on the collection of migration and asylum statistics (2005), and monitored regularly by the European Migration Monitoring Centre from 2006.



1. The Action Plan identifies ten key areas for priority action: fundamental rights and citizenship; the fight against terrorism; migration management; internal borders, external borders, and visas; a common asylum area; integration of migrants; privacy and security in sharing information; the fight against organised crime; civil and criminal justice; and sharing responsibility and solidarity. EUROPEAN COMMISSION, *The Hague Programme: Ten priorities for the next five years*, Communication to the Council and the European Parliament, Brussels, 10 May 2005, COM(2005) 184 final.
2. The latter is likely to develop more quickly as a result of a Council decision to apply co-decision and qualified majority voting to all Title IV measures (with the exception of legal immigration) from 1 January 2005. See Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, OJ L 396, 31 December 2004.
3. See the report of the Secretary-General to the United Nations General Assembly on Protection and assistance to unaccompanied and separated refugee children, 7 September 2001 (A/56/333).
4. The Separated Children in Europe Programme (SCEP) is a joint initiative of some members of the International Save the Children Alliance and the United Nations High Commissioner for Refugees (UNHCR).
5. "Separated children", often referred to officially as "unaccompanied minors", are defined by the Separated Children in Europe Programme as "children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation."
6. The real extent of movement of children is likely to be higher, especially because in some countries many, if not most, separated children do not claim asylum.
7. See SMITH, T., *Separated Children in Europe: Policies and Practices in European Union Member States. A comparative analysis*, Separated Children in Europe Programme, Save the Children Denmark, 2003 and RUXTON, S., *Separated Children and EU Asylum and Immigration Policy*, Separated Children in Europe Programme, Save the Children Denmark, 2003.
8. UNHCR, *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries 2001-2003*, Geneva, July 2004.
9. There are significant differences with respect to national definitions and recording practices. For instance, data on France and Italy are not comparable enough to be included. In Germany, the age limit to be considered as a separated child is 16 years compared to 18 years in the UNCR. In Spain, children aged 17 and 18 are not included in the statistics on separated children even though the official age limit for this group is 18 years. The Dutch statistics include some separated children who are older than 18 years. Age assessment of separated children lodging asylum claims can prove to be difficult in some cases. Another source of uncertainty is whether nationally collected data are being updated after the child's arrival. And the validity of statistics depends on whether registration procedures are of good quality or not.
10. The highest proportions of applications from girls in 2003 were in Ireland (54 %), Germany (36 %) and Sweden (35 %).
11. UK figures refer to the number of asylum cases, however the average number of persons per case for unaccompanied and separated children is expected to be quite low.
12. A new legal basis for legislative activity in this area is now enshrined in Articles 61-69 (Title IV) EC.
13. European Council on Refugees and Exiles, "Melilla tragedy underlines need for respect for fundamental rights within comprehensive approach to asylum", Justice and Home Affairs Council 12-13 October, 10 October 2005.
14. See for example, EUROPEAN COUNCIL ON REFUGEES AND EXILES, *Broken Promises, Forgotten Principles, An ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection*, Brussels, 2004.
15. Comments from the European Council on Refugees and Exiles on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, as agreed by the Council on 19 November 2004, CO1/03/2005/ext/CN, March 2005.
16. European Parliament Committee on Civil Liberties, Justice and Home Affairs, Draft Report on the amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/ 2004-C6-0200/2004-2000/0238(CNS)).
17. For a more detailed analysis, see RUXTON, S., *Separated Children and EU Asylum and Immigration Policy*, Separated Children in Europe Programme, Save the Children Denmark, 2003.
18. UN Committee on the Rights of the Child, General Comment no 6 on the "Treatment of unaccompanied and separated children outside their country of origin", 39th session, 3 June 2005, CRC/GC/2005/6.
19. The "Statement of Good Practice" is available on <www.separated-children-europe-programme.org>.
20. UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, 1997.
21. RUXTON, S., *Separated Children and EU Asylum and Immigration Policy*, Separated Children in Europe Programme, Save the Children Denmark, 2003.
22. EUROPEAN COMMISSION, *The Hague Programme: Ten priorities for the next five years*, Communication to the Council and the European Parliament, Brussels, 10 May 2005, COM(2005) 184 final.
23. The European Refugee Fund (2005-2010) co-finances actions in the field of reception conditions of asylum seekers and asylum procedures, integration of refugees and voluntary returns. Available funding is 604M EUR for six years.
24. Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, Brussels, 1 September 2005, COM(2005) 388 final.

25. See, for instance, UK HOUSE OF LORDS EUROPEAN UNION COMMITTEE, *The Hague Programme: a five year agenda for EU justice and home affairs*, 10th Report of Session 2004-2005, HL Paper 84, 23 March 2005, The Stationery Office Limited, London.
26. UNHCR's current "Quality Initiative", in conjunction with the UK Government, aims to review and improve the quality of first instance decision-making through ongoing audit of existing procedure and practice, and may provide an appropriate model for wider application in EU Member States.
27. McKEEVER, D., SCHULZ, J., SWITHERN, S., *Foreign Territory: The Internationalisation of EU Asylum Policy*, Oxfam GB, Oxford, 2005.
28. The UK Government drew up a proposal for regional processing centres in 2003. In 2005 the German Interior Minister, Otto Schily, published ideas for tackling irregular migration across the Mediterranean by screening asylum seekers in North Africa.
29. RUXTON, S., *Separated Children and EU Asylum and Immigration Policy*, Separated Children in Europe Programme, Save the Children Denmark, 2003.
30. Note that this section does not consider the issue of migration from the EU10 to the EU15. The Accession Treaty sets out transitional arrangements, which allow the EU15 to restrict freedom of movement for workers from the new Member States for a period of up to seven years from May 2004. During an initial two-year period, workers from the new Member States will, in most cases, still need a work permit in order to gain access to the labour market (Ireland, the UK and Sweden have imposed less restrictive entry conditions on workers and their families).
31. The common EU immigration policy does not apply to the UK, Ireland and Denmark, however, the UK and Ireland can decide on a case-by-case basis to join the other Member States.
32. UK HOUSE OF LORDS EUROPEAN UNION COMMITTEE, *The Hague Programme: a five year agenda for EU justice and home affairs*, 10th Report of Session 2004-2005, HL Paper 84, 23 March 2005, The Stationery Office Limited, London.
33. Commission Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM (2001) 386 final, 11/07/2001.
34. The Council Directive on residence permits for victims of trafficking (2004/81) is considered in the section on *Violence against Children*, page 49.
35. Commission Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Brussels, 1 September 2005, COM(2005) 391 final.
36. UN Committee on the Rights of the Child, General Comment No 6 on the "Treatment of unaccompanied and separated children outside their country of origin", 39th session, 3 June 2005, UNCRC/GC/2005/6.
37. EUROPEAN COMMISSION, *The Hague Programme: Ten priorities for the next five years*, Communication to the Council and the European Parliament, Brussels, 10 May 2005, COM(2005) 184 final.
38. EUROPEAN COMMISSION, *Green Paper on an EU Approach to Managing Economic Migration*, Brussels, 11 January 2005, COM (2004) 811 final.
39. UN Committee on the Rights of the Child, General Comment No 6 on the "Treatment of unaccompanied and separated children outside their country of origin", 39th session, 3 June 2005, UNCRC/GC/2005/6.
40. The Convention recognises that migrant workers and their families lack protection in many states, extends basic human rights to documented and undocumented migrants, seeks to eliminate their exploitation, and attempts to establish minimum standards.





Child health

The greatest determinant of human health is socio-economic status¹, with the wealthiest individuals and families enjoying the best overall good health and long life expectancy. Despite several decades of the welfare state and universal access to healthcare systems in Europe, health inequalities have grown and have the most impact on children, limiting their physical, emotional and intellectual development.

This section first addresses key issues that face children and parents from the early years, including breastfeeding, nutrition, and the use of paediatric medicines. It then highlights specific challenges that children and young people face predominantly in adolescence, including HIV/AIDS, risk behaviours (drug-taking, smoking, alcohol consumption), and mental health problems.

Other health-related issues are covered in other sections of the report. Social exclusion and poverty often expose children to physical, emotional and psychological abuse or other forms of exploitation (see *Child poverty and social exclusion*, page 41, and *Violence against children*, page 49). Young people in or leaving care have children at a young age and overall immunisation levels are lower than the average population (see *Residential care and adoption*, page 141). Children from the most marginalised communities such as Roma or migrants suffer poor health, experience difficult living conditions and have little access to education, social or health services (see *Discrimination*, page 61 and *Environment*, page 99).

The World Health Organisation's approach

The World Health Organisation (WHO) has demonstrated that the foundations of adult health are set before birth and in early childhood. As children grow and develop, their physical, mental and emotional needs evolve, as do their vulnerabilities to hazards and dangers. Public

The UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3 and 12** (see *Introduction*, page 16), the following Articles are also relevant:

Article 6. — The right to life and development.

Article 23. — The right of disabled children to special care.

Article 24. — The right to the highest level of health possible and to access to health services.

Article 25. — The right of children placed in the care of the State to periodic review of treatment.

Article 31. — The right to play.

Article 33. — The right to protection from the use of narcotic and psychotropic drugs.

policies to improve children's health therefore need to take a lifecycle approach, addressing the changing environment for children and ensuring that they are protected and supported. Policy also needs to focus on reducing overall inequality and providing springboards out of disadvantage.

In 2005, the WHO Regional Assembly adopted a *European strategy for child and adolescent health and development*², designed to help Member States achieve the following objectives:

1. Provide a framework for an evidence-based review and improvement of national child and adolescent health and development policies, programmes and action plans, from a life course perspective;
2. Promote multisectoral action to address the main health issues regarding child and adolescent health;
3. Identify the role of the health sector in the development and co-ordination of policies and in delivering services that meet the health needs of children and adolescents.

The Strategy sets out seven priority areas for action: mothers and babies; nutrition; communicable diseases; injuries and violence; physical environment; adolescent health; psychosocial development and mental health.

The EU policy context

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At EU level, the Amsterdam Treaty (Article 152) states that "...a high level of health protection shall be ensured in the definition and implementation of all Community policies and activities." However, Member States are responsible for the organisation and delivery of health services and EU action on public health is largely limited to data and information collection, health promotion and education. Although some of these activities—especially in relation to health promotion and tackling drug taking—have had some emphasis on targeting young people, the overall focus on children has, until recently, been relatively narrow.

On 23 September 2002, the European Parliament and the Council adopted a Decision establishing a programme of Community action in the field of public health (2003-2008)³. The Programme has three key priorities: health information, health threats, and health determinants. Drawing upon the reflection process for a new European health strategy, launched on 15 July 2004⁴, the European Commission's 2005 Workplan in the field of public health highlights the importance of developing links with other relevant Community programmes and actions, co-operating with other relevant international organisations working on health (e.g. WHO, Council of Europe, OECD), and ensuring coverage of issues which have not been dealt with previously. Whilst many of the broad actions envisaged will have indirect benefits for children, there are a range of specific references to issues affecting children and young people, including:

- good practice in childhood and adult immunisation programmes;
- prevention of sales of cigarettes to children and adolescents;
- information activities to reduce under-age drinking (especially binge-drinking);
- work on obesity prevention, in particular among children and young people;
- development of strategies to address the increase in risk taking behaviors among young people in relation to sexual and reproductive health;
- and prevention of mother-to-child HIV/Aids transmission.

Overall, however, insufficient attention has been accorded to the health of children in EU policy-making. For example, children's interests have often remained invisible, as little EU-wide data has been collected on their circumstances. Although the European Commission completed a report in 2000 on the state of young people's health⁵, this did not consider the health of children below age 15. This mirrors the approach of EU youth policy, which has targeted young people aged 15 upwards.

"One message that came across strongly from the reflection process launched last year was the need to target children and adolescents in our strategy. The seeds of many diseases—from heart disease to mental illness—are often sown in childhood. I completely take on board the importance of addressing this in our strategy."

Markos Kyprianou, European Commissioner for Health and Consumer Protection, EurActiv interview, 14 February 2005, <www.euractiv.com/>.

Proposals have been published by the European Commission for a new EUR 1,203 million Programme in the field of Health and Consumer Protection (2007-2013) * intended to create synergy between these areas. The aims are: to protect citizens from risks and threats that are beyond the control of individuals; to increase the ability of citizens to take better decisions about their health and consumer interests; to mainstream health and consumer policy objectives; to protect citizens against health threats; to promote policies that lead to a healthier way of life; to contribute to reducing the incidence of major diseases; and to improve efficiency and effectiveness in health systems. The Programme reinforces growing commitment at EU level to children's health, arguing that "health inequalities, ageing, and children's health are... underlying themes of all health activities under the current programme."

* Communication from the European Commission, *Healthier, safer, more confident citizens: a Health and Consumer protection Strategy, Proposal for a Decision of the European Parliament and of the Council establishing a Programme of Community action in the field of Health and Consumer protection, 2007-2013*, Brussels, 6.4.2005, COM(2005) 115 final.

Child health in the early years

- The implementation of the child's right to the highest attainable standard of health in the early years depends on:
- the full recognition of the parent's role in a stable physical, emotional and psychological development of the child;
 - full involvement of the family and the necessary social and financial support when their child gets sick, injured or is suffering from a disability;
 - a hospital environment that provides the space and infrastructure for children of different ages and developmental stages and for their parents;
 - a hospital environment designed, furnished, staffed and equipped to meet the needs of children;
 - doctors, nurses, and other professionals involved in the care of children who are trained and have the skills to respond to the physical, emotional and developmental needs of children and families;
 - governments who are willing to provide the legal framework for adequate health care services inside and outside of hospitals and provide the financial means to fulfil the above requirements⁶.

CHILDHOOD NUTRITION AND OBESITY

The window of opportunity for lifelong health starts with the first few months of life. Extensive studies have demonstrated the crucial role played by breast-feeding in boosting the immune system and safely providing all of the nutrients needed for growing infants. WHO recommends that exclusive breastfeeding⁷ during the first 6 months reduces the risk of sudden infant death syndrome, gastro-intestinal infections and gives long-term benefits against obesity, type 1 diabetes, respiratory illnesses and other chronic conditions. There is a lack of consistent data of breastfeeding levels across Europe, but a "Blueprint for action"⁸ produced by an EU funded project sets out the legislative, cultural and social changes needed to support breastfeeding among mothers.

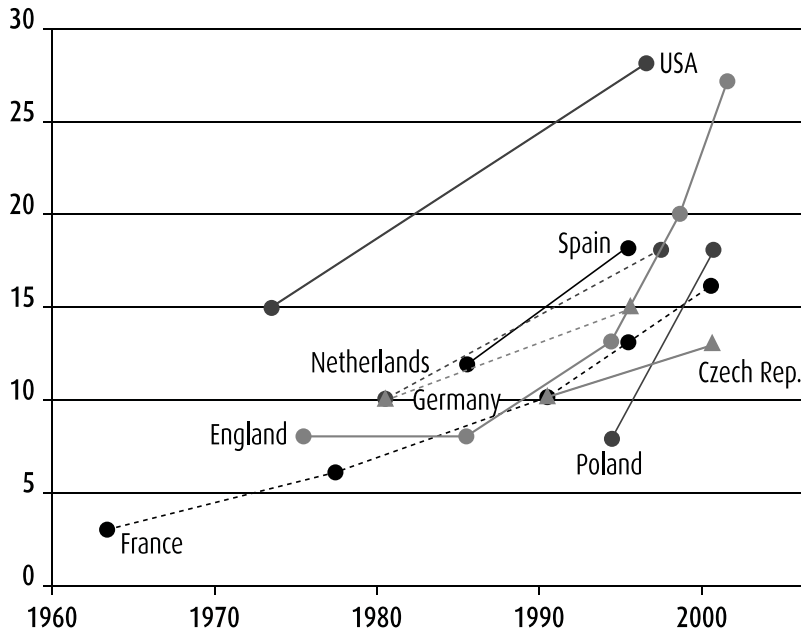
According to estimates of the International Obesity Task Force, one in five children in Europe is overweight. This figure has been rising markedly in recent years, with an additional 400 000 children becoming overweight each year. This is on top of the 14 million-plus who are already overweight (including at least 3 million obese)^{9,10}. For these children there is a significant likelihood of multiple risk factors for CVD, type 2 diabetes and other co-morbidities before or during early adulthood.

Figure 1 illustrates how the prevalence of overweight children is rising steeply in some countries, based on available data for those aged 5-11 from seven countries. The comparison with the USA shows how the gap with European countries is narrowing. Rates of increase vary, with England and Poland showing the sharpest increases. However, in general, Southern European levels of childhood obesity are higher than Northern European, owing to a generational shift away from the traditional Mediterranean diet towards processed foods rich in fat, sugar and salt¹¹. Other factors across the EU are increasing media/TV consumption, a general decline in school sport, and lack of adequate family resources¹². Health advocates have expressed concerns about the aggressive marketing of food products to children that are of poor nutritional value (see *Media and internet*, page 105).

In response to worrying data such as these, in March 2005 the European Commission launched the "EU Platform for Action on Diet, Physical Activity and Health". The Platform is intended to bring together key stakeholders—the food, retail, catering, and advertising industries, the cooperative movement, consumer organisations, health professionals and health NGOs—at EU level, pool their expertise, and initiate Europe-wide action in relation to five fields: consumer information, including labelling; education; physical activity promotion; marketing and advertising; and composition of foods, availability of healthy food options, portion sizes. Platform members commit to devoting greater resources and effort to the problem of obesity, either by extending existing initiatives or by launching new actions.

Figure 1

Rising prevalence of overweight children (5-11)



"Obesity is rising rapidly, and Europe's expanding waistline brings with it devastating consequences for public health and huge economic costs. Our continent is facing an obesity epidemic every bit as bad as the one in North America. I am particularly alarmed at the continued rise of overweight and obesity among school children. ...Business, civil society and government must work together to stem the rise of obesity among our children."

Markos Kyprianou, European Commissioner for Health and Consumer Protection, Press Release, IP/05/292, 15 March 2005.

Acknowledging that tackling obesity requires broader action on nutrition, physical activity and healthy lifestyles, the Commission will publish a Green Paper in 2005 outlining its initial ideas.

CHILDREN'S MEDICINES

More than 50 % of the medicines used to treat children have not been tested and authorised for use by children. This means a doctor writing a prescription for a child for an untested, unauthorised product, cannot be sure the medicine will be truly effective, what dose is appropriate, or exactly what the side effects may be¹³.

According to the European Commission, almost all areas of paediatric medicine lack products that have been researched and authorised. For example, major needs exist in: infectious diseases (meningitis, tuberculosis, AIDS), arthritis, cardiac diseases, diabetes, asthma, gastroenterology; allergic disorders, neurology; psychiatry; ophthalmology; anaesthetics, and malaria.

On 29 September 2004 the Commission adopted a proposal for a Regulation on medicinal products for paediatric use¹⁴, drawing upon comparable legislation in the USA. The objectives of the proposal are to: increase the availability of medicines specifically adapted and licensed for use in children; increase information available to patient/carers and prescribers about the use of medicines in children, including clinical trial data; and increase high quality research into medicines for children. Key measures include: a new expert "Paediatric Committee" within the European Medicines Agency to assess and agree companies' testing plans; marketing authorisation requirements so that the results of all studies performed are presented at the time of applications; a system of waivers from this requirement for medicines likely to be unsuitable for children, and a system of deferrals to ensure medicines are tested in children only when it is safe to do so; and an EU-wide study programme.

UK campaign to ban junk food for children

In 2005, chef Jamie Oliver launched a highly effective campaign to improve children's school meals, based on a series of TV documentaries ("Jamie's School Dinners"). As a result, the UK Government is increasing spending on school meals by an extra £280 million (around EUR 400 million) and has announced the development of new guidelines to combat obesity in children. These are likely to include: tougher rules on levels of salt, sugar and fat; official inspections; and a list of banned foods (e.g. sweets, chocolates, crisps).

<www.channel4.com/life/microsites/j/jamies_school_dinners/>.

Adolescent health

HIV/AIDS

Despite the early successes of European efforts to stem the epidemic, infection rates are now rising again across the continent. The number of newly reported HIV cases has doubled from 1995 until the present, and a resurgence of unprotected sex among young people is increasing the risk of a new wave of infections. In the new EU Member States and their neighbours, the situation is of particular concern, with the Baltic States, Russia and Ukraine experiencing dramatic rises in new cases of HIV infections. The HIV prevalence rate in Estonia is now 1%, with up to 80% of people infected with HIV under 25 years of age.

According to data published in 2004 by EuroHIV^{16,17,18} on cases of newly diagnosed HIV infections and AIDS¹⁹ in 52 European countries there are strong increases in the number of young women that are becoming infected.

Table 1

AIDS cases by geographic area¹⁹, sex, age at diagnosis and year of diagnosis (1999-2003) adjusted for reporting delays, and cumulative totals, WHO European region, data reported by 31 December 2003.

Geographic area/Sex/ Age at diagnostic (years)			Year of diagnostic					Cumulative total reported
			1999	2000	2001	2002	2003	
West	Male	<13	44	33	38	32	26	1899
		13-19	28	22	24	23	18	1081
	Female	<13	45	43	29	29	24	1764
		13-19	18	26	23	34	19	411
Centre	Male	<13	237	209	99	21	12	3893
		13-19	12	28	50	55	61	290
	Female	<13	174	156	65	21	4	2736
		13-19	14	21	30	33	51	199
East	Male	<13	5	4	1	3	1	105
		13-19	7	6	4	4	7	53
	Female	<13	5	0	1	1	4	80
		13-19	5	5	2	4	3	38

EU ACTION TO TACKLE HIV/AIDS

The HIV/AIDS epidemic has been a central concern of public health policy for the last twenty years. Alongside strong political commitment, the development of effective prevention programmes, and the introduction of antiretroviral drugs (in 1996), co-operation between EU Member States helped to contain earlier waves of the epidemic. EU action included funding for projects and networks to develop and disseminate best practice and meet the needs of specific vulnerable groups, and for longer-term research.

Today, however, there are fears that a new epidemic is emerging, with some parts of Europe seeing the fastest rise in HIV incidence in the world. During 2004, renewed political impetus was given to efforts to tackle HIV/AIDS within the EU and in neighbouring countries by Ministerial Conferences in Dublin and Vilnius, and by the publication by the European Commission Working Paper²⁰ summarising previous experience and setting out a range of short-term measures to address the problem. In addition to action at Member State level, it recommends that EU co-operation should include:

- Public information: an HIV/AIDS component in Commission youth campaigns for 2005-2006 and improved access of young people to information.
- Tailor-made strategies for vulnerable groups: a special focus on work with vulnerable groups and taking youth more into account in health policies and risk prevention, convening an expert network to develop best practice recommendations on the prevention of mother-to-child transmission.
- Efforts to reduce the negative impact of the epidemic.
- Mobilisation of resources and coordination of efforts.

The above actions are likely to have some positive impact on the circumstances of children and young people. However the specific issues that they face—whether living with HIV themselves, or with parents or family members who are affected by HIV/AIDS— require particular consideration at all levels. For example, children are most likely to acquire HIV from their mothers during pregnancy, birth or breastfeeding, but early identification of HIV positive mothers can lead to a significant reduction through medical intervention in the likelihood of transmission to the baby. The early diagnosis of HIV in infants and children can also ensure that appropriate treatment is given to prevent opportunistic infections. For older children, sex education may be inadequate, leaving them incapable of making informed choices about sexual contact, and unaware of how to protect themselves from the virus²¹. There are also concerns about the growing use of alcohol among young teenagers and links to risk-taking sexual behaviour.

Children's treatment needs are also specific. Access to antiretroviral therapy (ART) enables children with HIV to live longer and have a better quality of life, but the paediatric formulations that are available can cost up to six times more than ART for adults, making them inaccessible to people in poorer countries. Given the complexity of treatment regimes for children, there is also a need for specific paediatric AIDS training for doctors, nurses and healthcare workers. Expert counselling and support services may be required, both for children who are HIV positive, and for children who are living with/caring for other family members²².

Finally, children with HIV should have the right to attend school without disclosure of their status, in line with the anti-discrimination provisions of Article 2, UNCRC. And children should have the right to participate in decisions that affect them (Article 12, UNCRC), such as those over their care and inheritance, and to contribute in the fight against HIV/AIDS²³.

DRUGS

According to the 2004 Annual Report of the European Centre on Drugs and Drug Addiction²⁴, cannabis remains the most commonly used illegal drug in the EU with roughly one in five (20 %) adult Europeans having tried it at least once in their lifetime. Around one in ten 15-16 year old school students in Greece, Malta, Finland, and Sweden have ever tried the drug, compared with over 30 % in the Czech Republic, Spain, France and the UK. Around 15 % of 15-16 year olds in the EU who have used cannabis in the last year are "heavy" cannabis users—using a definition of 40 or more times per year. Young males are more than twice as likely to be "heavy users" as girls.

European trends in the recent use of ecstasy are also upwards, while trends for recent amphetamine use are more mixed in the majority of countries. Between 5 % and 13 % of young men aged 15-24 in the Czech Republic, Spain, Ireland, Latvia, the Netherlands and the UK report using ecstasy in the last year.

A 2004 Eurobarometer survey of the opinions of 7700 young people aged 15-24 in the EU(15)²⁵ found that the main reasons why young people decided to try drugs are curiosity (64 % of respondents) peer pressure (45 %) and thrill seeking (37 %). Whilst there are differences according to age, gender, and socio-economic status, overall they believed that:

- The main consequences associated with drug use are addiction (64 %), mental problems (40 %), and problems with the law (39 %).

"The current situation in the EU regarding medicines for children is clear evidence that market forces alone are insufficient to stimulate adequate research into and authorisation of medicines for children. The industry has considered that for many childhood diseases the potential return on investment is insufficient to justify such investment in research and development."

European Commission, Regulation on medicines for children: frequently asked questions, <pharmacos.eudra.org/F2/Paediatrics/index.htm>.

"...In our region persons at the highest risk of and most vulnerable to HIV/AIDS infection include children and young people, drug injectors and their sexual partners, men who have sex with men, sex workers, trafficked women, prisoners and ethnic minorities and migrant populations which have close links to high prevalence countries."

EU Health Ministers, Vilnius Declaration on Measures to Strengthen Responses to HIV/AIDS in the European Union and in Neighbouring Countries, Vilnius, 17 September 2004.

- The most effective responses were tougher measures against dealers, traffickers (60 %) and producers (49 %), more treatment and rehabilitation measures (53 %), and information campaigns (42 %).
- The main sources of information for young people about drugs are: specialised drug centres (55 %); health professionals (44 %); and friends (36 %). Internet is also an increasingly used source.
- Heroin is very dangerous (89 %) and more than seven respondents out of 10 agree to the great danger of cocaine and crack, but this perception of danger is much lower for cannabis (24 %). Only 10 % feel that occasional consumption of ecstasy is not dangerous.

The main plank of the EU's approach is the EU Drugs Strategy 2005-2012²⁶, part of the multi-annual "Hague Programme" for strengthening freedom, security and justice in the EU. Taking into account the principle of subsidiarity whereby Member States are responsible for national drugs policy and the EU complements their efforts, the Strategy sets out a co-ordinated approach combining demand reduction (and in particular prevention and early intervention programmes targeting families and young people), supply reduction, and the fight against international drug traffickers. The thrust of the Strategy has, however, been criticised by the European Parliament, especially for prioritising law enforcement over harm reduction among drug users and prevention²⁷. This reflects increasing emphasis, particularly within the EU(15), on drugs as a public health/social welfare rather than a law enforcement issue.

In February 2005 the Commission adopted a new EU Drugs Action Plan for 2005-2008²⁸, the first of two plans implementing the Drugs Strategy. The action plan sets out a range of measures, including co-ordination of policy (especially through the EU-level Horizontal Working Party on Drugs), prevention programmes (e.g. in schools, and for specific target groups), improved access to treatment programmes, and international co-operation.

SMOKING

Research has identified a causal relationship between smoking among adolescents and young people and adverse health consequences, such as impaired lung growth, early onset of lung-function decline, respiratory symptoms and asthma²⁹. Across the EU(15), a Eurobarometer opinion poll has shown that fewer than one in three young people aged 15-19 (31 %) smoke regularly³⁰. WHO's Health Behaviour in School-aged Children (HBSC) study³¹ surveyed 11, 13 and 15 year olds in 35 countries (including all EU Member States apart from Cyprus, Luxembourg and Slova-



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kia) and identified that, at age 15, 11–57 % of boys and 12–67 % of girls are weekly smokers (most of who smoke daily), with girls having higher rates in western European countries and regions and boys in eastern ones.

Maternal smoking during pregnancy is an important cause of ill-health for both mother and baby, increasing the risk of miscarriage, premature birth, complications, and low birth weight. “Passive” smoking carries similar risks. Smoking is increasingly linked to poverty, and contributes to a widening health inequality gap within the Union³².

Since 1987, Community action to control tobacco use has included directives on tobacco advertising³³, labelling, tobacco products³⁴, taxation legislation, and health and safety at work. The combination of these measures has had a significant impact; for example, a tobacco advertising ban currently exists in 18 Member States. More recently, Ireland, Norway, Sweden, Italy and Malta have banned smoking in public places. However, in general, progress has been slowed by the use of an internal market legal base (Article 95 EC)³⁵, which has been subject to repeated legal challenge by the tobacco industry and some national governments.

In 2003, the European Community signed the WHO Framework Convention on Tobacco Control (FCTC), the world’s first public health treaty. It entered into force on 27 February 2005 and is legally binding on ratifying states. The Convention, which has been ratified by 13 EU countries, calls for the prevention of sales of tobacco products to and by children, bans on the advertising of tobacco, high visibility health warnings on tobacco products, and measures to protect people from passive smoking.

Specific EU action in relation to children and young people has focused on anti-smoking campaigns. The EUR 18 million “Feel Free to Say No” campaign from 2001-2004 involved a range of events in Member States including a road show, schools competition, and television and print adverts. In 2004 the Commission announced a further four year EUR 72 million EU media campaign against smoking (“HELP: For a Life without Tobacco”), aimed at promoting tobacco free lifestyles to young people, encouraging existing smokers to quit, and promoting tobacco free public places. In addition, the Commission produced 42 hard-hitting colour picture warnings that could be used by national governments in addition to the text health warnings³⁶.

ALCOHOL

The WHO European Charter on Alcohol explicitly states that “all children and adolescents have the right to grow up in an environment protected from the negative consequences of alcohol consumption and to the extent possible, from the promotion of alcoholic beverages”.³⁸

The World Health Organisation has designated alcohol as “*no ordinary commodity*” for good reason. There are direct links between alcohol consumption—particularly intoxication—and domestic and marital violence, sexual assault within and outside families, child abuse and homicide. Exposure to alcohol during pregnancy can impair brain development and be associated with intellectual deficits that become apparent later in childhood. About one fifth of childhood deaths from road traffic accidents are due to someone else’s drinking. Approximately 12 % of European adults use alcohol at harmful levels, defined as 40 grams of pure alcohol or more per day for men and 20 grams or more for women.

In addition to the impact of adult drinking on families and children, there is growing concern about drinking among young people themselves. Two large-scale comparative surveys of young students’ alcohol and other drug use have provided the evidence: the European School Survey Project on Alcohol and Other Drugs (ESPAD)³⁸ and the Health Behaviour of School-age Children survey (HBSC).³⁹

A forthcoming major EU report on alcohol use reveals that nearly 9 in 10 children in the EU have drunk alcohol by the age of 15, starting at around 12½ years old on average. The average age of first intoxication for those that had been drunk was nearly 14, suggesting an average delay of over a year between experimenting with drinking and first drunkenness. There are some gender differences. European boys are more likely than European girls to have tried alcohol by age 11, to have been drunk by 13, to drink more, and to binge-drink.

In addition, the UNICEF Young Voices Opinion Survey found that 6% of EU15 young people (aged from 9 to 17) and 12 % of EU10 young people had friends or acquaintances their age with an addiction problem.⁴⁰

MENTAL HEALTH

Recent years have seen substantial increase in mental health problems among young people, ranging from mild forms of depression, emotional and behavioural problems through to complex psychiatric disorders. According to a Commission report on health status within the EU15: "Between 15 % and 20 % of adults and from 17% to 22% of teenagers under 18 suffer some form of mental health problem. Eating disorders, such as anorexia and bulimia, seem to be increasing among adolescents".⁴¹

During pregnancy and the early years of life, parents particularly those from impoverished backgrounds or suffering from mental disorders are at increased risk of mental health problems and are more likely to fail to provide a healthy environment for their children. This can in turn can lead to poor family relationships, greater levels of school expulsion and lower levels of educational attainment, links with offending behaviour, social exclusion and difficulties in establishing positive relationships with partners and own children. Delays in language development and consequent failure to learn in primary school can result in poor educational achievement and increase the risk of adolescent psychiatric symptoms and later mental disorders. Positive proactive parenting can increase children's self esteem, their social and academic competence and protect against later disruptive behaviour and substance abuse disorders.

Suicide may be associated with a range of factors, with substance abuse well recognised as a crucial risk factor.⁴² Although suicide figures are affected by differences in the process of death registration, there appears to have been a decline in recent years in the incidence of suicides among young people (aged 15-24) in the EU15. For the EU10, the available figures⁴³ for 15-19s show that rates for young women are less than for young men, and are highest for young women in Lithuania (8.8 per 100 000 population in 2002).⁴⁴ Similarly, among young men, rates are by far the highest in Lithuania (38.4 per 100 000 in 2002)⁴⁵; whilst they have fallen in most states, Lithuania is the only country where rates have climbed significantly.

Mental health promotion and prevention strategies require support given to good parenting and to the development of a strong parent/child relationship. These form a basis for empowerment, self-confidence and resilience for lifetime. A holistic approach to strategies for promotion and prevention in schools, colleges, universities and establishments that provide young people with training for work requires a co-ordinated approach that involves children, students, their teachers and parents.

In January 2005, the World Health Organisation, Council of Europe and EU held an intergovernmental conference in Helsinki on Mental Health.⁴⁶ The concluding Ministerial Declaration recognised the important role of mental health promotion and the damaging association between mental health problems and social marginalisation, unemployment, homelessness, and alcohol and other substance misuse. The governments committed themselves to "offer targeted support and interventions sensitive to the life stages of people at risk, particularly the parenting and education of children and young people".

The European Commission's 2005 Workplan in the field of public health emphasises the importance of:

- promoting positive mental health and preventing mental disorders focusing on children, adolescents and young people in settings such as pre-school, school and further educational settings as well in community settings;
- and actions on depression, suicide prevention and prevention of self-harm and substance abuse in children adolescents and young people.

Recommendations

- Information and statistics on children's health below age 18 should be collected on a systematic basis, disaggregated by sex and age, as part of the ongoing development of indicators for a "European Union System of Information on Health and Knowledge", being led by the European Commission in partnership with Eurostat, OECD and WHO.
- The health and well-being of children and young people should be prioritised in the EU's Health and Consumer Protection Programme. (2007-2013).
- Children's rights should be a central focus of the forthcoming Commission Communication on combating HIV/AIDS within the EU and neighbouring countries. The EU should support country-led strategies by sharing expertise, building capacity, and providing financial resources, in conjunction with other partners, such as WHO, UNICEF and UNAIDS.
- The EU and Member States should implement the WHO recommendation on breastfeeding, which includes training for healthcare professionals, legal protection for lactating workers, strict safety standards for the manufacture of infant formula, and control on the marketing of formula.
- Member States should ensure that schools, sport and youth clubs are developed and adequately resourced to ensure children rights to leisure and play opportunities are met (Article 31, UNCRC). If the Constitution is approved, the EU will be able to contribute to the promotion of sport (Article III-282); the EU should therefore continue to develop a sports policy, building on the 2004 European Year of Education through Sport.
- The 2006 Commission Green Paper on ways to effectively cooperate with civil society on drugs policy should ensure that the perspectives of children and young people, and organisations working with them, are integrated throughout. All Member States should also ensure that they establish by 2007 comprehensive programme-based drug prevention in schools and other community settings, and make prevention programmes available for children for children, young people and families at risk, as set out in the EU Drugs Action Plan 2005-2008.
- All EU Member States should commit to a comprehensive anti-tobacco strategy that addresses prices, availability, advertising, smuggling and counterfeit measures, and cessation programmes, in order to reduce overall tobacco consumption patterns among adults and young people. Member States that have not already done so should ratify and implement the provisions of the WHO Framework Convention on Tobacco Control.
- All EU Member States should enforce a minimum age of at least 18 (or higher) for purchasing alcohol, and licensing regulations and rules.
- The European Commission, in conjunction with Member States and other key stakeholders such as WHO and UNICEF, should implement the recommendations of the Ministerial Declaration on Mental Health adopted in Helsinki in 2005.

Footnotes

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9. International Obesity Task Force EU Platform, European Association for the Study of Obesity Briefing Paper, Brussels, 15 March 2005.
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11. International Obesity Task Force EU Platform, European Association for the Study of Obesity Briefing Paper, Brussels, 15 March 2005.
12. BRETT-SCHNEIDER, W.-D., NAUL, R., *Study on young people's lifestyles and sedentariness and the role of sport in the context of education and as a means of restoring the balance*, University of Paderborn, 2004.
13. EUROPEAN PUBLIC HEALTH ALLIANCE, *Commission adopts a proposal for a regulation on medicines for Children*, 30 September 2004, <www.epha.org/a/1451>.
14. EUROPEAN COMMISSION, *Proposal for a Regulation of the European Parliament and the Council on medicinal products for paediatric use*, Brussels, 29 September 2004 COM(2004) 599 final.
15. The European Centre for the Epidemiological Monitoring of AIDS WHO and UNAIDS Collaborating Centre on AIDS.
16. European work on HIV/AIDS surveillance started in 1984, covering the reporting of AIDS cases in 17 countries. Now this network, called EuroHIV, financed by the European Community, covers 51 member countries of the World Health Organisation.
17. EUROHIV, *HIV/AIDS Surveillance in Europe, End-year report 2003*, Institut de veille sanitaire, Saint-Maurice, 2004.
18. HIV case reporting remains incomplete in Western Europe. For example, two of the most affected countries—Italy and Spain—have not yet implemented HIV reporting at national level.
19. "West" includes the EU 15, plus Iceland, Israel, Norway and Switzerland. "Centre" includes Cyprus, Czech Republic, Hungary, Poland, Slovakia, Slovenia (all EU), plus Albania, Bosnia Herzegovina, Bulgaria, Croatia, Macedonia, Romania, Serbia and Montenegro, and Turkey. "East" includes the EU Baltic States (Estonia, Latvia, Lithuania), plus Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.
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26. Council of the European Union, *EU Drugs Strategy 2005-2012*, Brussels, 22 November 2004.
27. Proposal for a European Parliament recommendation to the Council on the European strategy on fighting drugs (2005-2012), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Giusto Catania, A6-0067/2004 final, 7 December 2004.
28. Communication from the Commission to the European Parliament and the Council on an EU Drugs Action Plan (2005-2008) COM(2005) 45 final Brussels, 14 February 2005.
29. ASPECT CONSORTIUM, *Tobacco or Health in the European Union: Past, present, and future*, European Commission, Directorate General for Health and Consumer Protection, Office for Official Publications of the European Communities, Luxembourg, 2004.
30. EOS GALLUP EUROPE, "Young People and Drugs", *Flash Eurobarometer*, No 158, European Commission, 2004.
31. CURRIE, C. et al (eds.), *Young People's Health in Context: international report from the HBSC 2001/02 survey*, WHO Policy Series: Health policy for children and adolescents, Issue 4, WHO Regional Office for Europe, Copenhagen, 2004.
32. ASPECT CONSORTIUM, *Tobacco or Health in the European Union: Past, present, and future*, European Commission, Directorate General for Health and Consumer Protection, Office for Official Publications of the European Communities, Luxembourg, 2004.
33. Under the Tobacco Advertising Directive 2003 all tobacco advertising on the radio, on the internet and in the print media in EU countries was prohibited from 31 July 2005. Tobacco advertising is already banned EU-wide under the TV Without Frontiers Directive of 1989.
34. The Tobacco Products Directive 2002 requires hard-hitting health warnings on all tobacco products sold in the EU (compulsory EU-wide since September 2003); bans misleading descriptions, and regulates maximum levels of tar, nicotine and carbon monoxide in cigarettes.
35. The public health legal base (Article 152 EC) is weaker, and does not allow this kind of legislation.
36. The picture warnings can be seen at <europa.eu.int/comm/mediatheque/photo/new_en.html>.
37. <www.euro.who.int/AboutWHO/Policy/20030204_1>.
38. <www.espad.org/>.

39. <www.hbsc.org/>.

40. UNICEF Young Voices opinion Survey, <www.unicef.org/polls/cee/drugs/>.

41. EUROPEAN COMMISSION, *The health status of the European Union*, Office for Official Publications of the European Communities, Luxembourg, 2003.

42. EUROPEAN COMMISSION, *The state of mental health in the European Union*, European Communities, 2004.

43. UNICEF, *Innocenti Social Monitor 2004*, UNICEF Innocenti Research Centre, Florence.

44. The second highest rate is in Hungary (3.8) and the lowest in Slovakia and Estonia (1.9).

45. The second highest rate is in Estonia (24.1) and the lowest is in Slovakia (6.3).

46. <www.euro.who.int/mentalhealth2005>.



Child safety

Children are a relatively vulnerable and powerless group within society who must be protected from risks to their health and safety. For example, they do not have access to adequate information about the risks they face—and when younger they may in any case lack the capacity to understand such information. Whilst the focus of this section is therefore primarily on the protection of children, it is also important not to overemphasise children’s “vulnerability”; this can undermine a view of children as increasingly competent social actors (see *Media and internet*, page 105).

In June 2004, Ministers from 52 European countries adopted a declaration and action plan on children’s health at a WHO conference in Budapest. The conference defined four priority goals, including the protection of children from injuries, and the enforcement of regulations to reduce the exposure of children to hazardous chemicals. In particular, the Final Declaration called on “manufacturers to stop placing on the market products containing substances that have, or may have, adverse effects on children’s health or on the environment”.¹ As a result, national environment and health action plans with child-specific actions are to be developed by 2007 at the latest. In 2005, the WHO Regional Committee passed a resolution on prevention of injuries in the European Region², setting out a range of specific recommendations (see also *Child health*, page 81).

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3.1 and 12** (see *Introduction*, page 16), the following articles are also relevant:

Article 3.2.—The duty of the Government to provide the necessary care and protection for the child’s well-being.

Article 3.3.—The duty of the Government to ensure that the standards of services provided for the care and protection of children are adequate, particularly in relation to safety, health, staffing and supervision.

Article 6.—Governments shall ensure to the maximum extent possible the survival and development of the child.

Article 17.—The duty of the government to ensure the child has access to information for his or her social, spiritual and moral well-being.

Article 19.—The right to protection from all forms of violence, injury, abuse, neglect or exploitation.

Article 24.—The right of the child to the enjoyment of the highest attainable standard of health’.

Article 31.—The right to participate in leisure, cultural and artistic activities.

For EU Member States, several directives have been adopted by the EU that have had a significant impact in improving children's safety, but the overall approach has been haphazard. Often the general focus of directives results in children's rights being ignored, and there has as yet been no systematic consideration of children's interests.

Ultimate responsibility for protecting children as consumers rests at the Member State level, and national regulations can be made where there are no European regulations and can exceed European regulations where the national authorities can justify why this is necessary (Article 36 of the Treaty). However Article 153 (ex Article 129a) of the Amsterdam Treaty strengthened consumer protection and public health in the EU, so that children's interests and concerns as consumers can be taken more fully into account in the drafting of EU legislation on a wide range of important issues. This is increasingly important in relation to issues that can be addressed at EU level arising from the Single Market's emphasis on the free movement of goods and services (e.g. product safety, the regulation of advertising).

In April 2005, the European Commission published proposals for a new EUR 1203 million Programme in the field of Health and Consumer Protection (2007-2013)³. The joint aims are to: protect citizens from risks and threats which are beyond the control of individuals and that cannot be effectively tackled by individual Member States alone (e.g. health threats, unsafe products, unfair commercial practices); increase the ability of citizens to take better decisions about their health and consumer interests; and mainstream health and consumer policy objectives across all Community policies in order to put health and consumer issues at the centre of policymaking.

In relation to consumer policy in particular, four strands of activity are envisaged: better understanding of consumers and markets; better consumer protection regulation; better enforcement, monitoring and redress; and better informed and educated and responsible consumers. Although there is an emphasis on "ensuring consumers are heard in EU policy-making" and on developing education actions targeted at young consumers, a significant gap is that there is no specific mention of children.

Child injury

Although there are significant differences between Member States in relation to data collection on child injury in the EU⁴, a recent publication by the European Child Safety Alliance⁵ summarises the available evidence. For example:

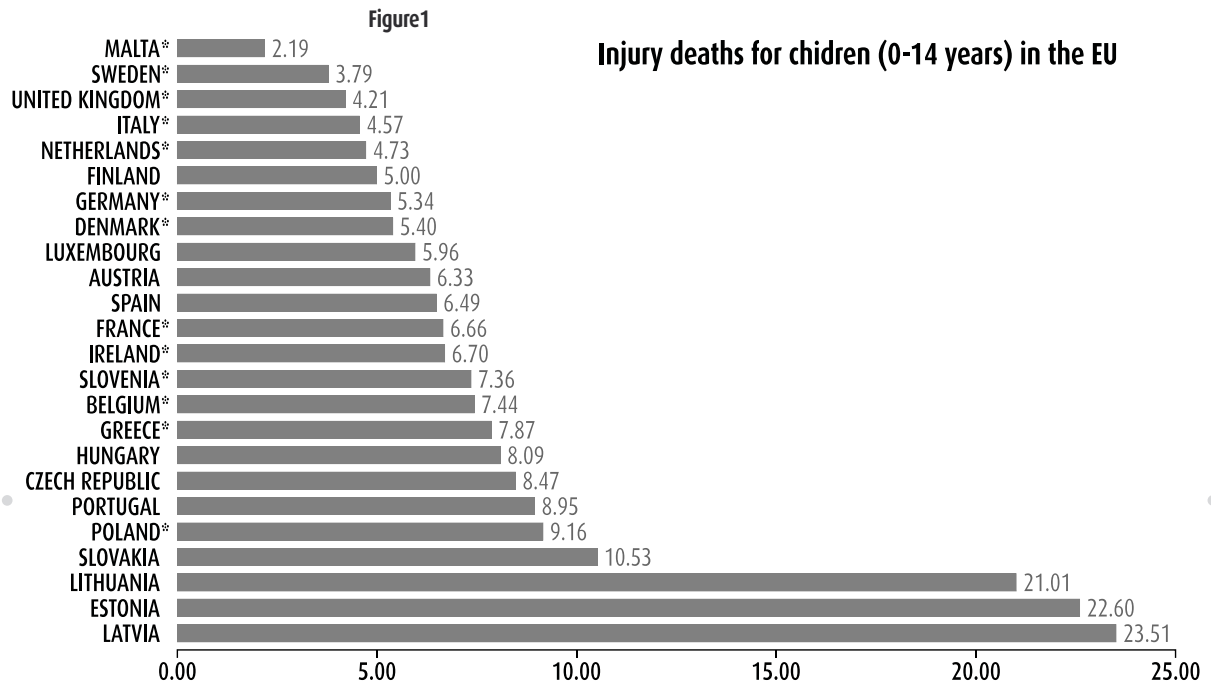
- Injury is the leading cause of death for children in Europe and between the ages of 1 and 14 years, an injury death occurs at twice the rate of a death from cancer, or 8 times that of a respiratory-related death.⁶
- The most common causes of child deaths (age 0-14) by injury are the same in all EU Member States: road accidents (34 %), drowning (13 %), homicide (6 %), falls (5 %), fire (4 %) and suicide (4 %).
- For most countries road accidents are the leading cause of injury deaths, yet in some countries in Central and Eastern Europe (especially the Baltic States) drowning is the number one cause of child injury deaths.

Beyond these figures in relation to extreme cases, there is national evidence that for every child that dies from injuries, another 160 children are admitted to a hospital for a severe traumatic injury and another 2000 children are treated in accident and emergency departments⁷. And even though there have been some improvements over the past 20 years in some Member States, the scale of the problem remains very significant —particularly for poorer households (see *Child poverty and social exclusion*, page 41).

"Children are particularly at risk: road traffic injuries are the leading cause of childhood mortality in children between the ages of 5 and 14, followed by lower respiratory illness, and drowning as the third leading cause, this being particularly prevalent in the low- and middle-income countries of the Region. Deaths are the tip of the iceberg; there may be long-term physical and psychological consequences in children, with serious repercussions for health in later life. These may be difficult to measure using routine information systems."

WHO, Injuries in the WHO European Region*: burden, challenges and policy response, 55th Session of the WHO Regional Committee (EUR/RC55/10) Bucharest, Romania, 12-15 September 2005.

* WHO European Region includes the EU Member States, plus Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.



* Some data is missing.

Making products safe for children

According to a recent Eurobarometer survey⁸, Europeans in the EU15 agree that the EU should enforce standards and regulations to help reduce accidental injury. They also believe that manufacturers should bear the responsibility for the safety of their products and that they should take children's safety into account when designing play areas, child related products and other goods. And they tend to agree that most accidental injuries concerning children can be avoided and that many products designed for child safety have unclear or complicated instructions.⁹

Alongside national measures, there is a role for the EU to ensure common safety standards. The General Product Safety Directive (GPSD)¹⁰ requires that only safe products are placed on the European market. Some groups of products (e.g. toys) are also subject to specific directives that provide further guidance on essential safety requirements and take precedence over the GPSD. These directives rely on European standards to provide the technical specifications necessary to manufacture products that are safe and do not expose their users to known risks and hazards.¹¹

Despite these initiatives, problems remain. Sometimes EU standards, dominated by the concerns of industry, have been set at too low a level to make a real impact (and on occasion have even reduced existing regulation in some countries), in apparent breach of the "best interests of the child" principle of Article 3 of the UNCRC. The implementation of directives (for which Member States have responsibility) is often poor. Although sanctions such as fines appear to be more common in relation to some issues (e.g. urban speed limits, seat belts, fireworks and child resistant packaging), overall "many countries within the EU lack even a basic structure for enforcing regulations and standards for consumer products such as child care articles".¹²

In relation to toy safety, for example, all toys are required to bear a "CE" mark to show that they conform to relevant EU safety standards, yet manufacturers have the right to declare that their products comply by attaching the mark themselves. Although Member States must carry out checks, it appears that enforcement is not rigorous enough in some instances.

There are other cases where existing regulations, directives and standards are not adequately protecting children's interests. These include child restraint systems in cars, pedestrian protection, building safety, child care articles, clothing flammability, cords on clothing, playground and fairground equipment, sport equipment and electrical appliances.¹⁴

Recommendations

- The European Commission should evaluate existing EU regulations, standards and directives to ensure they protect children effectively, are regularly enforced with strict penalties given for non-compliance, and adopted as national laws in Member States.
- The European Commission should integrate child safety into all relevant community policies and set a cross-sectoral target for injury prevention.
- The European Commission should improve and fund data systems at the European level in order to provide timely population-based data on injury occurrence and long-term consequences, hazard exposure and emerging issues.
- The European Commission should support and fund proven prevention measures that reduce child injury deaths and serious injury through: the development of an easily accessible European database on best and good practices in child injury prevention; enhanced development and increased enforcement of child safety standards; the establishment of a product safety directive specific to childcare products; and support for an annual child safety campaign at the European level.
- Consumer and children's organisations, and children themselves, should be engaged in consultation processes with relevant EU institutions as early a stage as possible in the development of regulations, directives, and standards that may affect children's interests as consumers.
- The European Commission should promote and support information and education campaigns in the Member States to educate children, parents, teachers, and other caregivers in relation to child safety issues.

Poverty and child injury

"In the road environment, poorer children are more likely to live in areas with a high traffic density, to live in homes which open directly onto the street, where there are less safe areas to play, and are more likely to travel on foot or by bicycle than by car. Where children are transported by cars, more affluent families can provide newer cars that incorporate more safety features, such as side impact protection bars. In the home environment, more affluent families are able to install a range of safety devices such as smoke detectors, safety gates and fireguards. People living in poorer housing conditions may increase their risk of fire with older furniture, heating equipment, and electrical appliances. Social factors may influence the parents' abilities to supervise children: such factors include single parent families, parent maturity, awareness and experience, depression and family illness, large family size."

EUROPEAN CHILD SAFETY ALLIANCE, *Priorities for Child Safety in the European Union: Agenda for Action*, Amsterdam, 2004, available on <www.childsafetyeurope.org>.

EU landmark decision bans phthalates in toys

Phthalates are widely believed to be harmful to human health, causing damage to the reproductive system and increasing the risks of allergies, asthma and cancer. They are used in a wide range of applications including clothing, PVC building materials, medical products, cosmetics, toys, child care articles and food packaging. In toys, they are used to soften the PVC plastics certain toys are made of. Based on an opinion by the European Commission's Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE), the Commission ordered a temporary ban on phthalates in 1999, after concerns (raised in Denmark, Spain and Sweden) that toxic chemicals were ingested by children when chewing plastic toys.

In 2005, the Council of Ministers finally agreed on the need to ban phthalates in toys for children under the age of three, but saw no need for the labelling of toys for over three-year olds. The European Parliament's Committee on the Environment, Public Health and Food Safety adopted, on 14 June 2005, a strong line in favour of compulsory labelling on toys containing phthalates. In a compromise text, the Council has abandoned the "age of three" limit on restrictions and the Parliament has given up on nearly all its other demands (including the labelling requirement). The compromise proposes to ban three types of phthalates "in toys and childcare articles which can be placed in the mouth by children." More products than initially planned will thus be affected by the directive.

Phthalates to be banned in toys and childcare articles, <www.EurActiv.com>, 24 June 2005.

Footnotes

1. Declaration of the Fourth Ministerial Conference on Environment and Health, Budapest, 23-25 June 2004, EUR/04/5046267/6.
2. WHO Regional Committee, *Resolution on prevention of injuries in the European Region*, EUR/RC55/R9, <www.euro.who.int/violenceinjury/20050429_1>.
3. Communication from the European Commission, Healthier, safer, more confident citizens: a Health and Consumer protection Strategy, Proposal for a Decision of the European Parliament and of the Council establishing a Programme of Community action in the field of Health and Consumer protection, 2007-2013, Brussels, 6 April 2005, COM(2005) 115 final.
4. Co-ordinated reporting of data to the WHO is four years old or more, and although a standard classification system exists for all injuries, it has not been extended to all Member States owing to lack of funding.
5. EUROPEAN CHILD SAFETY ALLIANCE, *Priorities for Child Safety in the European Union: Agenda for Action*, Amsterdam, 2004, available on <www.childsafetyeurope.org>.
6. WORLD HEALTH ORGANISATION, *Mortality Database 2003*, <www.who.int/whosis>.
7. CONSUMER SAFETY INSTITUTE, *Deaths and Injuries Due to Accidents and Violence in the Netherlands 1998-1999*, Amsterdam, 2000.
8. EUROPEAN COMMISSION, *Eurobarometer 59,0: The Actions and Attitudes of Europeans in Health, Food, Alcohol and Safety*, DG Sanco, Luxembourg, 2004.
9. These statements were fairly consistent across Member States and socio-demographic groups.
10. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, Official Journal L 011, 15/01/2002.
11. EUROPEAN CHILD SAFETY ALLIANCE, *A Guide to Child Safety Regulations and Standards in Europe*, Amsterdam, 2003.
12. EUROPEAN CHILD SAFETY ALLIANCE, *Priorities for Child Safety in the European Union: Agenda for Action*, Amsterdam, 2004, available on <www.childsafetyeurope.org>.
13. EUROPEAN CHILD SAFETY ALLIANCE, *Priorities for Child Safety in the European Union: Agenda for Action*, Amsterdam, 2004, available on <www.childsafetyeurope.org>.



Environment

Children from birth to adolescence are more vulnerable than adults to a variety of environmental factors. First, children are growing, and their rapidly developing bodies are particularly vulnerable. Second, they behave differently from adults, and live and play nearer to the ground. Third, they have a longer life expectancy than adults, so any adverse effects can emerge over a long time period, and finally, they have less control over their environment than adults.¹ Boys and girls are likely to be exposed in different ways to environmental factors, and may be affected differently.

Environmental hazards that are likely to have a disproportionate effect on children are rising, including: the pollution of lakes, rivers and groundwater; air pollution, especially through heavy traffic; dietary contamination (e.g. through intensive use of pesticides in farming); and increased generation of waste, and contamination of land in urban areas.²

Although all children are affected by environmental threats, the health risks associated with a poor environment are compounded by poverty and inequality. As the European Public Health Alliance has argued: "Poor families cannot choose where they live and their children often suffer as a result of environments that are neither healthy nor safe. Exposure to noise affects children's learning and developmental abilities long before it can be registered as hearing loss. Pollution affects poor children far more than those living in healthy areas... Poor housing, overcrowding and lack of green space also take their toll".³ In particular, children in extreme circumstances—street children, trafficked children, asylum and migrant children, for instance—are likely to be at serious risk.⁴

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3 and 12** (See *Introduction*, page 16), **Article 24** sets out the child's right to the highest level of health possible, including the state's duty to: diminish infant and child mortality (24.2a); ensure the provision of adequate nutritious foods and clean drinking water, and to consider the dangers and risks of environmental pollution (24.2c).

Also relevant are:

Article 6.—The right to life and development.

Article 27.—The right to an adequate standard of living.

Article 29.1(e).—The right to education to develop respect for the environment.

Article 31.—The right to rest, leisure and play opportunities.

Environmental risks for children

A ground-breaking WHO report⁵ ("The Environmental Burden of Disease" study) in 2004 assessed the overall impact of the environment on child health in Europe (including Russia and central Asia). It indicates that about one third of all childhood ill health from birth to 19 years can be attributed to unsafe and unhealthy environments. However, the results show great disparities between three regional sub-groups, which can be roughly compared to western, central and eastern Europe (regions A, B and C respectively).⁶

Lead is the single most important chemical toxicant for children and is probably the best known example of a neurotoxicant to which children are particularly vulnerable. Effects are particularly severe during the early development of children's neurodevelopmental system, equivalent to the first 2-3 years, causing several specific brain dysfunctions, in particular neurodevelopmental impairment, learning disabilities, attention, motor coordination, visuospatial and language disorders, and anaemia. Lead poisoning is the single most important reason for illnesses in all three sub-regional groups. In western Europe, 14 092 children aged between 0-4 years were believed to suffer from mental disorders attributable to blood lead in 2001. And the numbers rise to 156 619 when the other two regions are added. Known effects include learning disabilities, attention and visuospatial disorders and anaemia.

Air pollution is another major source of concern. In children, outdoor air pollution is associated with acute lower respiratory tract infections, asthma, low birth weight, and impaired lung function. Up to 13 000 deaths per year among children aged 0-4 years are attributed to pollution from particulate matter across Europe, 10 000 of which have occurred in the B region. In relation to indoor air pollution, as European children in general spend up to 90 % of their time indoors, they are likely to have very high exposure to indoor sources of air pollution. Several diseases have been linked to exposure to solid fuel use, including acute lower respiratory tract infections in young children and asthma in school-aged children. Household solid fuels account for some 10 000 deaths per year among children aged 0-4 years, almost all of which (90 %) have occurred in zone B. An estimated 9 000 lives or more could be saved each year if households could climb the so-called "energy ladder", shifting from solid fuels to cleaner liquid or gas fuels.

Poor water, sanitation and hygiene are an important cause of child mortality, particularly in the former USSR. The burden of diarrhoeal disease attributable to poor water, sanitation and hygiene is estimated at 5.3 % of all deaths in children aged 0-14 years in the European Region. The largest contribution to the burden of disease comes from EURO B countries with over 11 000 deaths in 2001. Figures are much lower for western Europe where 63 children died from poor quality water supply in the same year. Overall, the WHO estimates 2 million people or more in Europe do not have access to clean water, exposing children to high risks of diarrhoeal diseases.

Action to improve the environment and health for children

Alongside the moral and legal obligations set out in the UNCRC, investing in children at key points in the life course is an essential element in promoting children's present well-being and the future health and economic development of European societies. Conversely, failure to do so places additional burdens on families, and on health and welfare systems, and does nothing to arrest the inter-generational transfer of disadvantage.

At the landmark "Fourth Ministerial Conference on Environment and Health" in June 2004 ("The Budapest Conference"), attended by over 1 000 representatives from 52 European countries, ministers adopted a Children's Environment and Health Action Plan for Europe (CEHAPE)⁷. The Action Plan emphasises four principles (primary prevention⁸, equity⁹, poverty reduction, and health promotion), and sets out four Regional Priority Goals:

"It is easy to sum it up —what is good for children is good for society as a whole. This has always been my motto as a politician."

EU Commissioner Margot Wallström, quoted in *It's our world, our future too: Young people's voices on environment and health priorities*, extract from video produced by the European Public Health Alliance Environment Network.

"In our village, there are several places where rubbish is dumped illegally."

Erika Mecseki, Hungary.

"I live nearby Tessenderlo Chemie (chemical factory) and sometimes the smell is awful. I also believe that they do a lot of waste disposal in the canal."

Nicky Haegdorens, Belgium.

"Near to our living area there's a cement factory where used tyres were burned to generate energy. Fortunately, a filter system was installed recently... and they planted trees around the site, too. It's a great improvement... I noticed that the wildlife in our area revived."

Ern Balogh, Hungary.

It's our world, our future too: Young people's voices on environment and health priorities, extract from video produced by the European Public Health Alliance Environment Network.

"Across all countries polled, fully 17 % —representing nearly 16 million children— say they feel unsafe walking around in their neighbourhood; 3 % of them report feeling very unsafe."

UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, Geneva, 2001, <www.unicef.org/polls/cee/index.html>.

The EU's role

"Environmental effects on vulnerable groups are of particular concern. The Strategy (on *Environment and Health*, 2003) puts special emphasis on children in so far as their exposure and susceptibility are greater than those of adults. The challenge now is to put into practice the commitments regarding children's right to grow and live in healthy environments made not only in the Strategy, but also in the Convention on the Rights of the Child and at the World Summit on Sustainable Development."

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee, the European Environment and Health Action Plan 2004-2010, Brussels, 9 June 2004, COM(2004) 416 final.

1. "To prevent and significantly reduce the morbidity and mortality arising from gastrointestinal disorders and other health effects, by ensuring that adequate measures are taken to improve access to safe and affordable water and adequate sanitation for all children.
2. To prevent and substantially reduce health consequences from accidents and injuries and pursue a decrease in morbidity from lack of adequate physical activity, by promoting safe, secure and supportive human settlements for all children.
3. To prevent and reduce respiratory disease due to outdoor and indoor air pollution, thereby contributing to a reduction in the frequency of asthmatic attacks, in order to ensure that children can live in an environment with clean air.
4. To reduce the risk of disease and disability arising from exposure to hazardous chemicals (such as heavy metals), physical agents (e.g. excessive noise) and biological agents and to hazardous working environments during pregnancy, childhood and adolescence."

It concludes by recognising the need for government commitment to increased intercountry collaboration and solidarity, through: improving co-ordination and technical support (particularly for countries most in need); promoting the incorporation of child health and environment issues in the training curricula of child and adolescent health professionals; supporting evaluation of the social and economic costs and benefits of action and inaction, taking into account children's particular needs; exchanging information, experience and best practices; identifying partners and funding sources for research and development; and developing child participation models.

Ministers also committed themselves to developing and starting to implement national children's environment and health action plans by 2007. These should be based on the involvement of all relevant stakeholders¹⁰, collaboration between sectors¹¹, the incorporation of children's environmental health issues into curricula and continuing education programmes of professionals, and the development of harmonised and comparable monitoring systems. A more detailed programme of actions to implement the priority goals is set out in an accompanying Table.¹²

Under the Amsterdam Treaty, the EU can contribute to the protection of human health and the environment (as required by Articles 152 and 174), and much national legislation—from water pollution, to air quality, conservation, and waste management— now originates from EU directives. However implementation and enforcement of legislation in Member States has been slow in some cases, and there are fears in several Member States that EU standards may be watered down or may reduce existing standards.

Drawing upon a European Commission "Environment and Health Strategy" in 2003¹³, an EU Action Plan was launched in 2004¹⁴, intended to improve the necessary information and knowledge base and coordination between health, environment and research sectors, both at the EU and at the national level.

The Action Plan was the Commission's main contribution to the Budapest Conference. According to a subsequent Commission memo¹⁵, "Regional Priority Goal 1 of the CEHAPE, on clean water and sanitation, is already dealt with under EU legislation, and can be promoted in the wider WHO region through the EU Water Initiative. Regional Priority Goal 2, on accidents, will reinforce work undertaken by the Commission on accident prevention. With regard to Regional Priority Goal 3, on respiratory disease, WHO fully participates in the EU Clean Air For Europe (CAFE) process and will be involved in co-ordination of indoor and ambient air quality work. On Regional Priority Goal 4, on chemical-related diseases, REACH will be the main initiative in the short term, and the Commission will report to WHO on progress in adoption and implementation." In addition, the Action Plan indicated the Commission would work with Member States and WHO to improve information reporting requirements to the WHO Environment and Health Information system.

Although these activities will have some positive benefits for children, there appears to be little specific emphasis on children in their own right. Overall, this mirrors the fact that limited systematic attention has been accorded at EU level to children's interests within environmental policy.

In recent years, some efforts have been made to communicate with young Europeans about environmental issues. For example, the annual "Green Weeks"¹⁶ have involved competitions for children's paintings, photographs, and poems. And in 2001, the Council of Ministers brought together student delegations from all the then Member States to put their point of view on environmental policy. Important though initiatives such as these are, they are insufficient to ensure a child perspective is integrated within EU environment policy.

Child-friendly Cities

The Child Friendly Cities Initiative (CFCI)¹⁷ was launched in 1996, following the declaration at the second UN Conference on Human Settlements (Habitat II) that cities should be liveable places for all, and that the well-being of children is the ultimate indicator of a healthy habitat, a democratic society and of good governance. This emphasis was reinforced by the follow-up document of the UN Special Session on Children in 2002¹⁸ ("A World Fit for Children"), which explicitly commits member states to develop child-friendly communities and cities, and to involve mayors and municipal authorities as primary partners in achieving the new goals set for children.

Mirroring this international development, in 2001 a European network of "child-friendly" cities (ECFCN) was established under Belgian law as a non-profit association, based on a proposal by the EU's Economic and Social Committee (ECOSOC).¹⁹ ECFCN's "Declaration of London" (22 October 2004) highlights that children and young people have democratic rights as citizens to participate in governmental processes, but lack adequate opportunities to influence the processes and circumstances that impact upon their lives. Although there are variations between countries²⁰, they also have declining access to space for play and for socialising, their independent mobility is reducing as car use has grown and roads have become increasingly dangerous, and the living environments they face are increasingly unsafe. Finally, the Declaration suggests this can lead to social, mental and physical problems in later life.

National governments have made significant commitments for children over the past decade, but alongside this it is essential to translate national policy frameworks into local level processes to bring action closer to young people. Local government has a key responsibility, in partnership with other stakeholders (e.g. civil society, families, schools and children themselves) for implementing and monitoring child-friendly cities initiatives, and for providing opportunities to promote the well-being of children in their communities.

"In a child-friendly city, good governance for and with children entails the full implementation of the Convention of the Rights of the Child involving young citizens. In the context of decentralization, local authorities have a crucial role to play in involving young people in decision-making processes taking place in the city. To respond to a growing demand for child-friendliness, city governments need to grant visibility to children on their municipal agendas, by enhancing resources for children, developing child-friendly policies, monitoring the implementation of strategies and plans for children, and giving young citizens a voice."

Eliana Riggio Chaudhuri, Background Paper,
Second Intergovernmental Conference on
Making Europe and Central Asia Fit for Children,
Sarajevo 13-15 May 2004, UNICEF



"What are the characteristics of 'children's spaces' as compared to 'adult spaces': are we first of all protecting children against dangers or are we depriving them of a freedom to have first hand experiences?"

JENSEN A-M., "Introduction", in JENSEN et al.,
Children's Welfare in Ageing Europe,
Estonia: Tartu University Press, 2004.

Child-friendly Cities Some examples

In **Spain**, the “Ciudades Amigas de la Infancia” programme encourages Mayors to adopt a broad range of policies to promote children’s rights at local level. Fora for children’s participation have been established and a national Award for Children’s Rights and Local Governance is granted for best practice.

In **Italy**, a Movement of Child-Friendly Cities has been established, with children involved in participatory planning and decision-making processes in schools and within municipalities. To support the initiative, an organisation has been set up to provide services to child-friendly cities; benchmarks have been defined to measure the degree of child-friendliness of a city; and an international “Forum for Child-Friendly Cities” has been organized annually.

In **Germany**, the city of Munich set up the “München, Stadt für Kinder” programme, which has resulted in permanent mechanisms for promoting child and family policies, including a “Children’s Office”. In the city of Essen, a specific element of municipal taxes is dedicated to support a child-friendly city initiative.

Eliana Riggio Chaudhuri, Background Paper, Second Intergovernmental Conference on *Making Europe and Central Asia Fit for Children*, Sarajevo, 13-15 May 2004, UNICEF.

An important issue is how children in urban environments learn to manage risks with a minimum of potential harm.²¹ There is evidence that children need to be challenged and, through experience, have to learn to assess and deal with risk in their daily (urban) environment.²² At the same time there is a need for more recreational areas and playgrounds —particularly those with natural elements, and areas where children can safely remain unsupervised. This is especially true for children growing up in areas that suffer air pollution and traffic noise, or are densely populated or overcrowded.

Another key issue is urban crime, with prevention and surveillance at the centre of discussion about public space. Strategies in response understandably focus mainly on young people aged 14-20, with the intention of encouraging active usage of, and informal control over, public spaces. Partly because of this focus, the needs of younger children (e.g. roughly between ages four and twelve) are often overlooked. For a range of reasons (e.g. access to computers, lack of play space, danger from traffic), the latter group spends more and more time at home, in daycare, at schools and youth clubs. Yet the availability of public space remains an important arena for learning for these children, and key to any inclusive play and recreation strategy.

Recommendations

- The European Commission should ensure that the circumstances of children are analysed systematically in the development of integrated EU environment and health information and statistics, and that all policies are assessed for their impact on children’s health and welfare.
- In conjunction with WHO and the Member States, the existing research base on children and the environment should be strengthened, and EU indicators of children’s environmental health should be established.
- Investment in public health (e.g. safe water, clean air, good nutrition, education, housing, health care) should be a key strand in improving child well-being and reducing poverty, and should be emphasised within the EU’s Sustainable Development Strategy.
- In order to improve urban environments for children, greater co-ordination and exchange of good practice is required between different policy areas (e.g. education, urban planning, health and social welfare, policing) at all levels —and particularly at municipal level. The European Commission should encourage such exchange, working closely with ECOSOC, central and local government, children’s organisations, and children themselves.
- Member States should encourage municipal governments to promote child-friendly cities by developing, for example: fora for children’s participation; child-friendly legal frameworks; city-wide Children’s Rights Strategies; Children’s Rights Units to coordinate policy; child impact assessments and evaluations; a children’s budget; a regular report on the State of the City’s Children; and independent Commissioners for Children.

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6. EURO A: very low adult/very low child mortality.—Andorra, Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Slovenia, Spain, Sweden, Switzerland, United Kingdom.
- EURO B: low adult/low child mortality.—Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Kyrgyzstan, Poland, Romania, Serbia and Montenegro, Slovakia, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Uzbekistan.
- EURO C: high adult/low child mortality.—Belarus, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Republic of Moldova, Russian Federation, Ukraine.
7. WHO, *Children's Environment and Health Action Plan for Europe, Fourth Ministerial Conference on Environment and Health*, Budapest, 23-25 June 2004, EUR/04/5046267/7.
8. "I.e. policies, programmes and plans aimed at improving the state of the physical environment (air, water, soil, noise), in particular through the integration of children's needs into housing, transport, infrastructure and planning."
9. "I.e. giving priority to protection of children at highest risk, and particularly of children who are neglected, abandoned, disabled, institutionalized or exploited, or who are suffering the consequences of armed conflict and forced migration, by improving access to preventive health and social protection services."
10. E.g. the corporate sector, trade unions, child-focused NGOs and parents', children's and youth organizations.
11. Not just health and environment, but also sectors such as finance, transport, education and culture, energy, urban and rural planning, labour and social services.
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Media and Internet

Children's relationship with media and new technologies is an ambivalent one. Whilst the media regularly contribute to the monitoring of children's rights and highlight specific violations, this can be double-edged. Often children are presented solely as innocent victims, which can reinforce a traditional view of them as "incompetent" and "incapable", rather than as social actors in their own right.

In contrast, sociological accounts emphasise the opportunities provided by the media and new technology for developing children's creativity and potential; it is increasingly argued that many children are more skilled at handling the technology and decoding media messages than their parents¹. However some commentators caution that the relationship between children and the media industry as a very unequal power relationship between partners whose interests do not coincide.²

Mirroring this tension, the UNCRC recognises the vulnerability of children in certain circumstances but also their capacities and strengths as rights holders. It is in the spirit of Articles 12, 13 and 14 of the UNCRC that children should not only receive information but also participate themselves in the media. But in practice journalists routinely ignore children's views, except on limited occasions where the latter are directly affected. And in spite of the globalisation of the media, children's access is still very unequal.

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2,3 and 12** (see *Introduction*, page 16), **Article 17** calls on governments to "ensure that the child has access to information and material from a diversity of national and international sources" and to "encourage the development of guidelines to protect children from harmful material."

The following Articles are also relevant:

Article 13.—The right to freedom of expression and to obtain and impart information.

Article 14.—The right to freedom of conscience, thought and religion.

Article 16.—The right to protection from interference with privacy, family, home and correspondence.

Article 19.—The right to protection from all forms of violence, injury, abuse, neglect or exploitation.

Article 31.—The right to participate in leisure, cultural and artistic activities.

Article 34.—The right to protection from sexual exploitation.

Article 36.—The right to protection from all other harmful forms of exploitation, including pornography.

Although new services can provide children with access to a vast range of educational materials and cultural opportunities, there is the risk an increasing divide between the “information-rich” and the “information-poor”, deepening existing patterns of disadvantage between and within different EU regions and countries.

At EU level, the main focus in this area has been on protecting children from adverse effects of the media, rather than on their rights to participate. While the UNCRC supports access for children to the media, it also reflects concern about the risks to children. For example, children need protection from the negative effects of certain types of advertising that can reinforce brand loyalty, convey misleading information or suspect values (e.g. “use this product and you will gain more friends”), and encourage them to put pressure on their parents to purchase certain products.

Children may also be exposed to harmful or illegal images depicting violence, pornography, or racism. “Harmful” content is material that adults responsible for children, such as parents or teachers, consider harmful to those children. Definitions of what harmful means can vary between cultures and individuals. The definition of “illegal” content also depends on the country —what is illegal in one country can be protected as free speech in another. Illegal internet content, moreover, may be produced in one country, stored in a second and accessed in a third, complicating law enforcement.³

Regulating advertising to children

Children have a major influence over parental buying decisions and children have therefore become “market makers” for global companies. Young people are increasingly targeted in order to encourage a culture of regular and frequent consumption and to promote habits that will persist in adulthood.⁴

Advertising is mainly transmitted by TV and is expanding as the number of TV channels in Europe grows. However other forms of advertising are increasingly targeted at children too, through techniques such as kids clubs, sponsorship, free gifts, direct mail, and in-school advertising. Internet and interactive technologies also provide commercial organisations with a growing range of opportunities to develop advertising targeted at children, through, for example, online games, viral marketing (e.g. promoting products by including a clickable URL with communications), online surveys, and monitoring chatrooms and bulletin boards.⁵

The relatively few international surveys of the nature and extent of television advertising aimed at children^{6,7} have found that in most EU countries, food advertising makes up the largest category of advertised products during programmes for children, with between one (Sweden) and eight (France) advertisements an hour. Up to 95 % of the food advertisements on television were products high in fat, sugar or salt; the most common were sweets, pre-sweetened cereals, savoury snacks or soft drinks. An EU funded study led by the European Heart Network indicates a wide variation across Europe of the proportion of advertising aimed at children that promoted unhealthy foods (e.g. high in sugar, salt and fat). This ranged from 49 % in Italy to nearly 100 % in Denmark and the UK⁸ (see *Child health*, page 81).

At EU level, general principles applicable to advertising are set out in a directive on misleading advertising (1984)^{9,10}, however it does not contain any specific rules concerning children. A 1995 directive¹¹ aims to protect individuals where their personal data are automatically transmitted or stored. Although some conditions have to be met, again the directive does not contain any specific provisions regarding children, and there are concerns that children are often asked to divulge personal and family information through internet websites.

Specific rules in relation to broadcast advertising are set out in the 1989 Television Without Frontiers (“TVWF”) directive¹², which applies to broadcasting services exclusively.¹³ The directive is intended to facilitate the free movement of TV broadcasting within the EU whilst providing protection for children from programmes that might seriously harm their development. It contains specific rules preventing children’s programmes of less than 30 minutes

“Because the media are central to children’s and adolescents’ development and education – influencing not only attitudes but also behaviours and identities – we are deeply concerned about the negative values and lifestyles promoted by so much of the media today. The media are taking on roles once played by parents and teachers, frequently without being prepared to face this awesome challenge. Children and adolescents are entitled to something better than what they are getting from the media. The greatest investment we can make in the future is in our children and adolescents. This implies greater responsibility from both media and society, and actions that can no longer be postponed.”

Declaration of the Professionals, 4th World Summit on Media for Children and Adolescents, Rio de Janeiro, 2004

“Most countries have an incoherent patchwork of legal and voluntary controls on broadcast and nonbroadcast advertising, and on marketing in schools. The Internet, as a newer medium, is among the least regulated, with promotions on food company websites virtually unregulated. The majority of countries recognise the need to protect children from advertising and marketing in general, but very few have specific rules focusing on food marketing to children.”

MATHEWS, A., COWBURN, G., RAYNER, M., LONGFIELD, J., POWELL C., *The marketing of unhealthy food to children in Europe: A report of Phase 1 of the “Children, obesity and associated avoidable chronic diseases” project*, European Heart Network, 2005.

“So far this morning I have brushed my son’s teeth with a Buzz Lightyear toothbrush, using Mickey Mouse toothpaste. Dressed him in his Power Rangers underpants and Superman vest before giving him Cheerios for breakfast—not because they are his favourite cereal—but because Cheerios were giving away a Finding Nemo toy. He wears a school uniform which is where the branding ends, although I do sometimes wonder how long it will be before a company thinks of putting its logo on school uniforms—and encouraging us to save empty packets of something or another to pay for it.”

Parent quoted in National Family and Parenting Institute, *Hard Sell, Soft Targets?*, NFPI, London, 2004.

duration being interrupted by advertising (Article 11.5). It also prevents advertising for alcohol being aimed at children, or depicting them consuming alcohol (Article 15a). And Article 16 sets out general principles concerning advertising aimed at children. Advertising must not “cause moral or physical detriment to minors”, and must not: exhort minors to buy a product or a service by exploiting their inexperience or credulity; encourage children to persuade their parents or others to purchase the goods and services being advertised; exploit the special trust children place in parents, teachers or others; or unreasonably show minors in dangerous situations. An amendment to the directive in 1997¹⁴ extended the scope of these Articles to include teleshopping.

The TVWF directive is implemented in all Member States, however wide variations in interpretation of the law are found between national courts. Some Member States (e.g. Flemish Community of Belgium, Denmark, Italy) have more restrictive rules than those in the directive. The most notable examples are Greece (where TV advertising of toys is prohibited before 22:00) and Sweden (where there is a general ban on advertising directed at children under 12). This possibility was recognised in a European Court of Justice case of 9 July 1997¹⁵, where it was found there were no objections as prohibition was only applied to TV channels based in Sweden, and not to those based abroad.

An EU study in 2001 on the impact of advertising on children¹⁶ found a remarkable number of differences at Member State level, ranging from the age limits in definitions to specific provisions in certain sectors (e.g. regarding alcohol). It also noted clear differences between the regulation of television and other media, with the former much more heavily regulated than the latter (where there are not always specific rules concerning children). It concluded that the number of complaints is extremely low, and that the directive provided an “adequate and flexible framework”, with extensive use of self-regulation.

One element of the European Commission five-year strategy to boost the digital economy (“*2010: European Information Society 2010*”) involves modernising the legal framework for audio-visual services, starting with a Commission proposal in 2005 for revising the TVWF Directive. This is intended to take account of technological developments and changes in the structure of the audiovisual market.¹⁷ The Commission recently outlined the conclusions of a public consultation on the directive. These suggested, among other things, that the scope of the existing law should be extended to cover “non-linear” as well as “linear” audiovisual content¹⁸, with a basic tier of rules covering “audiovisual commercial communications” of all kinds (e.g. conventional advertising slogans, promotional sponsorship slogans, teleshopping, split screens, interactive advertising, product placement, etc.). In relation to child protection, the Commission concludes that “the application of such rules to all audiovisual commercial communications, including linear services, would offer a more coherent legal framework.” In addition, product placement should not be allowed, nor should advertising be inserted, in children’s programmes.

In general, the advertising industry believes that a minimum of legislation, together with self-regulatory codes, are adequate to protect children. Moreover, a ban on TV advertising to children would not prevent advertising reaching them in other ways (e.g. direct marketing, shop displays, print media, product placement) that are harder to control. Instead, alongside codes, children should be taught from a young age to be critical in interpreting advertising. Ultimately, it is parents’ responsibility to control the access of their children to commercial communications.

However, there is continuing concern among consumer, health, and children’s organisations about the commercial targeting of children and young people, especially in relation to alcohol or food products. For instance, the European Consumers Organisation (BEUC) argues that: “children do not have adults’ ability to have a critical questioning attitude to advertising. This requires extra, relatively sophisticated skills, and their acquisition is a gradual long-term process that varies between individual children. Even where children possess some critical facilities, being able to distinguish advertising from programming can be extremely difficult because of marketing techniques, such as linking product merchandising with programme characters, or the promotion of products within competi-

tions".¹⁹ Indeed, the increasingly hidden forms which advertising takes, and the burgeoning volume of such communication, makes it impossible, even for well-informed parents, to protect their children effectively; one recent poll found that that 84 % of parents felt that companies targeted their children too much.²⁰

Overall, industry attempts at self-regulation²¹ are seriously flawed, and fail to consider the "best interests of the child" (Article 3, UNCRC) as a primary consideration. Self-regulatory systems (e.g. the ICC International Code of Advertising Practice)²² are based on voluntary codes of conduct drawn up by the advertisers, agencies and media, and are applied by self-regulatory bodies or committees set up for this purpose and funded by the advertising industry itself. Despite industry claims that such codes are effective, many NGOs argue that they are insufficient.²³ For example: most codes deal with the content rather than the volume of advertising; their wording is vague and general, leaving wide scope for creative interpretation; violations of the code are committed regularly, even by big advertisers²⁴; and most code committees only make recommendations, and breaches do not carry a penalty. In contrast, the Commission prefers an approach based on co-regulation.²⁵

Protecting children from violent imagery

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According to Article 22 of the TVWF Directive, Member States must "take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence." On the other hand, programmes which are likely to impair the physical, mental or moral development of children may be broadcast where it is ensured by selecting the time of the broadcast, or by any technical measure, that children in the area of transmission will not normally hear or see such broadcasts. The directive has been complemented by a 1998 Council Recommendation on the protection of children²⁶, extending protection to all audiovisual and information services including online services (see below).

Whereas until relatively recently, very few children had ever seen violent screen imagery (e.g. shooting, knifing, fighting, bombing), today it is relatively commonplace. Based on an overview of research articles published between 1998-2004, one recent study²⁷ found consistent evidence that violent images in television, film, video and computer games have "substantial short-term effects on arousal, thoughts, and emotions"; these effects "increase the likelihood of aggressive or fearful behaviour in younger children, especially in boys".

Another study²⁸ found that the leisure time of at least one fifth of German males aged 12 to 17 is dominated by violent films and PC games unsuitable for children, affecting their social life, mental development and school achievement. Crime rates have increased too—and to a much greater extent among boys. The research concludes that boys in particular tend to spend too many evenings watching TV late into the night and without adult supervision, taking the opportunity to see films rated unsuitable for children that cannot legally be shown before the eleven p.m. watershed.

Results from a recent Eurobarometer survey²⁹ of parental attitudes in the 25 Member States also indicate that a significant proportion of children face no parental limitations on their use of television, the internet, mobile phones, or game consoles. This is the case for 22 % of 7-11 year olds, 27 % of 12-15 year olds, and 40 % of 15-16 year olds.

These findings suggest that more active measures are required within Member States, and that measures such as altering the timing of broadcasts, as indicated in the TVWF directive, are an insufficient response to the scale of the problem.

"I need to ask if the advertising industry are comfortable spending millions of pounds targeting children direct and then saying it's down to mum and dad to stand up to them?"

Parent quoted in National Family and Parenting Institute, *Hard Sell, Soft Targets?*, NFPI, London, 2004.

"In countries with high rates of Internet access, the dimensions of child pornography on the Internet are bigger. Countries with a limited use of this technology do not see the dangers of the abusive use of the Internet as an immediate problem. If, on the one hand, it is true that the scale of use goes together with that of abuse, on the other hand, countries that do not have an adequate legislation and appropriate accompanying measures to prevent and combat this problem, expose their children to the risks of abuse and exploitation."

Report of the UN Special Rapporteur on the sale of children, child prostitution, and child pornography, Commission on Human Rights 66th session, E/CN.4/2005/78, 23 December 2004.

Child pornography on the internet

Although there are differences between Member States, overall about half of all European children use the internet.³⁰ The internet can provide children with easy access to an enormous range of educational materials and cultural opportunities, and is a powerful tool that can help to meet children's rights under the UNCRC (e.g. to participation, information, and freedom of expression). However, it simultaneously provides a forum where children can come into contact with illegal or harmful images (especially pornography or child pornography). The internet is also increasingly used by a growing number of abusers to exchange materials involving children, or to organise child prostitution, child trafficking or child sex tourism, with a significant degree of anonymity.

In addition to the provisions set out in Articles 19 and 34 of the UNCRC, the 2000 "Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography"³¹ (see also *Violence against children*, page 49) defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes" (Article 2c). A more comprehensive definition addressing computer-generated images is contained in the 2001 "Council of Europe Convention on Cybercrime"³²: "child pornography" shall include pornographic material that visually depicts: a. A minor engaged in sexually explicit conduct; b. A person appearing to be a minor engaged in sexually explicit conduct; c. Realistic images representing a minor engaged in sexually explicit conduct" (Article 9)³³. Useful though these definitions are, there are gaps; for example, many 'child erotica' websites manage to avoid legal sanction by marketing themselves as 'artistic sites' or 'posing pictures'.

According to Save the Children³⁴, child pornography is evidence of the sexual abuse of a child and the production of child pornography always presupposes a crime committed against the child. Child pornography may be used by abusers as a means to manipulate a child by claiming that what is happening to the child in the picture is something that many children take part in. Child pornography can also lower the potential perpetrator's inhibitions and allows the offender to minimise, distort and justify abusive behaviour.

Police operations and hotline services indicate that such activities are taking place on a widespread scale. For example, a Sweden-wide police raid in 2004 netted 118 men suspected of breaching child pornography laws by buying child pornographic material on internet sites, making on-line payments with credit cards.³⁵ In 2002, under Operation Ore—arising from a single law enforcement action in the US—the British police were handed the names of 6500 people who had used credit cards to buy child abuse images from one website; over 2000 people have now been arrested in the UK as a result. There is evidence too that more states, including Russia and other Eastern European and Asian countries, are becoming sources of child abuse images; although they are dwarfed by the US output, they are gaining fast.³⁶ Research by the COPINE (Combating Online Paedophile Networks in Europe) project³⁷ in Ireland also suggests that more child abuse images are being created than before, and that more children are being abused in order to provide them.

In addition to measures to prevent access to harmful or illegal material, it is also vital that child victims of pornography on the internet are identified and given access to justice as well as therapeutic services—especially as images of abuse can circulate in cyberspace forever, and this knowledge can follow victims into their adult lives. In reality, very few children abused for the production and distribution of child pornography have ever been identified and traced, and current knowledge about victims and the circumstances under which they were abused is sparse. Although positive examples of agencies working together exist (e.g. of co-ordinated investigations avoiding the necessity of repeated forensic interviews of children), in general judicial systems in Europe tend to be based on adult conceptions and it is difficult for children to receive justice and appropriate support in such contexts.³⁸

To tackle the risks children face, international co-operation is essential; child pornography on the internet is a transnational crime and therefore requires a transnational response. At EU level, a Council of Ministers decision in 2000 on combating child pornography on the Internet³⁹ aimed to “prevent the production, treatment, possession and distribution of material containing child pornography and to promote the effective investigations and prosecutions of criminal offences in this area.” In 2004, a further Council framework Decision on combating the sexual exploitation of children and child pornography⁴⁰ set out minimum requirements for Member States in the definition of offences and for sanctions. The definition of the child is 18, although Member States are allowed not to prosecute if the child is above the age of sexual consent (which varies between countries)⁴¹. Minimum sentences range from one to ten years depending on the type of offence. The text gives the option of not penalising “virtual pornography” if someone produces it for their own use. The Commission will report on implementation of the Framework Decision in the Member States by December 2007.

In 2004, a proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity in relation to the European audiovisual and information services industry⁴² was also put forward.⁴³ Covering both the internet and broadcasting services, the draft addresses questions of media literacy (e.g. media education programmes), cooperation and sharing of experience and good practices between regulatory bodies dealing with the rating or classification of audiovisual content and action against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and the right of reply (previously only applicable to broadcasting). The European Parliament’s Committee on Culture and Education has suggested a range of amendments⁴⁴, seeking to define specific action at political level (e.g. to develop information campaigns, extension of hotlines), and by the education sector (e.g. training for teachers, information for children). The Committee also argues that the audiovisual industry has a responsibility “because the existence of charters, codes of conduct, and quality initiatives is not enough”, and suggests action such as automatic filtering of violent, racist or pornographic images at source.

However the proposals tend to rely on the goodwill of the audio-visual and information services industries. There is a fear that a strategy based on self-regulation may not deter all those engaged in activities that are likely to harm children from exploiting their vulnerable position. For example, in relation to the internet, although several software packages are available to help parents filter out unsuitable sites, it is likely that most children who are computer literate will at present be able to get round these systems. And although new ratings systems are being developed—and the major internet service providers are indicating that they will uphold them—financial support from the industry has so far been insufficient to ensure the urgent progress which is needed.

Recommendations

- Member States must be permitted to develop and retain stricter national consumer standards affecting children than those in the TWVF directive. A horizontal EU approach is needed to protect children in relation to all forms of marketing, whatever the medium or sector.
- EU legislation on food labelling should assist families and children in making healthy food choices. Labels should be accurate, informative and easy to read and understand. EU legislation on health and nutrition marketing claims for food should prohibit such claims unless the food item meets a minimum nutrient profile. Health and nutrition claims on food products marketed to children should be prohibited.
- The TWVF directive should be amended so that the collection and use of personal data about children without prior verifiable parental consent is prohibited.

“I was only 14 when it happened. A friend and I went down to a camping site and a guy talked us into coming into his caravan. He was at least 25. He was drinking wine and gave us beer. My friend went home but I stayed, and the man started touching me. It was the first time I ever got drunk and I didn’t dare stop him. It was a real rape and it hurt badly. Afterwards, I threw up. I never dared tell my mother what had happened. But I remember he had a yellow jacket and he took a lot of pictures of me with a flash. I’ve been reading about child pornography rings in the paper and I’m really worried about those pictures.”

Call to Save the Children Sweden hotline, quoted in ASTROM, P.-E., *Child Pornography on the Internet: Beyond All Tolerance*, Save the Children Sweden, Stockholm, 2004.

Awareness of risks whilst surfing

According to a survey of 10000 children and parents by the trans-European SAFT (*Safety, Awareness, Facts and Tools*) project, a partnership between organisations in Norway, Denmark, Iceland, Sweden and Ireland that promotes safe use of the internet, 40 % of children say that people they have only met on the net have asked to meet them in person. Fourteen per cent of the children have actually met someone this way, while only 4 % of the parents think the children have done this. And while 30 % of the children have seen websites with violent material, only 15 % of the parents think their children have done so¹.

Eurobarometer's survey of European parents² found that most say their children know what to do if they are confronted with an online situation that makes them feel uncomfortable (60 %), but one-quarter say they don't (24 %). Many Greek, Portuguese (39 %), Italian and French (38 %) families think that their children are not prepared to handle uncomfortable situations on the Internet. Parents in the UK, Cyprus and Finland are likeliest to feel that their children would know what to do in a bad online situation. However a fair share of parents seem not to be aware of the possible risks that their child may encounter on the internet; although limitations on internet usage are imposed by many parents, they are only faced by half of 7-15 year olds, and a third of 15-16 year olds. Overall, four in 10 parents (especially in those countries where Internet coverage is lower) do not know to whom they should report harmful or illegal content found on the Internet; this response is significantly more frequent in the EU(10) than in the EU(15).

1. See <www.saftonline.org> for details.

2. Eurobarometer, *Illegal and Harmful Content on the Internet*, EB60.2 – CC-EB 200 4.1, European Commission.

- In order to promote children's safety to the maximum extent possible, the European Commission, in conjunction with the Member States, must build upon the measures it has already taken and play a strong role in monitoring national regulation of audiovisual and information services (including internet).
- The EU institutions should engage more actively with children's NGOs and children themselves in developing strategies and projects in relation to audio-visual and information services.
- The EU should ensure that the Framework Decision on combating the sexual exploitation of children and child pornography is fully implemented by Member States so that they can establish clear child protection policies with regard to child sexual abuse and exploitation on the Internet. The EU should ensure that it monitors the implementation of the Framework Decision and that action is taken where Member States have not adjusted their national laws to implement the legislation
- Member States and the Commission should take steps to further investigate the linkages between child pornography and child trafficking. More emphasis is needed on helping Member States identify children who are abused in connection with the production and distribution of sexually abusive/exploitative images on the Internet. The European Commission should establish an expert group on victim identification to bring together police, member states, NGOs, industry and relevant parts of the Commission's services.
- All Member States should ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Council of Europe Convention on Cybercrime.
- All legislation on child pornography should protect all children under 18, regardless of the age of consent to sexual activity. As the UN Special Rapporteur has argued, a child, even if he or she reached the age of consent to sexual activity, cannot be considered as able to consent to engagement in pornography, prostitution or trafficking.

The Safer Internet Plus Programme

The European Commission's EUR 45m Safer Internet Plus programme (2005-2008) builds on an earlier Safer Internet programme* (1999-2004). It brings together the different actors—from mobile phone operators to child welfare NGOs— whose cooperation is essential but who may not come together without the appropriate structures in place. The Programme involves four action lines: extending the existing hotline network for reporting illegal content to the EU(10) and candidate countries; raising safer internet awareness among teachers, parents and children (e.g. by extending the European network of awareness "nodes" to over 20 countries); developing technologies to limit the amount of unwanted and harmful content users receive, and help them manage it when they do (e.g. through filtering systems, exchange of information on combating spam, improving content rating); and through continuing exchange of best practice and continuing dialogue (e.g. through the Safer Internet Forum bringing together industry, child rights and policy representatives).

For further detail, see SAFER INTERNET PLUS, *Making the Internet a Safer Place*, Factsheet 18, April 2005.

* The original EUR 38.3m Safer Internet programme financed over 80 projects to: create a safer environment via a European network of hot-lines to report illegal content; EUR encourage self-regulation and codes of conduct; develop filtering and rating systems; and EUR encourage awareness actions.

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2. KLINE, S., "The Terror of Hypervigilance: Security and the Compromised Spaces of Contemporary Childhood" in Qvortrup (ed.), *Studies in Modern Childhood*, Palgrave Macmillan, Basingstoke, 2005.
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11. Council directive 95/46 EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
12. Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC).
13. In relation to other electronic communications, horizontal legislation applies (e.g. the e-commerce directive).
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and Legal Aspects of Child Sexual Exploitation: A Comprehensive Review of Child Pornography, Child Prostitution, and Internet Crimes against Children, GW Medical Publishing, St. Louis, 2002.

38. SAVE THE CHILDREN EUROPE GROUP, *Child Abuse and Adult Justice: A comparative study of different European Criminal Justice systems handling of cases concerning Child Sexual Abuse*, 2002 and SAVE THE CHILDREN EUROPE GROUP, *Child Pornography on the Internet: Legislation, policies and practice in six selected countries*, 2004.

39. Council of Ministers decision of 29 May 2000 on Combating child pornography on the Internet (2000/375/JHA).

40. Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

41. In Poland, for example, the age used in child pornography legislation is 18. However, this concerns only "professional" pornographic material produced to be publicly distributed. Producing and possessing pornographic material with the participation of children between 15 and 18 is legal if the aim is not public distribution. In Portugal, the existing legislation on child pornography covers children below the age of 14 years only, which is also the age of consent to sexual activity. However amendments to the Criminal Code currently under discussion are intended to cover children under 18 in provisions related to child pornography.

42. Proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry, (COM(2004)0341 - C6-0029/2004 - 2004/0117(COD)).

43. The proposal seeks to update Council Recommendation of September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, 8440/98 DG J.

44. European Parliament Committee on Education and Culture, Draft Report on the proposal for a recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (COM(2004)0341 - C6-0029/2004 - 2004/0117(COD)), Rapporteur: Marielle De Sarnez, 14 March 2005.





The EU's role in education

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In 1992, education became formally recognised in the Maastricht Treaty as a legitimate area of EU involvement, although Member States retain responsibility for their education systems. As a result, the EU can contribute to the development of high-quality education and of a "European dimension" to education, and the promotion and improvement of vocational training. In line with this remit, the European Commission has supported the comparison of ideas and good practice between Member States (e.g. through academic networks, study visits and partnerships) and played a role in policy-making in relation to issues such as the definition of quality indicators and the future objectives of education and training systems.

The Commission has also supported funding programmes such as "Comenius" (school partnerships, projects for the training of school education staff, and school education networks), "Socrates" (co-operation in education), "Leonardo" (vocational training policy), and the "Youth" programme. In 2004, the Commission proposed an Integrated Action Programme in the field of lifelong learning.¹ This brings together under one umbrella four existing programmes (including Comenius, Erasmus, and Leonardo) with a "transversal" programme incorporating four key cross-cutting activities (policy development, language learning, information and communication technology, and dissemination of results) and a "Jean Monnet" programme (action related to European integration and European education and training institutions and associations). The overall programme will involve a substantial budget increase, from EUR 3 935 million during the current period 2000-2006 to EUR 13 620 million for the new period 2007-2013. It will also establish quantifiable targets (e.g. 5 % of school pupils to participate in Comenius between 2007-2013), and will support a range of new actions.

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3 and 12** (see *Introduction*, page 16), the following Articles are relevant:

Article 27. — The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28. — The right to education, including vocational education, on the basis of equality of opportunity.

Article 29. — The duty of the government to direct education at developing the child's fullest personality and talents and promoting respect for human rights.

Article 30. — The right of children from minority communities to enjoy their own culture and language, and to practice their own religion and culture.

Article 31. — The right to rest, leisure and play opportunities.

Differences between national education systems

A joint publication in 2005² by Eurydice (a Commission-supported information network on education in Europe), Eurostat, and the European Commission has provided key data on education issues in 30 countries.³ For example:

- At the age of 4, a great many children in Europe are enrolled in pre-primary educational institutions despite the fact that attendance is not compulsory. School-based or otherwise, educational provision of this kind is available everywhere, but the age of admission varies from country to country.⁴
- The EU10 will be particularly affected by the decrease in the number young people of compulsory school age by 2015. Lithuania, Poland, Slovakia and Bulgaria are expecting a fall of at least 30 % between 2000 and 2015 in the number of pupils aged between 5 and 9. The expected fall in numbers of those aged 10-14 is especially striking, reaching over 40 % in Estonia, Latvia, Lithuania, and Poland.
- Education continues to be a significant item of public expenditure in all countries, although the proportion of resources devoted to it may be twice as much in some countries as in others, ranging from 8-17 %. Those that proportionally spend most are Denmark, Malta, the Netherlands, Sweden, and (outside the EU), Norway.

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Educational attainment

In terms of learning outcomes, the OECD Programme for International Student Assessment (PISA) provides the most comprehensive information, assessing achievement by 15-year-olds in 30 member countries.⁵ Results from the 2003 study⁶ show, for instance, that Finland once again came out top, with high performances in mathematics and science matching those of high-ranking Asian countries. However other EU countries (e.g. Italy, Portugal, Greece) remained relatively low achieving. In relation to reading, the performances of Finland, Ireland, Sweden, Netherlands and Belgium were significantly above the OECD average. In all countries girls outperformed boys, but gender differences in mathematics tended to be small.

Overall, parents in the EU can rely on high and consistent standards across schools in Denmark, Finland, Ireland, Poland and Sweden.⁷ By contrast, variations in student performance in Austria, Belgium, Germany, Hungary, Italy, and the Netherlands are largely accounted for by performance differences between schools. Unsurprisingly, children whose parents have better-paid jobs, are better educated and have more “cultural” possessions in their homes perform on average significantly better in all countries than others. However, the degree of difference varies. Australia, Canada, Finland and Japan stand out for high standards of both quality and equity. In contrast, results for Belgium, Germany, Hungary and the Slovak Republic reveal large socio-economic inequalities in the distribution of educational opportunities.⁸

The impact of poverty and social exclusion

Poverty and social exclusion have a significant impact on educational outcomes (see *Child poverty and social exclusion*, page 41). For instance, Hoelscher’s study⁹ cites extensive evidence that poverty has a direct impact on children’s cognitive development, and is a risk factor for later performance at school. Children from low income families—especially boys—tend to display more behavioural problems, and are more likely to truant or be excluded from school. They also may suffer bullying or be marginalised in the classroom, owing to their inability to afford brand name clothing or equipment or go on school trips, or their dependency on free school meals. Alongside

The right to education Children’s views

“When the children polled* were asked what they knew about “children’s rights”, over half said that they had a lot of (12 %), or some (42 %), information about this topic, the others claimed to know very little or nothing about their rights. But when invited to identify a right of the child, over 60 % spontaneously mentioned “the right to education/school”.

UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, UNICEF, Geneva, 2001.

* The Young Voices poll surveyed children and adolescents from 26 States in transition in Central and Eastern Europe (CEE), the Commonwealth of Independent States (CIS), the Baltic States and nine countries in Western Europe. The poll is based on face-to-face interviews with 15200 children, between the ages of 9 and 17, conducted between December 2000 and February 2001.

"There are countries where only one third of Roma children complete primary school. In fact, many Roma children do not start school at all and drop-out rates are especially high. The segregation of Roma children in sub-standard schools is one of the most serious problems we face."

Odile Quintin, Director General for Employment, Social Affairs, and Equal Opportunities, European Commission, "Roma challenges in the world of education and media", Speech to the European Parliament Roma Forum, Brussels, 25 January 2005.

income, family factors are relevant too (e.g. parents education and social status, educational resources, family structure, parental conflict, parenting practices, the well-being of children at home). Particular minority groups, such as Roma, asylum seeking, migrant, and disabled children, are likely to face considerable difficulties in integrating in schools.

The effects of poverty and social exclusion on children's education are particularly acute in the EU10. In its analysis of the National Action Plans on Social Inclusion (2004-2006)¹⁰, the European Commission highlights that many of these states are taking initiatives to overcome particular barriers that impede access to education. These include: free school lunches (Estonia and Hungary), grants supporting access to education (Poland), and literacy programmes (Malta). However the Commission concludes that "overall the education and training reforms undertaken in the EU10 do not appear sufficient to meet the current challenges".

Roma, gypsy, and traveller children

Although some positive efforts are being made to promote the integration of Roma children in school systems, segregation is still widespread across Europe. Many are still sent to special remedial schools or "ghettoised" in poor schools in particular areas. Consequently, achievement rates are very low. Girls are particularly prone to dropping out of school, either as a result of early (arranged) marriage or imposed domestic duties (see also *Discrimination*, page 61).

Asylum seeking children

Under the 2003 Reception Directive¹¹, asylum seeking children must be granted access to the education system on similar—but not necessarily the same—terms as those applicable to nationals (e.g. education may be provided in accommodation centres, rather than schools). Education can be postponed for no more than three months from the date of application for asylum, unless specific education is provided in order to facilitate access



to the education system (where the postponement can be for one year). The directive also states that where the specific situation of the child makes access to the education system impossible, Member States may offer other arrangements.

There is concern in some Member States where education is provided alongside nationals as the norm, such as Belgium, France and Ireland that the directive allows for segregation of children of asylum seekers by educating them in accommodation centres. According to the European Council on Refugees and Exiles¹², “the needs of asylum seeking children are best served through education in local schools, as this favours normal contacts with other children and best facilitates children’s learning”.

Among children who are able to attend mainstream schools, the opportunities that education in school provides are highly valued. However integration presents significant challenges in practice. Children may not be able to pay transport costs to the school, or they may not be able to get a good night’s sleep or have space to study owing to poor or cramped accommodation. There may also be gaps in information about the provision that is on offer, and a lack of interpreters.¹³

EU migrant children

Under the free movement provisions of Regulation No 1612/68¹⁴, children of EU migrant workers must be granted access to the educational system of the host state under the same conditions as nationals. The European Court of Justice has adopted progressive interpretations of the law, enhancing the independent status of the children of migrant workers. For example, in the landmark “Baumbast” case (see *Context*, page 21), the rights of migrant children to continuing education in a host state were upheld, even though their working parent had left the EU. This principle is now incorporated in the 2004 Free Movement directive.¹⁵

However, the entitlements under the original Regulation are limited to access to education. The 1977 directive on the education of the children of migrant workers goes further, acknowledging that their situation at school is distinct from that of national children and requires special efforts to be made on their part—particularly in supporting their linguistic and cultural needs. However, implementation of the directive has been poor, with the European Commission’s own reports¹⁶ showing that most Member States have failed to take any measures at all to meet the directive’s provisions.

Disabled children

Some action has been taken by the EU to support educational opportunities for disabled children, building on previous projects carried out under the Commission’s Socrates, Leonardo and Youth Programmes (See *Youth and employment*, page 121). For example, the Council of Education Ministers adopted in 2003 a “Resolution on Equal Opportunities for Pupils and Students with Disabilities in Education and Training”. The same year, a Hearing was organised by the European Agency for Development in Special Needs Education in the European Parliament for children and young people from 22 countries to share their experiences and wishes with Commission officials and members of the Parliament.¹⁷

Although some of these actions have had a positive impact, they remain insufficient to promote a comprehensive approach to the rights of disabled children in education. In its 2003 reports¹⁸, the EU Network of Independent Experts on Fundamental Rights highlights its concerns about the segregation of disabled children from mainstream education in a number of countries, including Cyprus, Ireland and Latvia. It argues that the EU has the competence to adopt measures prohibiting discrimination in education under Article 13 of the Amsterdam Treaty,

“When I was six I went to a boarding school for the blind. I had to cover 185 kms to reach the school every week and it was quite tiring. In that time it was not customary for the children with special needs to go to an ordinary school. But I had the luck to grow up with great changes in my country and after five years I was able to come back home and continue my studies in a mainstream school, where I had good teachers.”

Young person, Estonia.

“I study at a school for blind and visually impaired children. In our country we have integrated visually impaired children who study in mainstream schools, but blind children don’t study there because mainstream schools are not ready yet to teach blind students.”

Young person, Latvia.

Hearing in the European Parliament for children and young people in special needs education, 3 November 2003.

and may be required to do so under Article 26 of the Charter of Fundamental Rights, if this adds value to the national initiatives. But “the failure of the Community to do so, in the absence of any convincing justification, would not seem to be in conformity with this objective of the Charter of Fundamental Rights”.

Recommendations

- The European Commission should encourage all Member States to take further steps to tackle truancy, absenteeism, and school drop-out through the design and implementation of comprehensive early intervention and support programmes.
- The European Commission should encourage all Member States to address Roma, gypsy and traveller children as a target group within National Action Plans on Social Inclusion. The EU institutions should also explore, with Member States, ways in which EU education policies and programmes can address racial segregation in education and the exclusion of Roma, gypsy and traveller children.
- Member States should ensure that education for asylum seeking and migrant children is provided within the mainstream education system. Opportunities should be provided for the child to retain cultural links, learn about their country of origin, and maintain use of their mother tongue, in line with UNCRC Articles 2, 28 and 30.
- Member States should ensure that disabled children have full access to education systems, not only in terms of the built environment, but also appropriate information, teaching materials and methods, and communication formats. The European Commission should play a role in exchanging good practice.
- Member States should develop coherent strategies for improving children’s awareness of their rights. Children’s rights should form part of the regular school curriculum, as proposed by the UN Committee on the Rights of the Child.



1. Commission of the European Communities, Proposal for a Decision of the European Parliament and the Council establishing an integrated action programme in the field of lifelong learning, Brussels, 14 July 2004, COM(2004) 474 final.
2. EUROPEAN COMMISSION, EURYDICE, EUROSTAT, *Key Data on Education in Europe 2005*, Office for Official Publications of the European Communities, Luxembourg, 2005.
3. The 25 EU Member States, and Bulgaria, Iceland, Norway, Romania, and Switzerland.
4. Compulsory education begins at the age of 7 in Denmark, Finland and Sweden, as well as in Estonia and Bulgaria. By contrast, in Luxembourg and the UK (Northern Ireland), it begins at the age of 4. On average, compulsory education lasts 9 or 10 years.
5. All EU Member States (apart from Cyprus, Estonia, Latvia, Lithuania, Malta, and Slovenia), plus Australia, Canada, Iceland, Japan, Korea, Mexico, New Zealand, Norway, Switzerland, United States.
6. OECD, *First results from PISA 2003, Executive Summary*, OECD, Paris, 2004.
7. Data for the UK are not included, due to insufficient response rates of students and schools.
8. OECD, *First results from PISA 2003, Executive Summary*, OECD, Paris, 2004.
9. HOELSCHER, P., *A thematic study using transnational comparisons to analyse and identify what combination of policy responses are most successful in preventing and reducing high levels of child poverty*, University of Dortmund, 2004.
10. EUROPEAN COMMISSION, *Report on social inclusion 2005: An analysis of the National Action Plans on Social Inclusion (2004-2006) submitted by the 10 new Member States*, Office for Official Publications of the European Communities, Luxembourg.
11. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers. Denmark and Ireland do not take part in the adoption of this Directive.
12. ECRE Information Note on the Council Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seeker.
13. EURYDICE, *Integrating Immigrant Children into Schools in Europe*, 2004, <www.eurydice.org/Documents/Mig/en/FrameSet.htm>.
14. Article 12 of Regulation No 1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers within the Community.
15. Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 229/35 of 29 June 2004.
16. Commission of the European Communities, Report on the implementation of the directive 77/486, COM(88)787 final. See also ACKERS, L., STALFORD, H., *A Community for children? Children, Citizenship and Internal Migration in the EU*, Ashgate, Aldershot, 2004.
17. European Agency for Development in Special Needs Education, Euronews on special needs education, No 12, Autumn 2004.
18. EU Network of Independent Experts on Fundamental Rights (2004) Report on the Situation of Fundamental Rights in the European Union in 2003, CFR-CDF.repEU.2003, and (2004) Synthesis Report: Conclusions and Recommendations on the Situation of Fundamental Rights in the European Union and its Member States in 2003, CFR-CDF.Conclusions.2003.en.

Youth and employment

The development of EU Youth Policy

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In recent years, momentum has grown at European level behind the development of a coherent EU youth policy. This has been given added impetus recently by the need to address the implications of demographic change, with the number of young people aged 15 to 24 set to fall by a quarter between 2005 and 2050 (from 12.6 to 9.7 %), while the age-group 65+ will grow from 16.4 to 29.9 % (see *Early childhood*, page 135). Young people are also at particular risk of poverty (19% of 16-24 year olds, compared with 12% of 25-64 years-old) (see *Child poverty and social exclusion*, page 41).¹

In 2001, following a wide-ranging consultation process (including young people themselves), the European Commission published a first White Paper on youth policy.² This proposed the introduction of an Open Method of Co-ordination (OMC), drawing on similar processes in relation to employment and social inclusion³, under which competence remains at Member State level but the EU has a co-ordinating role. The Paper identified four areas of action: participation; information; voluntary service among young people; and a greater understanding of youth.

In response to the White Paper, the European Council adopted a series of "Resolutions" on youth policy^{4 5 6}, resulting in a list of fourteen "Common Objectives" in the areas of action outlined above. Member States present progress reports to the Commission and the Council on implementation of the objectives.⁷ To support these initiatives, a European Council Youth Working Party (YWP) has been set up to share information and best practice on the implementation of the Common Objectives.⁸

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3 and 12** (see *Introduction*, page 16), the following Articles are relevant:

Article 13.—The right of access to information.

Article 26.—The right to benefit from social security.

Article 27.—The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28.—The right to education, including vocational education, on the basis of equality of opportunity.

Article 31.—The right to rest, leisure and play opportunities.

Article 32.—The right "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

Youth employment and the European Employment Strategy

Over the past twenty years, three main shifts in the pattern of transition from education to employment have occurred within the EU. First, increasing participation in education has delayed the transition for many young people. Second, the duration of the transition has become longer owing to labour market insecurity and participation in part-time work while studying. Third, young people have become more vulnerable to the tightening of social protection legislation and provision, deregulation of labour markets, and decreases in the average youth income. As a result, more young people have remained dependant on family networks for financial support.⁹

Many young people occupy a very marginal position in the labour market, being twice as likely to have temporary contracts as the working population, and more likely to have part-time contracts. Employment rights for young people also tend to be weak, and they frequently earn less than the adult minimum wage. They are more likely to work in the informal sector, without formal employment rights.¹⁰ Some—particularly those from disadvantaged backgrounds—end up without employment, education or training. They may therefore only be eligible for very limited social security benefits, and are at risk of being pushed into social exclusion. According to EU figures on early school leavers¹¹, in 2004 16 % of young people (14 % of young women and 18 % of young men) aged 18-24 had at most lower secondary education and were not in further education or training.

Youth unemployment (defined by the EU as young people between 15 and 25 years old) is more than double the overall rate within Europe (17.9 % for under 25s, compared with 7.7 % for 25 year-olds and up in 2004).¹² Among the EU(25) the 2003 rates range from 41 % (Poland), 34 % (Slovak Republic), 27 % (Italy and Lithuania) to 7 % (Netherlands) and 8 % (Austria and Ireland). Although the overall rates for males and females are very similar, there are differences between countries; in Spain, Greece, Italy, Latvia, and Lithuania, for instance, significantly more young women are unemployed¹³. Other groups, such as young people from ethnic minorities, young migrants and the young disabled also fare poorly in the labour market, although overall statistics in these areas are not available.

Member State approaches to tackling youth unemployment tend to centre on improving “employability”, so as to integrate young people into the world of work (through measures such as personal counselling, training and apprenticeship schemes, and subsidised work placements). These initiatives are often combined with reviews of social protection systems, aimed at moving claimants from benefits into work (“passive to active measures”). There is some concern that the emphasis on developing “employability” may stigmatise individuals who are unemployed through no fault of their own, and that benefits are becoming conditional on accepting offers on government schemes.

Although EU Member States are responsible for their own employment policies, national approaches have become increasingly co-ordinated following the establishment of the European Employment Strategy in 1997 and the development of National Action Plans for Employment. Since then, an important focus of the annual Employment Guidelines has been on tackling youth unemployment. Impetus was provided in particular by the conclusions of the Lisbon European Council in 2000 (the “Lisbon Strategy”—see *Child poverty and social exclusion*, page 41) to make Europe “the most competitive and dynamic knowledge-based economy in the world” and to “regain the conditions for full employment.”

The Joint Employment Report 2004/2005 report¹⁴ is, however, pessimistic about the future, recording “worrying signs of deteriorating job prospects for the young, the low-skilled and other vulnerable groups...” Despite a strengthening of active labour market policies in the Member States, “the efforts seem insufficient with rising unemployment, especially of young people.”

“Europe’s future increasingly depends on its ability to foster societies that are child and youth friendly.”

Jan Figel, Commissioner for Youth, “Addressing the concerns of young people”, Commission press release, 30 March 2005.

The role of the Council of Europe

“The Council of Europe has contributed for many years in a varied and significant way to the development of youth policy in a wider Europe. Its work is particularly important because it involves the majority of countries in Europe, rather than only the 25 who are members of the European Union. It has also built up considerable expertise in the field during this period and organises many activities that contribute to the dissemination and transmission of this knowledge. For young people and youth organisations, the co-management structure of the Council of Europe* is always held up as a model of how young people can be equally involved in decision-making structures.”

ORR, K. et al., *European Youth Forum Youth Report: Education, Employment and Young People in Europe*, Brussels, 2004.

* The Council of Europe’s system of “co-management” for developing youth policy involves committees of representatives of non-governmental youth bodies and government officials setting priorities and make proposals for the budget and programme. The proposals are then considered by the Committee of Ministers.

“For the group of new Member States as a whole, the labour market situation for young people in 2003 was much worse than in the EU15, with the youth unemployment rate double that of the EU15, and the activity and employment rates some 11 and 15 percentage points lower respectively. This reflects the contrasting development in the group of new Member States compared to the EU15; in the former the labour market situation for youth has declined continuously from 1997 onwards. While the employment rate for young people in the group of new Member States stood at just over 33 % in 1997, by 2003 it had fallen almost 9 percentage points to just over 24 %, mainly driven by decreases in employment of young men. At the same time, the unemployment rate jumped over 12 percentage points, from 19.3 % in 1998 to 31.8 % in 2003.”

EUROPEAN COMMISSION, *Employment in Europe 2004: Recent Trends and Prospects*, Office for Official Publications of the European Communities, Luxembourg, 2004.

“Youth in Action and the Youth Pact are important milestones for a new impetus on youth policy in Europe.”

Lissy Gröner MEP, rapporteur on the Youth in Action Programme 2007-2013, personal communication with Euronet, 26 September 2005.

The “Youth Pact for Europe”

Primarily to provide additional impetus to efforts to tackle youth unemployment, in October 2004 the governments of France, Germany, Spain and Sweden¹⁴ proposed a “Youth Pact for Europe”. In March 2005, the European Council adopted such a Pact aimed to “improve the education, training, mobility, vocational integration and social inclusion of young Europeans, while facilitating the reconciliation of working life and family life.” The Pact is also intended to “ensure the overall consistency of initiatives in these areas and provide the starting point for strong, ongoing mobilisation on behalf of young people.” The Council calls on the EU and Member States, in particular under the European Employment and Social Inclusion Strategies, to follow a range of actions.

The European Youth Forum¹⁶ welcomed the adoption of the Youth Pact, but argued that its implementation required concrete targets with measurable results to be included in national and EU reform programmes from 2005-2008¹⁷. They suggested, for instance, that:

- Each Member State should commit to reducing early school leaving by 50 % in the period 2006-2010, to achieve a Europe wide reduction from 16 % of dropouts now to 8% in 2010.
- the EU and Member States should commit themselves to reducing youth unemployment in the EU from 18 % to 9 % in the period 2006-2010.
- EU Member States and the European institutions should reduce the number of young people living in poverty by 50 % in the period 2006-2010, and develop dedicated programmes targeted at the most vulnerable young people.

The Forum also registered disappointment that participation and active citizenship of young people were excluded from the final text.

Commission Communication on youth policies – beyond employment

Following the adoption of the Pact, the Commission issued a Communication in May 2005 on “European policies concerning youth”¹⁸ setting out how Member States can implement the Pact by drawing on the “Integrated Guidelines for Growth and Jobs”; the latter were proposed in April 2005 by the Commission¹⁹ to relaunch the Lisbon Strategy, in line with the European Council’s desire to refocus on growth and jobs.²⁰

The Communication highlights that monitoring of the implementation of the Pact will be integrated in the reporting mechanisms of the Lisbon Strategy, based on reports from Member States each autumn on progress made. It identifies relevant actions for Member States and the Commission in: employment and social inclusion²¹; education and training²²; promoting mobility²³; and for reconciling family life and working life.²⁴ However it does not set specific targets such as those requested by the European Youth Forum.

Whilst the Commission recommends concentrating on the areas set out in the European Youth Pact, it also highlights the relevance of other policies. On racism and xenophobia, for instance, the Commission will promote involvement of young people in the “For Diversity—against Discrimination” campaign from 2005.²⁵ In 2006, the Commission will launch a European initiative in 2006 to promote good health for young people and children (see *Child health*, page 81). And the Commission will also launch a public consultation on sport in 2005, with a view to reinforcing its educational and social values for young people. The Communication also confirms the importance of active citizenship for young people (and the priorities of participation, information, and voluntary activities) set out in the earlier Resolutions (see *Children’s participation*, page 129).

Child Labour

Child labour can be found in wide range of environments, including agriculture, fishing, manufacturing, tourism, domestic work, construction, and the urban informal economy. In its worst forms, it involves practices such as child trafficking (see *Violence against children*, page 49), prostitution, and pornography (see *Media and internet*, page 105) and criminal activities such as the drugs trade.

Drawing on the provisions of ILO Conventions Nos 138 of 1973 (Minimum Age) and 182 of 1999 (Worst Forms of Child Labour), ILO has identified three categories of child labour²⁶ to be abolished:

1. *Labour performed by a child who is under a minimum age specified in national legislation for that kind of work;*
2. *Labour that jeopardizes the physical, mental or moral well-being of a child, known as hazardous work;*
3. *The unconditional worst forms of child labour, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution and pornography, and illicit activities.*"

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There is a range of reasons why child labour exists. Poverty is inextricably linked to child labour, but it is not the sole explanation. Poverty also interacts with other causative factors, such as lack of access to good quality education, and inadequate social protection. Discrimination (e.g. on the grounds of, ethnicity, disability, or gender) also plays a part; for example, girls in some cultures are expected to be domestic workers, so their schooling is de-prioritised at a young age.

According to the International Confederation of Free Trade Unions, although not widespread, unacceptable exploitation of children who work is occurring in most—if not all—EU states to some degree, mainly in the informal economy and in agriculture. However “in virtually all EU countries, trafficking in women and girls for the purpose of forced prostitution is a problem, as is forced manual labour by trafficked people.”

ICFTU suggests that “Generally, but not always, the enforcement of child labour laws and the requirements of compulsory education make the problem of child labour lesser in the northern and western countries of the European Union. In southern and eastern member states it is a serious problem”²⁷. This perspective is endorsed by a recent European Parliament report²⁸, which argued that “five million children are being exploited at workplaces in eastern Europe and the Mediterranean region and in particular (it would appear) in EU Member States.”

In Central and Eastern Europe, an ILO review²⁹ indicated four main trends:

Addressing child labour in Portugal

Although confirmed cases of exploitation in Portugal are falling, there are still significant problems: “Many children work between 10-14 hours a day. Some start at 7 am and return at 11 pm or midnight. They often work in illegally established enterprises and are fired when they get older. There are reports that some of these children are abused by employers and many suffer serious mental and psychological damage.”

To tackle child exploitation, the Commission to Combat Child Labour has significantly increased inspections, alongside heavy fines on those who employ children, increased financial support for vulnerable families with children, and measures to keep children in school. However the transfer of work involving children from factories and workshops into the home and other settings beyond the reach of inspectors has made it more difficult to monitor and deal with violations. A Ministry of Labour “Plan for the Elimination of the Exploitation of Child Labour” has also been established.

International Confederation of Free Trade Unions, *Internationally Recognised Core Labour Standards in the European Union: Report for the WTO General Council Review*, Geneva, 25 and 27 October 2004.

European Youth Pact

(extract)

Employment, integration and social advancement: monitoring policies for the sustained integration of young people into the labour market; endeavouring to increase employment of young people; giving priority to improving the situation of the most vulnerable young people, particularly those in poverty, and to initiatives to prevent educational failure; promoting the emergence of young entrepreneurs.

Education, training and mobility: encouraging the development of a common set of core skills, and concentrating on the problem of drop-outs from the school system; expanding the scope for students to undertake a period of study in another Member State; encouraging mobility of young people; and developing, between Member States, closer cooperation on occupational qualifications and recognition of non-formal and informal education.

Reconciliation of working life and family life: promoting the reconciliation of working life and family life by sharing the responsibility between partners, particularly by expanding the child care network and developing innovative forms of work organisation; considering child-friendly policies, in the light of discussions on the Commission Green Paper on demographic change.

European Youth Pact, European Council Presidency Conclusions, Annex 1, Brussels, 22 and 23 March 2005.

The Youth in Action Programme

Following the ending of the "Youth" Programme in 2006, the Commission proposed a new "Youth in Action" Programme from 2007-2013, based on Article 149 of the Treaty, which relates to education, training and youth¹. The objectives are: "promoting young people's active citizenship in general and their European citizenship in particular; developing young people's solidarity, in particular in order to reinforce social cohesion in the European Union; fostering mutual understanding between peoples through young people; contributing to developing the quality of support systems for youth activities and the capabilities of civil society organisations in the youth field; and promoting European cooperation in youth policy." Youth in Action consists of five Actions: Youth for Europe², European Voluntary Service³, Youth of the World⁴, Youth workers and support systems⁵ and Support for policy cooperation⁶. The proposed budget for the duration of Youth in Action is 915 million euros.

1. Paragraph 2 states that Community action shall be aimed at "encouraging the development of youth exchanges and of exchanges of socio-educational instructors".

2. Exchanges, mobility and initiatives for young people and projects for participating in democratic life.

3. Developing young people's solidarity, active engagement and mutual understanding through either individual or collective projects.

4. Co-operation projects with the neighbouring countries of the enlarged Europe and other third countries.

5. Support for youth organisations at European level; development of exchange, training and information schemes for youth workers; projects to stimulate innovation and quality; partnerships with regional or local entities.

6. Promoting cooperation on youth policy, supporting structured dialogue between young people and those responsible for youth policy, cooperation with international organisations and measures aimed at gaining better knowledge of youth.

- working street children (e.g. vending food and small consumer goods, shining shoes, washing windshields, scavenging, loading and unloading of merchandise);
- working children in agriculture (e.g. mixing, loading, and applying toxic pesticides, fertilizers, or herbicides). In Romania, for example, over 70 % of children working in agriculture are between the ages of 6 and 14 (see *Acceding countries*, page 151);
- working Roma children (e.g. begging or scavenging for scrap metal, or other objects to sell); and,
- child trafficking (see *Violence against children*, page 49).

In Western Europe, child labour is prevalent in the north of Portugal (e.g. construction, tourism, footwear, clothing and textiles), the south of Italy (e.g. agriculture, hotels, coffee bars, restaurants, construction, street markets, leather industry), Spain (e.g. the shoe industry, shops, bars, agriculture, markets, cleaning car windows), and the UK (e.g. service sectors, agriculture, child prostitution).

Under the EU's 1994 Young Workers' Directive, governments are required to protect the health and safety of under 18s, and specific requirements have been introduced covering certain types of work, working hours, rest breaks and night work.

In 2001, the European Commission initiated Court proceedings against Italy, France and Luxembourg for failing to report on the transposition of the Directive. Italy transposed the Directive during this process, but a court ruling was issued against Luxembourg and France. Luxembourg transposed the Directive after the ruling. Proceedings were pursued against France, but were later dropped following the steps it took to comply with the Court's rulings. The UK was allowed a transitional period of four years regarding some of the provisions on working time; it subsequently transposed the directive, which entered into force in 2003 (though with some exemptions in relation to night working).

In a 2004 monitoring report on the EU(15), the European Commission concluded that legislation to protect young workers was already in place in most Member States before the directive, but that in some, the directive has led to a considerably higher level of protection. Based on reports from national governments: "The Commission does not see any immediate need to revise the Directive. Most of the problems described by the Member States in their reports relate to the monitoring, and not to deficiencies in the Directive"³⁰. However, given the unacceptably high numbers of children who are exploited and the extent of the problems outlined above, especially in the new Member States, it is essential that a more comprehensive analysis is undertaken as soon as possible.

We, the Ministers responsible for Childhood, declare that it is important:

- To give priority to eliminating the worst forms of child labour; to continue to support the ILO in its work to combat child labour; and to promote the universal ratification and implementation of the ILO Conventions 138 and 182.
- To focus special attention on children who are at particular risk of economic exploitation, including for example girls, migrant children, street children, foreign unaccompanied children, Roma children and other minority groups.
- To give attention to child labour in the informal economy as this is where much child labour occurs, often in the most hazardous and hidden forms, including forced labour and slavery and situations where children are confined to the premises of the employer.
- To further the debate on child labour and, where possible, strengthen the work carried out in recent years at national level, recognising that a co-ordinated approach by Governments, social partners, international organisations, local bodies, NGOs, other relevant organisations and individual citizens is the most effective way to obtain positive results...

EU Ministers for Childhood, Declaration of Lucca, 25-26 September 2003.

Recommendations

- In national strategies to implement the European Youth Pact, Member States should adopt ambitious and concrete targets (e.g. for reducing child poverty, early school leaving and youth unemployment), underpinned by clear implementation plans.
- Member States should increase the number of flexible training opportunities available to young people, and ensure that social security provisions are sufficient to maintain an adequate standard of living in the transition to independence (Articles 26 and 27, UNCRC).
- The Member States should all apply relevant legislation to tackle child labour (e.g. the 1994 Young Workers directive and ILO Conventions 138 and 182), monitor the extent of the problem, and take further action to ensure its eradication. This should include investing in quality education, addressing discrimination (particularly against women, ethnic minorities and disabled people), putting pressure on employers to uphold standards, and supporting children and children's NGOs. The European Commission should encourage exchange of best practice between EU Member States.
- Member States that have not ratified ILO Conventions No 138 ("Minimum Age for Admission to Employment") (Czech Republic, Estonia, Latvia) and No 182 ("Worst Forms of Child Labour") (Latvia) should take immediate steps to do so.³¹
- The European Commission should undertake comprehensive monitoring of the extent and nature of child labour in EU Member States, and strategies in response. This should also explore: how to balance children's rights to increasing independence and autonomy with their rights to protection from exploitation; how to protect children without increasing family poverty; and how to tackle the hidden nature of much child labour.
- The views of children should be considered in decisions that affect them and they should be involved in the planning, implementation and evaluation of action in relation to child labour, in line with Article 12 UNCRC.

Footnotes

1. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
2. European Commission White Paper, "A New Impetus for European Youth", COM(2001) 681 final.
3. The European Employment Strategy (the "Luxembourg Process") and the Social Inclusion Process.
4. Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council regarding the Framework of European Co-operation in the Youth Field, OJ C 168/2 of 13 July 2002.
5. Council Resolution of 25 November 2003 on common objectives for participation by and information for young people, 2003/C295/04).
6. Council Resolution of 15 November 2004 on common objectives for voluntary activities for young people (13996/04 JEUN 89) and Council Resolution of 15 November 2004 on common objectives for a greater understanding and knowledge of youth (13997/04 JEUN 90).
7. Reports were delivered at the end of 2005 in relation to participation and information; a similar process, but with a longer timescale, is anticipated in relation to the other objectives.
8. The YWP has established three working groups (on young people's commitment, on young people's participation at local level, and on information).
9. ORR, K. et al., *European Youth Forum Youth Report: Education, Employment and Young People in Europe*, Brussels, 2004.
10. ORR, K. et al., *European Youth Forum Youth Report: Education, Employment and Young People in Europe*, Brussels, 2004.
11. EUROPEAN COMMISSION, *Joint Report on Social Protection and Social Inclusion*, Staff Working Paper, Technical Annexes, Brussels SEC(2005).
12. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
13. EUROPEAN COMMISSION, *Joint Report on Social Protection and Social Inclusion*, Staff Working Paper, Technical Annexes, Brussels SEC(2005).
14. COUNCIL OF THE EUROPEAN UNION, *Joint Employment Report 2004/2005*, Brussels, 9 March 2005, 7010/05.
15. "Pacte europeen pour la jeunesse", 29 October 2004.
16. The European Youth Forum is a platform of national youth councils and international non-governmental youth organisations, including members from both the EU and the rest of Europe. See <www.youthforum.org> for further details.
17. EUROPEAN YOUTH FORUM, *Position Paper on the European Youth Pact*, Brussels, 22-23 April 2005.
18. Communication from the Commission to the Council on European policies concerning youth, Brussels, 30 May 2005, COM(2005) 206 final.
19. EUROPEAN COMMISSION, *Integrated Guidelines for Growth and Jobs (2005-2008)*, Brussels, 12.4.2005, COM(2005) 141 final.
20. Some organisations fear that focussing on growth and jobs may lead to a downgrading of "Social Europe" (see *Child poverty and social exclusion*, page 41).
21. Member States to take action to promote the employment of young people (e.g. in order to: reduce youth unemployment; build employment pathways; develop personalised action plans, with job search assistance, guidance and training); Commission and Member States to make young people a priority in the mutual learning programme on employment in 2005; using the Social Inclusion Strategy, Commission and Member States improve the situation of the most vulnerable young people; Commission to launch study on the social integration of highly disadvantaged young people in 2005.
22. Member States to take action for young people (e.g. to reduce the number of early school leavers, improve access to vocational education and training, including apprenticeships and entrepreneurship training; to develop frameworks to support transparency and recognition of qualifications and competences, and for validating non-formal and informal learning); Member States to implement Europass decision; Commission to adopt a Communication on entrepreneurship education in 2005; Commission to propose a European Qualifications Framework in 2006; Commission to adopt a Recommendation on key competences in 2006; Commission & Member States to develop "Youthpass" from 2006.
23. Member States invited to provide more transparency and information to make it easier to work and study abroad; European Year of Worker Mobility 2006 to include special actions for young people; Commission to develop tools such as EURES and PLOTEUS to improve possibilities for young people to work and study abroad; Commission to produce in 2005 recommendations on a mobility card for young people in Europe; In 2006, Commission to study extension of the 'Jobs d'été' initiative; In 2007, Commission & Member States to implement new forms of EVS; From 2007, actions improving the geographical and occupational mobility of young people in the follow-up to Action Plan for skills and mobility.
24. Member States to provide more accessible, affordable and quality childcare facilities and care for other dependants; Member States, supported by Commission, to develop new forms of work organisation, e.g. flexitime, tele-working, maternity, parental leave etc.; Commission consultation in 2005 on the impact of demographic change and possible policy responses.
27. A five-year pan-European information campaign supported by the Commission Action Programme to combat discrimination, see <www.stop-discrimination.info>.
28. The term "child labour" does not encompass all work performed by children under the age of 18. Many children, in very different national circumstances, carry out work that is entirely consistent with their education and full physical and mental development.
29. INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, *Internationally Recognised Core Labour Standards in the European Union: Report for the WTO General Council Review*, Geneva 25 and 27 October 2004.
30. EUROPEAN PARLIAMENT COMMITTEE ON DEVELOPMENT, *Report on the exploitation of children in developing countries, with a special*

focus on child labour, 15 June 2005, A6-0185/2005 final.

31. MARTIN, J.W., *Child Labour in Europe and Central Asia: Problem and Response*, International Programme on the Elimination of Child Labour, International Labour Organisation, Geneva, 2003.

32. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the application of Directive 94/33/EC on the protection of young people at work.

33. The Convention sets a regular minimum age of not less than the age of compulsory schooling, and in any case of not less than 15 years, and a higher minimum age of 18 for work that can be considered hazardous.

Children's participation

Children often have very limited opportunities to be involved in key decisions that affect them. Yet they have expert knowledge of the behaviour of children at school, on the streets, in youth clubs, in the family. They also have views on what could be done to improve the environment, make the streets safe and make schools better places to study and learn.

Recognising their capacities and valuing their contribution —individually and collectively— is a crucial prerequisite for creating a dynamic, participative society. Accepting that children are not purely “vulnerable”, “dependent”, and in need of adult protection, but also social actors in their own right, lies at the core of the participation section of the UNCRC. Article 12 highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, and applies equally to all measures adopted by States to implement the Convention (see also *Introduction*, page 16).

Although it does not give children control over decisions that affect them or override the rights of parents, Article 12 represents a significant challenge to traditional perspectives on children and childhood. It gives children the right to be heard in all matters affecting them, whether in the family, at school, or in the wider community; importantly, public policy and legislation are not excluded. It acknowledges the importance of children having their views not just listened to, but also taken seriously. And drawing also on the concept of “evolving capacities” (Article 5, UNCRC), it recognises the relevance of children’s age and maturity, and their understanding of decisions they face.¹

Failure to listen to children can lead to children’s rights being ignored in policy making. It may also allow some adults to abuse their power over children (e.g. as in the many abuse cases that have emerged across Europe over the past twenty years). Listening to children can improve decision-making, strengthen commitment to (and understanding of) democracy, ensure proper protection for children, and help to implement their rights.

Within the EU, Article 24 of the Charter of Fundamental Rights incorporates the principle of children’s participation. Whilst this reference is positive, unfortunately Article 24 is weaker than the UNCRC. Where the Charter states that children “*may* [our emphasis] *express their views freely*”, the UNCRC enshrines this principle as a right.

UN Convention on the Rights of the Child

In addition to Articles 2 and 3, Article 12.1 sets out that:

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

Principles for participation

Lansdown² sets out a number of fundamental principles that should guide children's participation. For example:

- *Children must understand what the project or the process is about, what it is for, and their role within it:* this involves providing appropriate information in accessible formats to enable children to make informed decisions, and avoiding tokenistic processes.
- *Children should be clear from the beginning what decisions can be made and by whom:* if this is not adhered to, children are likely to feel cynical about the process.
- *Children should be involved from the earliest possible stage of any initiative:* the earlier children are involved, the more likely it is that they will be able to influence or shape the process.
- *All children should be treated with equal respect regardless of their age, situation, ethnicity, abilities or other factors:* depending on their identity and circumstances, individual children may require different levels of support in order to participate.
- *All projects involving children need to establish ground rules that are negotiated and agreed between the adults and the children:* any boundaries need to be clear and explicit from the start.
- *Participation should be voluntary.*
- *Children are entitled to respect for their views and experience.*

Participation into practice

Positive initiatives to involve children as active citizens in policy and planning have been established at a range of levels, from local, national and regional to international. Many have sought to set up consultative processes, initiated by adults to obtain information from children through which they can improve legislation, policies or services. Others have aimed to create opportunities for children to engage in democratic processes or involve children in the development of services and policies that affect them. A smaller number have promoted self-advocacy projects to empower children to identify and fulfil their own objectives. These are not however rigid categories, and in practice, initiatives may shift from one to another as they develop.

Below we set out various examples of participation initiatives to engage children (see also *Environment*, page 99 and *Education*, page 115 for further examples).

SURVEYING CHILDREN'S OPINIONS

The "Young Voices" poll³, sponsored by UNICEF with support from the OECD, involved interviews with 15200 children between the ages of 9 and 17 years. It is the largest and most ambitious survey ever taken among children in Europe and Central Asia, providing a portrait of the views and concerns of children and adolescents from 26 States in transition in Central and Eastern Europe (CEE), the Commonwealth of Independent States (CIS), the Baltic States and nine countries in Western Europe.⁴

Among a range of topics, the poll provides some disturbing insights into children's views on violence, injustice and discrimination. For instance:

- 6 out of 10 children say they face violence or aggressive behaviour within their families (shouting and hitting);
- almost half the children polled feel they do not have basic information on HIV/AIDS (65 % in the 9-13 age group, 27 % for 14-17 year olds);
- 61 % think their views are either not sufficiently taken into account or not considered at all by their local government.

"Make things better, listen to the citizens of Europe and lead by example, otherwise Europe will fail."

Merfina, Nawal, Sakina and Warda
(children from Belgium)
at Euronet "Children and the Future of Europe"
conference, April 2003

"One-off or regular events like children's parliaments can be stimulating and raise general awareness. But Article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views."

General measures of implementation of the UNCRC (Arts. 4, 42 and 44, para. 6),
General Comment No 5 (2003),
UNCRC/GC/2003/5,
27 November 2003.

“War and politics are always adult games, but children are always the losers.”

Eliza, 17 (Bosnia and Herzegovina), speaking on behalf of the Children’s Forum at UN Security Council Meeting on Children and Armed Conflict, 7 May 2002.

Nevertheless, children clearly express their hopes for a better future, and are highly concerned about a range of economic, social and environmental issues. They are discerning in identifying discrimination against disabled children, children living in poverty, and children of different faiths. The poll is being used to guide advocacy and programming by UNICEF and others.

ENGAGING CHILDREN WITH POLICY PROCESSES

The UN General Assembly Special Session on Children (UNGASS)

On 5-7 May 2002, UNICEF and partner organisations held a “Children’s Forum”⁵ so that children and young people could gather before the UN Special Session on Children to discuss issues relevant to them and come up with ways for governments, civil society organisations and children to respond. A total of 242 girls and 162 boys attended; two thirds were selected by their own governments and were members of the official delegations of 148 countries. The rest were members of the 106 different non-governmental delegations.

The children agreed a joint statement on the key challenges facing them and on the ways that governments and children themselves can make a difference, entitled “A World Fit for Us”. The message was delivered to UNGASS by child delegates—the first time that children had addressed a formal session of the UN. Child participants also played active roles during the Special Session in a range of meetings, forums and roundtables. The Outcome Document (“A World Fit for Children”⁶) outlines key principles and objectives for a global strategy (see *Introduction*, page 13).

The “Young People’s Parliament” in Portugal

The “Young People’s Parliament”⁷ has been taking place annually at the Portuguese Parliament since 1995 to show young people aged 10-18 the values and practice of democracy and to further citizenship education. The initiative has been developed in co-operation between Parliament itself and the Ministry of Education.

The process involves preliminary work by schools on topics on the agenda of each parliamentary session; the election of “MPs” in schools; preparatory meetings; and parliamentary sessions, directed by a bureau of young MPs, that are broadcast live by a public television channel and by the parliamentary channel.

Children and participatory research

Whilst not yet standard practice, it is increasingly acknowledged that research studies can benefit from children’s participation, improving understanding of their perspectives, and building the self-confidence and “voice” of those involved. However it is essential for researchers to be sensitive to some of the complexities and tensions by, for instance, allowing children sufficient time and support to talk about their experiences and views, affording children some control over the process, and involving them in follow-up activities.

One example is a research project in the UK⁸, where the Children’s Rights Alliance for England and Save the Children consulted 106 children and young people living in communities with high levels of poverty and social deprivation about how poverty affects them. Advice was also sought on what could be done now to improve young people’s lives, as well as to eradicate poverty in the longer term. Eleven group sessions were conducted with under 11 year olds, and six with over 11s. In terms of methods, with younger children the researchers usually used story books, hand puppets, and photography. With older children, structured discussion was employed. Discussions were taped and transcribed, and the main messages were summarised in accessible form. The children were invited to take part in the launch.

Participation initiatives at EU level

At European level, there has been limited emphasis on children's participation and active citizenship, however this has increased in recent years. For example, in 1998 the Committee of Ministers of the Council of Europe adopted a Recommendation on Children's participation in family and social life⁹, setting out a range of measures in relation to: information; education; out-of-school activities; children's associations; participation in public life; work; training; media; social cohesion; research; legal framework; and European co-operation. Since then a Council of Europe initiative on "Children, democracy and participation in society" has been carried out, intended to explore important issues for, and effective examples of, children's participation projects in Europe.¹⁰

Within the EU, a 2003 Council Resolution sets out common objectives for participation by young people.¹¹ EU Member States are committed to increasing the participation by young people in the civic life of their community and in the system of representative democracy and "greater support for various forms of learning to participate".

This emphasis is mirrored in a European Commission Communication of May 2005 on "European policies concerning youth"¹² and in the objectives of the "Youth in Action" Programme 2007-2013 (see *Youth and employment*, page 121).¹³ The Communication states that "the emphasis should continue to be placed on increasing participation at the local level, within representative democracy, and providing greater support for learning to participate. Improving access to information, providing more quality information and increasing the participation of young people in preparing and disseminating information, have all to be reinforced".¹⁴ It goes on to stress the importance of the involvement of young people, and organisations representing them, in implementing the European Youth Pact (see *Youth and employment*, page 121). This is to be achieved through a consultation with young people on measures for the Pact (including an Internet consultation), culminating in a Youth "États généraux" at the end of 2005, bringing together young people, Commissioners, MEPs and policy-makers to discuss youth policy.

Finally, the Communication highlights the importance of programmes to support projects that encourage young people to become active, involved citizens. These include¹⁵: the European Social Fund (in relation to employment, training and social inclusion); the European Regional Development Fund (e.g. education and training, university research, entrepreneurship, health, culture, urban regeneration); the Integrated Lifelong Learning Programme (see below for details); and the Youth and proposed Youth in Action programmes (e.g. mobility, non-formal learning and youth entrepreneurship, active citizenship of young people).

Welcome those these initiatives are, EU participation programmes for "young people" are generally addressed at the age range 15-30. However the opportunities for young people under-18 are limited, and there appear to be no specific programmes for children below 13.¹⁶ Yet they are potentially relevant to children younger than 13, as well as to children and young people over this age. In practice, children—even very young children—are capable of understanding issues and contributing thoughtful opinions, particularly if appropriately supported.

Recommendations

- In line with the commitment of EU Member States to common objectives of increasing the participation by young people in the civic life of their community, and "greater support for various forms of learning to participate"¹⁷, the lower age limit for existing EU participation programmes for young people should be reduced, especially those under the proposed "Youth" programme intended to run from 2007-2013.
- The European Commission should explore the role that the EU institutions and Member States can play in exchanging good practice and encouraging participation by children, especially those in younger age groups,

"Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible."

General measures of implementation of the UNCRC (arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.

"...in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on."

General measures of implementation of the UNCRC (arts. 4, 42 and 44, para. 6), General Comment No 5 (2003), UNCRC/GC/2003/5, 27 November 2003.

"As a young person I feel as though I am seen as a problem that will not go away."

Andy, 15 (England) at Euronet Children and the Future of Europe conference, April 2003.

Euronet's "Children and the Future of Europe" project

With the support of the European Commission, Euronet initiated national consultations on the future of Europe in October 2002, bringing together children and young people from 11 countries. Member organisations worked with national networks and groups of children and young people aged 11-17, identifying themes to focus on. Each group then produced a report with a set of key messages and elected a national delegation of around four members to come to Brussels to attend a preparatory day, and present their findings to a wider Euronet conference the next day.

The conference was addressed by the Vice-President of the Convention on the Future of Europe*. Thirty-five children and young people under 18 attended, representing Belgium, Bulgaria, England, France, Greece, Ireland, Romania, Scotland, Spain, Sweden and Wales. A range of MEPs and NGO staff explored with the children the issues raised by them (including trafficking, children in institutions, poverty and social exclusion, education, environment, discrimination, and participation). The conference concluded with an address and question and answer session with the European Commissioner for the Environment.

Euronet, "Children and the Future of Europe", Conference Report 2-3 April 2003.

* In 2002-2003, the "European Convention", composed of representatives of Heads of Government, national parliaments, the European Parliament, and the European Commission, was responsible for drafting the Treaty establishing a Constitution for Europe.

in decisions that affect them. This should include exchanging experiences of countries/regions where the voting age has been brought down to 16.

- The European Commission should develop practical proposals to ensure that children are given a voice in relevant EU meetings, consultations, and processes, both with other children and with adults. This will involve the development of focal points within the Commission to listen to and discuss children's views.
- EU institutions and Member States should ensure that the specific needs of all groups of children, including disabled children and children who are socially excluded, are met within participation initiatives.
- Member States should encourage the development of different forms of children's participation at the local, regional and national levels. In particular, there should be a duty on education, child care and residential institutions for children to provide opportunities for children to make their opinions heard on matters concerning them, and to ensure that their views are taken into account in decision-making processes.

Footnotes

1. LANSDOWN, G., "The Evolving Capacities of the Child", *Innocenti Insight*, UNICEF, Florence, 2005.
2. LANSDOWN, G., "Promoting Children's Participation in Democratic Decision-Making", *Innocenti Insight*, UNICEF, Florence, 2001.
3. UNICEF, *Young Voices: Opinion Survey of Children and Young People in Europe and Central Asia*, UNICEF, Geneva, 2001.
4. States surveyed that are now EU members were: Austria, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Slovakia, and UK. Other participants were Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Bosnia and Herzegovina, Croatia, FYR Macedonia, FR Yugoslavia (including the UN-Kosovo), Albania, Bulgaria, Romania, Belarus, Moldova, Russian Federation, Ukraine, Switzerland.
5. UNICEF, *Children's Forum Report on the Meeting of Under-18 delegates to the UN Special Session on Children, New York, 5-7 May 2002*, 2002.
6. UN General Assembly, A World Fit for Children, Twenty-seventh Special session, 11 October 2002.
7. See <www.parlamento.pt/ingles/note.html> for details.
8. WILLOW, C., "Bread is free": children and young people talk about poverty, Children's Rights Alliance for England/Save the Children, 2001.
9. Council of Europe, Recommendation No R (98) 8 of the Committee of Ministers to Member States on Children's Participation in Family and Social Life, 18 September 1998.
10. COUNCIL OF EUROPE, *Children, participation, projects. How to make it work!*, Council of Europe Publishing, Strasbourg, 2004.
11. Council Resolution of 25 November 2003 on common objectives for participation by and information for young people, 2003/C295/04.
12. Communication from the Commission to the Council on European policies concerning youth, Brussels, 30 May 2005, COM(2005) 206 final.
13. If adopted, Article I-47 of the European Constitution would bolster the principle of participatory democracy. Clause 4 in particular, would enable 1 million children in the EU, as European citizens, to ask the European Commission to submit a proposal on matters where they consider their rights should be implemented.
14. Communication from the Commission to the Council on European policies concerning youth, Brussels, 30 May 2005, COM(2005) 206 final.
15. For a more extensive list, see Annex 4 of the Communication from the Commission to the Council on European policies concerning youth, Brussels, 30 May 2005, COM(2005) 206 final.
16. For example, there are differences in the ages targeted by specific strands within the "Youth in Action" programme (e.g. youth exchanges [13-25], participative democracy [13-30], young people' initiatives, European Voluntary Service, Youth of the World [18-30]).
17. Council Resolution of 25 November 2003 on common objectives for participation by and information for young people, 2003/C295/04).



Early childhood

Demographic change and children

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In recent years, concern has grown about the economic and social impact of significant changes to the demographic profile of the EU. Figures in a 2005 European Commission Green Paper on Demographic Change¹ show that the fertility rate across the Union is below the threshold needed to renew the population (around 2.1 children per woman), and has even fallen below 1.5 children per woman in many Member States. By 2030 Europe will have 18 million children and young people fewer than today. These low birth rates are a result of many factors, including: “difficulties in finding a job, the lack and cost of housing, the older age of parents at the birth of their first child, different study, working life and family life choices”.²

Alongside declining fertility, healthy life expectancy is still rising, the workforce is shrinking, and family life is changing (e.g. a decline in marriage, increase in cohabitation, diversification in family types). The structure of society is also altering radically as a result: there are more elderly people (65-79) and very elderly people (80+), but fewer children, young people and adults of working age.³ Overall, the demographic dependency ratio⁴ will rise from 49 % in 2005 to 66 % in 2030.

These shifts have major implications, not just in terms of elder care and pension provision, but also for the organisation of working life, urban planning, housing design, public transport, and so on. There are also the important questions of whether immigration can help to stem the EU’s population fall and boost the labour force, and how this process can best be managed (see *Asylum and migration*, page 69).

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3.1** and **12** (see *Introduction*, page 16), the following Articles are relevant:

Article 3.2. — The duty of the Government to provide the necessary care and protection for the child’s well-being.

Article 3.3. — The duty of the Government to ensure that the standards of services provided for the care and protection of children are adequate.

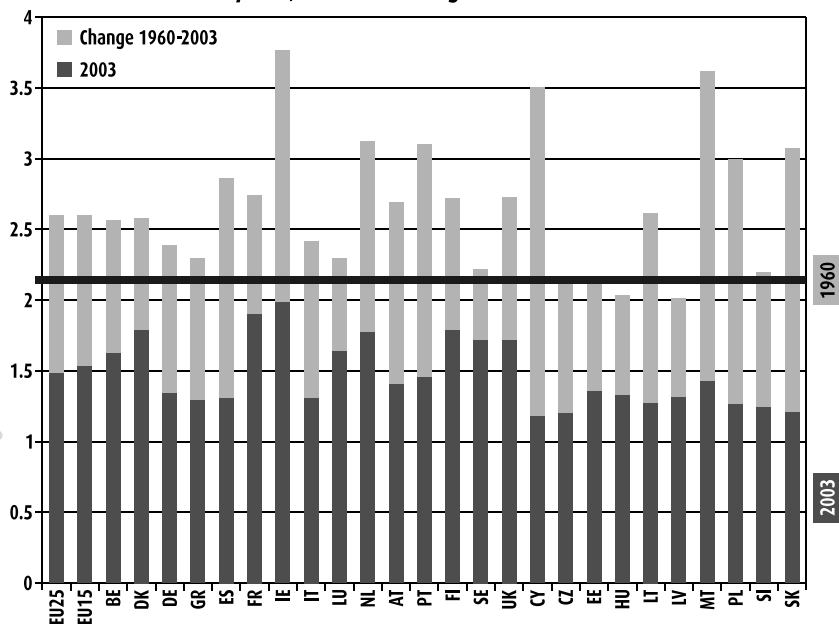
Article 5. — The duty of the Government to respect the rights and responsibilities of parents to provide guidance and direction for children appropriate to the evolving capacity of the child.

Article 9. — The child’s right to live with his or her family unless this is not in the child’s best interests and, where separation does take place, the right to maintain contact with both parents on a regular basis.

Article 18. — The duty of the Government to recognise that both parents have joint responsibility for bringing up their children and to support them in this task.

Figure 1

Total fertility rate, 2003 and change between 1960* and 2003



Source: Eurostat, *Except Estonia and Latvia 1970

— Level needed for the replacement of generations

In relation to young people, the Commission Green Paper identifies that youth unemployment and poverty will need to be reduced, and the discrimination that can affect young people (e.g. on the grounds of age, race, gender) must be tackled. The level of basic training will also need to be raised, and they will need to be flexible to the changing needs of the economy (see *Youth and employment*, page 121).

In relation to children, the Paper notes that: "Children are also at risk of poverty: this is the reality for 19 % of under 15s. The risk is even worse for those living in single-parent families. One consequence of this is that children are forced to drop out of school early, which may, in the medium term, accentuate the risk of poverty amongst young people".⁵ However, the Paper fails to highlight the relationship between demographic change, children and childhood in any depth.

Reconciling work and family

Linked to demography, the EU has paid some attention to the issue of childcare services and the reconciliation of work and family responsibilities. However, its activities in this area have tended to prioritise the needs of working parents and the labour market over those of children.

For example, since its establishment the European Community has had a strong focus on ensuring equal opportunities for women and men, largely in relation to labour market participation. Action in pursuit of this objective has included the development of legal protection (e.g. in employment, training, working conditions) and five Action Programmes to promote equality. Whilst women's participation and employment rates have steadily increased, some of these activities have also had a positive indirect impact on children (e.g. directives on the health of pregnant women [1992⁶], on working time [1993⁷], and on parental leave [1996⁸]). But children have not been the primary target of such actions, and have tended to be seen purely as "dependents" or "barriers to work".

"Children are our future. But they are also an important present."

Zuzana Baudysova, Director of Our Child Foundation (Czech Republic), Euronet Seminar, Prague, 23 April 2005.

"If children are to be addressed as subjects, this presupposes a child-centred discourse on reconciliation, in which the interests of children have to be prioritised and care for young children is to be seen as a task just as important as any other tasks in the economy and/or society."

WINTERSBERGER, H., "Work Viewed from a Childhood Perspective", *Family Observer* No 1, <http://europa.eu.int/comm/employment_social/eoss/downloads/fo1_en.pdf>.

Quality targets in services for young children

In 1996, the EC Network on Childcare drew up proposals for a ten year action programme to implement specific objectives for the development of services for young children. The 40 resulting targets are not intended as a universal prescription, but as a basis for discussion and negotiation. Examples are:

Target 2. — At national level, one department should be nominated to take responsibility for care and education services to young children aged 0-6.

Target 7. — Public expenditure on services for young children (0-6) should be not less than 1% of GDP.

Target 20. — The education and learning environment should reflect and value each child's family, home, language, cultural heritage, beliefs, religion and gender.

Target 29. — 20 % of staff employed in collective services should be men.

European Commission Network on Childcare and Other Measures to reconcile Employment and Family Responsibilities, *Quality Targets in Services for Young Children*, Poplar, Brussels, 1996.

In relation to childcare, the Council of Ministers adopted a non-binding "Recommendation on Childcare" in 1992, intended to help women and men reconcile work and family responsibilities.⁹ From 1986-1996 the Commission supported the European Network on Childcare and other Measures to reconcile Employment and Family Responsibilities, which produced a range of useful publications on related topics.¹⁰

In 2002 the European Council in Barcelona set targets for the provision of childcare facilities under the broader agenda for economic growth and jobs—with the aim of raising employment rates for women and men. However the targets can be seen as a retrograde step, expressed in purely quantitative terms and saying nothing about what types of places should be provided. In contrast, the earlier action programme proposed by the Network for a comprehensive set of quality targets shows how it is possible to negotiate certain common criteria across countries—while, at the same time, recognising areas of national diversity which should be valued.

According to the Barcelona targets, Member States should "strive, taking into account the demand for childcare facilities and in line with national patterns of provision, to provide childcare by 2010 to at least 90 % of children between three years old and mandatory school age and at least 33 % of children under three years old".¹¹ These targets were reiterated in the subsequent European Employment Strategy 2003, and have to be incorporated by

Member States into National Action Plans on Employment.

Although all these activities have stimulated debate across the EU, it is unclear what progress has been made by Member States in meeting the Barcelona targets. Data on childcare is scarce in some countries, and not directly comparable between countries. For instance, there are variations in the types of services provided, the hours they are open, in the ages of the children that are catered for etc. Nevertheless the Commission has been working on comparable data¹² and has indicated that this will be available by 2006.¹³

In addition to the targets, the Commission has repeatedly emphasised that childcare facilities must be affordable, accessible and of a good quality if parents—and in particular women—are to participate in the labour market. It has also urged Member States to address men in order to achieve gender equality¹⁴, echoing parallel initiatives globally.¹⁵

It has been suggested that the current policy focus on "childcare" for working parents, at EU and Member State levels, is limited and narrow¹⁶. It both supports a long-standing and outmoded separation between child care and early education services, reinforces traditional perspectives (e.g. of services as substitutes for home care; of children as "dependents"), and excludes non-employed parents. Instead, Moss suggests a more holistic approach for children within communities, bringing together care and education, and cites a range of possible models (e.g. Swedish preschools, municipal schools for children up to age 6 in the Reggio Emilia region of Italy, and "Children's Centres" in the UK).

Recommendations

- In the debate around the European Commission's Green Paper on demographic change, the consequences for children should be highlighted. This should include exploration of issues such as: children's participation in the intergenerational contract between workers and older people; social and economic measures to support children; attention to children in different family formations; investment in education, health and welfare services for children; and children's perspectives and activities.
- The emphasis on labour market participation in EU employment and gender policies results in children's interests and perspectives either being sidelined, or addressed only in terms of their future status as "productive" workers. The impact on children—both for their well-being now and their future life chances—should be specifically addressed in the development of policy and services for young children, in line with the principles of the UNCRC (especially Articles 2, 3 and 12).

- Eurostat and the European Commission should re-examine the proposals outlined by the European Network on Childcare for a “Quality Targets” approach to services for young children. Going beyond the basic Barcelona European Council targets for providing defined numbers of childcare places, this should involve the development of a wider vision of common European principles and objectives in relation to services for young children.
- Research on children’s perspectives on childcare should be taken into account in the development and selection of quality indicators for childcare provision¹⁷.
- Member States should develop and fund comprehensive provision for caring for children and implement EU directives (e.g. on leave arrangements, and on working time) to enable mothers and fathers to share paid work and care opportunities. The European Commission should provide opportunities for exchange of good practice, working closely with the EU Presidency and the l’Europe de l’Enfance’ initiative.
- The European Commission should continue to encourage Member States to provide incentives so that men take up paternity and parental leave opportunities, and raise awareness so that men increasingly share responsibilities for the care of children.

“A good childcare setting from the perspective of children and young people, irrespective of age and type of setting, seems to be one where children can have fun, play with their friends, where they are given a choice over what they can do and where interesting activities are provided in a safe, relaxed and welcoming environment.”

MOONEY, A., BLACKBURN, T., *Children’s Views on Childcare Quality*, Thomas Coram Research Unit, Institute of Education, University of London, UK Department for Education and Skills, Research Report RR482, 2003.



Footnotes

1. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
2. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
3. However there are more older workers (55-64) in the overall labour force.
4. The ratio of the population aged 0 to 14 and over 65 to the population aged between 15 and 64 years.
5. Communication from the Commission, "Confronting demographic change: a new solidarity between the generations", *Green Paper*, Brussels, 16 March 2005, COM(2005) 94 final.
6. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).
7. Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, OJ L 307, 13 December 1993 and Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18 November 2003. There is an Amended proposal for a directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time, Brussels, 31 May 2005, COM(2005) 246 final, which would end the "opt-out" provision, under which individual workers can waive the right to work no more than 48 hours (net) per week (e.g. not including rest periods) however it has not reached political agreement in the Council of Ministers. The opt-out has been used almost exclusively by the UK.
8. Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.
9. Note that the Recommendation refers to childcare services for working parents; this focus can lead to a narrow concept of services for children.
10. E.g. "Leave Arrangements for Workers with Children" (1994), "A Review of Services for Young Children in the European Union 1990-1995" (1996), "Family Day Care in Europe" (1995), "Reconciliation of work and family life for men and women and the quality of care services - Report on existing research in the European Union" (1999).
11. Presidency Conclusions, Barcelona European Council, 15-16 March 2002, SN 100/1/02 REV 1.
12. SEMENTINI, L., WARD, T., RABEMAFARA, N., PLANTENGA, J., *Development of a methodology for the collection of harmonised statistics on childcare*, European Commission/Eurostat, Office for Official Publications of the European Communities, Luxembourg, 2004.
13. PAVAN-WOOLFE, L., *Childcare in a changing world*, Groningen, 2004.
14. Report from the Commission to the Council, European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between men and women 2005, Brussels, 14 February 2005, COM(2005) 44 final.
15. See RUXTON, S., *Gender Equality and Men: Learning from Practice*, Oxfam GB, Oxford, 2004.
16. Moss, P., "Getting beyond Childcare and the Barcelona Targets", Paper presented at the Wellchi Network Conference 1, St. Anne's College, University of Oxford, 7-8 January 2005.
17. See also section on *Children's participation*, page 129.



Residential care and adoption

Children may be living in a range of alternative institutional settings outside the family, including children's homes, shelters, observation or assessment centers, boarding schools, special schools, secure units, and reception or detention centres (see also *Asylum and migration*, page 69). There is a range of possible reasons for this, including: the absence of parents (e.g. due to illness, imprisonment, poverty, death), child protection (e.g. from abuse, neglect, or exploitation), child disability or illness, delinquency, or education.

Residential settings have come under heavy criticism for providing old-fashioned education, and poor (in some cases, punitive or abusive) regimes that fail to address individual needs. Often they have been used, for misguided "care" reasons, as "dumping grounds" for children who are regarded as "problematic" and/or from disadvantaged backgrounds. This reality has been underlined by the over-representation of certain groups of children (e.g. those who are disabled, or from ethnic minorities [such as the Roma¹]) in institutional care. Male children are also more likely to be placed in institutional care.

UN Convention on the Rights of the Child

In addition to the general principles set out in **Articles 2, 3.1 and 12** (see *Introduction*, page 16), the following articles are relevant:

Article 3.2. — The duty of the Government to provide the necessary care and protection for the child's well-being and (Article 3.3) to ensure that the standards of services provided for the care and protection of children are adequate.

Article 9. — The child's right to live with his or her family unless this is not in the child's best interests and, where separation does take place, the right to maintain contact with both parents on a regular basis.

Article 19. — The right to protection from all forms of violence.

Article 20. — The duty of governments to provide special protection for children unable to live with their family, and the right to appropriate alternative care which takes account of children's need for continuity and their ethnic, religious, cultural or linguistic background.

Article 21. — The duty of the Government to ensure that where adoption takes place, it is only carried out in the best interests of the child and with all necessary safeguards.

Article 23. — The right of disabled children to special care, education and training.

Article 24. — The right to the highest level of health possible.

Article 25. — The right for children in the care of the State to periodic reviews of treatment.

Article 28. — The right to education on the basis of equality of opportunity.

Change has been increasingly driven by public dissatisfaction, poor outcomes for children, growing awareness of children's rights, and not least, the high cost of residential options. Although the pace of change varies significantly between countries, the use of residential care—especially large-scale institutions—has declined in Western Europe. For example, UNICEF research has charted how the use of institutional care fell in Italy from the 1970s and Spain from the 1980s.² Yet institutionalisation rates of children remain high in some states. In Central and Eastern Europe, modernisation has been much slower, and in some countries the process of de-institutionalisation has only begun relatively recently.

Related to this transition, alternative approaches such as fostering and adoption have grown, especially in Western Europe. However, the characteristics of the children involved have changed over time. For example, the number of healthy babies offered for adoption has fallen in the great majority of EU countries; many children who are available for adoption today have particular needs stemming from disabilities, or as a result of damaging experiences in the early years. This has prompted significant interest in inter-country adoption, fuelled by media attention on destitute children in countries such as Romania following the collapse of the Soviet Union.

Residential care in Europe

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The UNCRC provides a clear framework of standards in this area; in particular, it promotes responses other than institutional placement wherever possible, whilst recognising the role that residential care can play for some children.³ Within the EU context⁴, Article 24(3) of the Charter of Fundamental Rights—echoes Article 9 of the UNCRC.⁵ In practice, this right is balanced with the right to respect for private and family life in Article 7 of the Charter; the latter is drawn from the European Convention on Human Rights, and often involves claims regarding contact with children⁶.

It is hard to establish an accurate picture of the use of institutional care for children across Europe, however the evidence suggests that it is still widely used. Definitions of what constitutes “residential care” vary between countries; the age groups considered are not necessarily comparable; the collection of statistics may be split between responsible ministries; and data on state, private, and voluntary provision may or may not be counted together. A particular limitation is that only rarely do the statistics distinguish between the number of children in residential care and in various forms of provision at a single point in time and those in these situations at some time during a year.

Despite these difficulties, a study funded by the European Commission’s “Daphne” programme (see *Violence against children*, page 49) has recently surveyed 33 European countries and sought to compare the number and characteristics of young children in institutional care.⁷ The research provides worrying evidence that it is common practice in many states to place young children under age three in residential care. Given the critical importance of children’s experiences in the early years, it is widely accepted that institutionalisation at this age can lead to negative outcomes such as attachment disorder, and can affect brain development.

The study suggests that 23 000 under threes are at risk, living in residential care settings across Europe⁸. Twelve countries (Czech Republic, Belgium, Latvia, Bulgaria, Lithuania, Hungary, Romania, Slovak Republic, Finland, Malta, Estonia and Spain) have more than two children in every 1 000 under three in residential care, whereas some (e.g. UK) routinely provide foster homes rather than institutionalise children under three.

There are significant differences between European regions in the reasons children are institutionalised. In Western Europe⁹, 69 % are placed in residential care institutions because of abuse and neglect; 4 % due to abandonment, 4 % because of disability and 23 % for social reasons, such as family ill health or imprisonment of the parents. No biological orphans (e.g. children without living parents) were institutionalised. By contrast, elsewhere in Europe¹⁰ only 14 % of children are placed in institutions due to abuse or neglect; 32 % are abandoned; 23 % because of disability; 25 % are social “orphans” placed because of family ill health and incapacity; and 6 % are true

There is a “...very real risk for some parents, especially those living in severe poverty, of having their children taken into care either temporarily or permanently. The reason often given is “child neglect” —meaning inability to provide adequately for the children’s needs. At a time when the policy focus is so often on the need to balance rights with more responsibilities, these parents’ greatest dread is that their most important responsibility—bringing up their children— will be taken away from them.”

BENNETT, F., Foreword to *Valuing Children, Valuing Parents*, ATD Fourth World, 2004, <www.atd-quartmonde.org>.

“Romania has made the transition over the last four years and has closed most large institutions. Some other countries have not yet done so and development of child protection alternatives such as foster care is slowly starting. A word of caution relates to this transformation process. There is a growing pressure for inter-country adoptions from Central and East European countries since Romania closed down its large institutions.”

Frantisek Hauser, Representation of the European Commission in the Czech Republic, Euronet seminar, Prague, 23 April 2005.

“...the process of de-institutionalisation is not simply about closing buildings or even developing new services. Most importantly, it is a medium through which children in care begin to be seen as individuals and have the opportunity to reclaim their identities and express their individuality.”

High Level Group for Romanian Children,
De-institutionalisation of Children's Services in Romania, UNICEF, Bucharest, 204.

biological orphans. The first pattern was associated with countries with a higher GDP, higher health expenditure and a higher average age of mothers at first birth. The second pattern was found in countries with a lower GDP, lower health expenditure and a higher rate of abortion.

Research by UNICEF has come to similarly disturbing conclusions. Its 2001 Regional Monitoring Report, *A Decade of Transition*¹¹, shows that the numbers of children living in institutional care in Central and Eastern Europe and the former Soviet Union in 1999 were higher than in many parts of the region a decade earlier. A six per cent increase in absolute numbers in out-of-home care was particularly noteworthy, as the overall child population fell at the same time. Moreover in 16 of the 25 countries for which data were available, the rates of institutionalisation for young children rose – and particularly steeply in Latvia, Bulgaria and Romania. This was paralleled by increases in the rates of children in all forms of public care (including fostering and adoption as well) over the past decade.

Recently concern has also grown about the use of residential care as a measure of first resort for older children, particularly when the placement is made as a substitute for the entire range of social protection measures. In some of the EU(10), for instance, non-investment in prevention work and family-based services is leading to high spending on out-of-family services for this age group.

De-institutionalisation

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Across Europe, the majority of large traditional institutions have gradually been replaced by smaller homes and the role of residential care has changed. In many countries long-term placements have been replaced by shorter periods in care, with the priority on reuniting families or establishing substitute care in a new family.

The process of de-institutionalisation can be difficult; if undertaken too swiftly or if the children's rights and needs are not treated as a priority, it can be damaging for them. The most striking example of what can be achieved is probably from Romania, where the high levels of children in poor quality institutions was for several years a major block to the country's EU candidacy. To tackle this issue, a “High Level Group for Romanian Children” has fostered collaboration between the national government (at Prime Ministerial level) and a range of partners, including the European Commission, the European Parliament, the World Bank, and UNICEF, with the goal of de-institutionalisation. Building on existing progress in developing alternative services, initiated by funding from the EU's PHARE Programme, the Group has developed a model for the closure of significant numbers of institutions.¹² This defines both a set of principles to guide action (drawing on the framework of the UNCRC), and phased stages towards closure, including: identification of key target groups of children; establishment of action groups to oversee progress; analysis and consultation with stakeholders; logistical planning; institution closure; evaluation and future planning.

Increasingly, this approach is being seen as a model for other countries to emulate. It is, for example, providing lessons for Bulgaria, which still has a very high number of children aged three and under in residential institutions (see *Acceding Countries: Bulgaria and Romania*, page 151).

Violence in institutions

State obligations under the UNCRC include provisions that refer to protection from all forms of violence (e.g. Articles 19, 37 and 39), and are applicable to children in residential care. But according to a summary of existing research on violence against children in such settings, gathered by UNICEF¹³ for a Regional Consultation on Violence against Children in Europe and central Asia¹⁴:

- The Committee on the Rights of the Child has notified many States of its concerns about violence in care facilities (e.g. in the Czech Republic, Greece, Romania and Slovenia), and expressed concern at the lack of a clear

ban on corporal punishment in institutions (e.g. in Belgium, the Czech Republic and France); in some Member States corporal punishment is banned by law in institutions, but not in others.

- Ongoing investigations in Ireland testify to abuse over decades: a Commission to Inquire into Child Abuse has received 3 000 complaints, 60 % of them from those over 50 who were abused as children in institutions.
- There are increasing reports and allegations of abuse of children by staff or older children and, in recent years, public inquiries and convictions against staff. In Portugal, the current “Casa Pia” affair concerns allegations of the organised sexual abuse of boys in residential care said to have taken place over three decades. Several official inquiries have taken place in the United Kingdom (e.g. the Waterhouse Inquiry into Abuse in Children’s Homes in North Wales).
- Some groups of children face particular risks. Research has highlighted the inappropriate nature of placements, poor conditions, inadequate staffing and the potential for abuses to go unchecked in facilities for the mentally disabled, including children, in many countries. The Committee on the Rights of the Child has recently expressed concern, for example, that disabled children in some Greek institutions “experience abuse and inhuman and degrading treatment”.
- The Committee on the Rights of the Child has raised the issue of police officers ill-treating children and young people in police custody in a range of countries, including France and Germany.

Inter-country adoption

For some children, inter-country adoption provides a permanent family to children who have been separated from their parents, and helps children to escape from poverty or a life in institutions. However there is also substantial evidence that the demands of childless couples in Western countries has created an unregulated market and promoted an unjustifiable movement of children from poor to rich countries. At worst, there is child trafficking, with babies smuggled illegally and intermediaries making large profits.

High rates of inter-country adoption (e.g. 77 % of all adoptions in Latvia, 56 % in Lithuania¹⁵) are usually found in countries where large numbers of children under five are placed in institutions. Inter-country adoption and residential care, both considered as measures of “last resort”, frequently reinforce each other, and the existence of one is often the excuse for the use of the other. This relationship makes de-institutionalisation reforms harder to implement.

The Hague Convention of 29 May 1993 on Private International Law on Protection of Children and Co-operation in Respect of Inter-Country Adoption, ratified or acceded to by all EU Member States apart from Greece and Ireland, is the main international legal instrument intended to regulate this trade.

Other key countries from which children have come for international adoption, such as Romania, have also ratified the treaty. However the extent of the trade—for example, since 1989 some 30 000 Romanian children have been adopted internationally—has prompted the European Commission to question whether Romania meets the political criteria on human rights required for membership of the EU, and in January 2005 the Romanian Government enacted a law intended to restrict international adoptions.¹⁶ One unintended consequence of this legislation has been a steep increase in inter-country adoptions from the Russian Federation and Ukraine.

In a recent landmark judgment, which has significant ramifications for the rights of children in such circumstances in 45 countries across Europe (Pini and Bertani & Manera and Atripaldi vs Romania [application Nos 78028/01 and 78030/01]), the European Court of Human Rights (ECHR) held that in inter-country adoption cases, the rights of children have priority and take precedence over any competing rights of adults. As the ruling put it, adoption is “the giving of a family to a child and not a child to a family”.

“The estimated one million children in residential institutions across the region are desperately vulnerable to violence because they are separated from society and live in a closed environment. And the more closed that environment is, the greater the risk of violence and the smaller the chance that it will be reported.”

Statement by Maria Calivis, UNICEF Regional Director for Central and Eastern Europe, the Commonwealth of Independent States, and the Baltics, Regional Consultation on Children and Violence in Europe and Central Asia, Ljubljana, Slovenia, 5 July, 2005.

Pini and others vs Romania

The case concerned two Romanian girls, Florentina and Marina, who had been adopted at age nine, against their wishes, by two Italian couples. These adoptions were originally sanctioned by the Romanian courts, but were never enforced. The girls clearly and consistently stated their desire to stay in a particular children's home in Romania where they had lived for some time, keeping in touch with friends and remaining family members.

The ECtHR overruled the Romanian court's decision that the girls must be sent to Italy, finding against the applications of four Italian nationals who had claimed, in particular, that their rights under Article 8 of the European Convention on Human Rights had been violated. It recognised that both the adoptive parents and the children had conflicting rights in this situation, but ultimately prioritised the views and rights of the children.

European Court of Human Rights,
Case of Pini and others vs Romania,
Strasbourg, 22 June 2004.

Recommendations

- In line with the principles of the UNCRC, EU Member States should ensure that institutional care is only used as a last resort, and for very short periods of time; when used, such care must be of high quality.
- EU Member States should take immediate steps to close all residential care institutions for children (particularly for those under age five) and should develop alternative systems for child protection. Wherever possible, contact should be maintained between children and their biological families.
- The enlargement process has provided significant leverage for de-institutionalisation reform in countries applying for EU membership. This approach should be applied systematically in the EU's relations with other formal (and potential) candidates for EU membership.
- The European Commission should continue to support and fund initiatives to assist accession and candidate countries to close residential institutions for children and develop alternative provision.
- Member States should implement legal reforms to end all forms of violence against children in all institutional settings, in line with Article 19 of the UNCRC.
- Effective mechanisms should be established so that children in institutions can express their views on key decisions that affect them, according to Article 12 of the UNCRC.
- Inter-country adoption should be a measure of last resort and should only be considered when it is in the best interest of the child, when adequate safeguards are in place, and when it does not result in improper financial gain, as set out in the UNCRC (Article 21).
- The European Commission should encourage all Member States to ratify the Hague Convention of 29 May 1993 on Private International Law on Protection of Children and Co-operation in Respect of Inter-Country Adoption.
- National authorities should ensure that the views and rights of children are prioritised in inter-country adoption cases, in line with the ECtHR judgement in the case of Pini and others vs Romania.
- The European Commission, together with other partners such as Eurostat, UNICEF, WHO and the World Bank, should agree with EU Member States a common definition of institutional care, and encourage the development of robust data (disaggregated by sex and age) on children in institutions across the EU.

1. The over-representation of Roma children has been observed in various countries (e.g. Greece, Hungary, Romania and the Slovak Republic), however data is often not collected by official departments.
2. Innocenti Research Centre, "Children in Institutions: The Beginning of the End?", *Innocenti Insight*, UNICEF, Florence, 2003.
3. See in particular Article 20.3 and, in relation to juvenile offenders, Article 37.b.
4. Note that the Committee of Ministers of the Council of Europe adopted a Recommendation to Member States on Children's Rights in Residential Institutions (Rec [2005]5, 16 March 2005). The Recommendation sets out basic principles regarding placements, highlights the rights framework, and defines guidelines and standards for alternative care. See also the Explanatory Report (CM[2005]24 Addendum, 15 February 2005).
5. The principle is also incorporated in Article 3 of the new Brussels II Regulation (see *Family separation*, page 147).
6. MCGLYNN, C., *European family values: families, law and policy in the EU*, Cambridge University Press (forthcoming 2006); KILKELLY, U., *The Child and the European Convention on Human Rights*, Ashgate, Aldershot, 1999.
7. BROWNE, K. et al., *Mapping the number and characteristics of children under three in institutions across Europe at risk of harm*, University of Birmingham/World Health Organisation Regional Office for Europe, 2005.
8. This figure is an estimate and eleven countries could not provide reliable statistics about the number of young children in institutional care (without a caregiver) for more than 3 months.
9. Belgium, France, Norway, Portugal, Sweden and the United Kingdom.
10. Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Malta, Romania and the Slovak Republic.
11. UNICEF, "A Decade of Transition", *Regional Monitoring Report*, No 8, UNICEF Innocenti Research Centre, Florence, 2001, <www.unicef-icdc.org>.
12. HIGH LEVEL GROUP FOR ROMANIAN CHILDREN, *De-institutionalisation of Children's Services in Romania*, UNICEF, Bucharest.
13. CANTWELL, N., *Violence in residential institutions for children*, paper for the Regional Consultation for the UN Study on Violence against Children, Ljubljana, Slovenia, 5-7 July 2005
14. The Consultation was held in Ljubljana, Slovenia, 5-7 July 2005, hosted by the Government of Slovenia and co-organised by the Council of Europe, UNICEF, WHO, OHCHR and the NGO Advisory Panel. It is contributing to a UN global study on violence against children being led by an independent expert, Paulo Sérgio Pinheiro. The study will draw together existing research and relevant information about the forms, causes and impact of violence affecting children and young people. A major report will be published in 2006 and recommendations presented to the UN General Assembly.
15. BROWNE, K. et al., *Mapping the number and characteristics of children under three in institutions across Europe at risk of harm*, University of Birmingham/World Health Organisation Regional Office for Europe, 2005.
16. Under the law, children aged over two years can only be adopted by foreigners if the search for Romanian adoptive families has failed.

family separation

As travel between countries has become more common, especially within the EU where the principle of free movement of people is enshrined in Community law and frontier controls have generally been removed, more children are being born to parents of different nationalities. When such families separate, the consequences for children can be highly damaging—and even more so when parents decide to live in different countries. Occasionally, children may be abducted by one of their parents. Children's rights in transnational separation cases can often be undermined by lengthy and complicated disputes over legal procedures, exacerbated by cultural and linguistic differences.¹

The past decade has seen the gradual emergence of family law on the EU policy agenda.² If the proposed European Constitution is agreed, this trend is likely to be reinforced; an explicit reference to family law in Article III-269 makes provision for the Union to develop, by unanimous consent within the European Council, judicial co-operation in civil matters with cross-border implications.

The potential further development of an EU role in family law remains contentious. Some argue that the EU should not interfere with Member State sovereignty and the specific cultural/religious traditions of national family law, and that there is a risk of developing supra-national laws on cross-national family disputes that duplicate, and/or add another layer of confusion to, private international law.

Others suggest that an EU Regulation (see below for details) is justified in such cases, as private international law has often not been properly or uniformly implemented across the EU; furthermore, there have been limited mechanisms to ensure enforcement. In contrast, the EU Regulation ensures uniform, direct and automatic application of legislation that will significantly ease recognition and enforcement for intra-EU cases.

UN Convention on the Rights of the Child

In addition to the general principles set out in Articles 2, 3 and 12 (see *Introduction*, page 16), the following Articles are relevant:

Article 9.—The child's "right to maintain contact with both parents if separated from one or both".

Article 10.—The right of children and their parents to leave any country and to enter their own in order to be reunited or to maintain the child-parent relationship.

Article 11.—Contracting States must "take measures to combat the illicit transfer and non-return of children abroad" and must "promote the conclusion of bilateral or multilateral agreements or accession to existing agreements".

Article 18.—"Both parents have joint primary responsibility for bringing up their children and the state should support them in this task."

Article 35.—Contracting States must "take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form."

Parental responsibility for children

In 1998, the EU Member States signed the “Brussels II Convention”, agreed on an inter-governmental basis under the EU’s “Third Pillar” (Justice and Home Affairs). The Convention was intended to improve procedures for the recognition and enforcement of judgments in relation to divorce and custody of children, providing, for example, clear rules on which Member State’s court was competent to make decisions about where children should live, and with whom.

The Amsterdam Treaty, which came into force in 1999, strengthened the legal basis for judicial cooperation in civil matters by transferring issues relating to visas, immigration and asylum from the intergovernmental forum of the Third Pillar into the law-making competence of the EC (first) pillar (Title IV, Articles 61-69EC). Following this, the Commission almost immediately proposed the conversion of the non-binding Brussels II Convention into a uniformly applicable Regulation³ that would be automatically implemented across the EU (with the exception of Denmark). This “Brussels II” Regulation was subsequently replaced in 2003 by a Revised Regulation⁴, which came into force on 1 March 2005.

The new Regulation strengthens some of the provisions relating to parental responsibility. For example, the Brussels II Regulation did not apply to decisions if the parents were unmarried, or if the child was not common to both parents, whereas the later Regulation extends the scope to all decisions on parental responsibility. Courts are also required in every case to hear the views of the child, unless this appears inappropriate having regard to the age or degree of maturity of the child (e.g. Articles 11.2, 23(b), 41(2)(c), and Article 42(2)(a)). The Regulation also puts in place common rules on jurisdiction; the main principle is that the court that is closest to the child (based in the first place on the habitual residence of the child) is competent to deal with a case of parental responsibility.

In addition, the new Regulation reinforces the right of the child to maintain contact with both parents after the parents split up or divorce when the parents live in different Member States, in line with Article 9 of the UNCRC. The Regulation provides that decisions on rights to contact are automatically recognised and enforced in another Member State if certain procedural conditions are met.

Child abduction

In extreme cases, one parent abducts their child (or children) in order to maintain contact with them, usually following relationship breakdown. Whilst the stereotype is that abductors are usually non-custodial fathers, in fact mothers may also flee with their children —often because they fear, or have experienced, violence from their former partner.

A range of factors can present difficulties in such cases. For example, the parents may be from very different cultures or backgrounds; States may not have signed the relevant Conventions; the principles of existing law may not be applied rigorously; judges may be inexperienced in making decisions on such cases; there may be bias in favour of the parent who is a national of the country where the case is heard; procedures can be complex and slow, and judgements not enforced; and financial costs for parents can be high.

The new Regulation includes rules intended to tackle these difficulties and to dissuade child abduction within the Community. The rules seek to ensure that the courts of the Member State of the child’s residence before the abduction have the final say in deciding whether or not the child shall return. Their decisions will be recognised and enforced in the other Member State without the need for a declaration of enforceability (the “*exequatur* procedure” which existed under “Brussels II”). This latter procedure is also abolished for judgments on visiting rights, which are directly recognised and enforceable in another Member State under the new rules.

“This Regulation is a milestone in the creation of a common judicial area in family law matters and a significant step forward in the EU policy to protect and promote the rights of the child. The new rules on child abduction will ensure the prompt return of abducted children to their Member States of origin. The Regulation will also reinforce the fundamental right of the child to maintain regular contacts with both parents by allowing judgments on visiting rights to circulate freely between Member States.”

Franco Frattini,
Vice President of the Commission
and Commissioner for Justice,
Freedom and Security, Commission press
release, IP/05/228,
Brussels, 1 March 2005.

The Regulation complements and reinforces the system created by the 1980 Hague Convention on Child Abduction by imposing stricter obligations to assure the prompt return of a child in cases of child abduction between Member States.⁵ From 1 March 2005, the courts of the Member State to which the child has been abducted shall always order the return of the child to the Member State of origin, if the child can be protected there. In order to avoid unnecessary delays that can harm the child, the court must issue its decision within six weeks. The Regulation also creates a system of co-operation between central authorities of the Member States. These authorities will facilitate court-to-court communications and facilitate agreements between parents through mediation or other means.

There are several positive aspects to the revised Regulation (e.g. its application to all children, not just those of married parents; the child's right to be heard). However it is unclear whether the Regulation will be implemented effectively in all EU states, and to what extent it will solve the range of existing problems.

Some commentators suggest, for example, that conflicts of jurisdiction and conflicts of orders are still likely, particularly as the emphasis of the Regulation is on "seising" jurisdiction—whichever is seised first, the law of that state will apply. In practice, this will force a race between parties to hastily establish jurisdiction without considering more conciliatory and less adversarial methods of dispute resolution (such as mediation). Ultimately, the impact on any children involved will be detrimental.

The child's right to express views may also be undermined by diverse procedures at national level which are not addressed by the Regulation; if a child is in a jurisdiction which has quite limited child consultation procedures or quite high age thresholds, then they are going to be in a weaker position than a child in a more child-friendly jurisdiction.⁶

Finally, there are few formal agreements with many countries outside the EU (e.g. Islamic states), and the Regulation will not in itself affect this.

Recommendations

- The 2003 Revised Regulation envisages that central authorities will meet together regularly within the framework of the "European Judicial Network on civil and commercial matters" to discuss the application of the Regulation. In particular, the Network should create a databank of Regulation decisions; develop a core curriculum for training purposes; initiate research on implementation; and make relevant information widely available on the web to families and practitioners.
- The Regulation states that the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on its application, with proposals for adaptation, by no later than 1 January 2012. Given the importance of this issue, the Commission should bring forward this report by 2010.
- In order to implement the 2003 Revised Regulation effectively, Member States must devote sufficient resources to responsible Central Authorities in their country, and ensure adequate training for judges and other relevant legal and social welfare practitioners.
- In line with their positive duty to assist children to express their views (Article 12, UNCRC) in decisions that affect them, Member States should: appoint trained representatives; make skilled interpreters available; and provide child-friendly environments for hearing cases.
- All EU Member States should ratify the 1996 Hague Convention, and should promote wider international accession to existing agreements in relation to parental responsibility and child abduction, in line with Article 11 of the UNCRC.

Footnotes

1. ACKERS, L., STALFORD, H., *A Community for children? Children, Citizenship and Internal Migration in the EU*, Ashgate, Aldershot, 2004.
2. In addition to the issues addressed in this section, the European Commission has also undertaken a consultation on maintenance (Green Paper on maintenance obligations, COM (2004) 254 final of 15 April 2004), published a divorce Green Paper (Green Paper on applicable law and jurisdiction in divorce matters Brussels, COM[2005] 82 final, 14 March 2005), and is exploring proposals on marital property, and on wills and succession.
3. Council Regulation No 1347/2000 of 29 May 2000 on the jurisdiction, recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility for joint children, Official Journal L 160 of 30 June 2000.
4. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.
5. The scope of application of the Regulation is also very similar to that of the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of the child ("the 1996 Hague Convention"). The Regulation prevails in matters of jurisdiction, recognition and enforcement, but the Convention applies in relations between Member States in matters of applicable law, since this subject is not covered by the Regulation. Six EU Member States have ratified or adhered to the Convention: the Czech Republic, Estonia, Latvia, Lithuania, Slovakia, and Slovenia. The remaining Member States, with the exception of Hungary and Malta, have all signed but not yet ratified the Convention.
6. STALFORD, H., "Brussels II and Beyond: A Better Deal for Children in the European Union?", Contribution to the collection of papers from the CEFL conference held in Utrecht, 11-14 December 2002.



Acceding countries Bulgaria and Romania

The Accession Process

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Since its establishment, the European Union has grown from six to 25 members. In 2004, ten new Member States, mainly from Central and Eastern Europe¹ joined the Union, and Bulgaria and Romania are expected to join on 1 January 2007². In order to accede to the Union, states need to fulfil the economic and political conditions known as the “Copenhagen criteria” (established by the European Council in 1993), according to which a prospective member must:

- be a stable democracy, respecting human rights, the rule of law, and the protection of minorities;
- have a functioning market economy;
- and adopt the common rules, standards and policies that make up the body of EU law (the “acquis”).

In return, the EU has assisted these countries in applying the “acquis”, and provided financial assistance to support the development of their infrastructure and economy. This has included, for example, programmes such as PHARE (institution building measures and measures to promote economic and social cohesion), ISPA (environment and transport investment) and SAPARD (agricultural and rural development support), and participation of Bulgaria and Romania in Community programmes, agencies and committees.

Following successful accession negotiations between 2000 and 2004, Accession Treaties were signed on 25 April 2005 with both Bulgaria and Romania. EU membership is however dependent on further progress in complying with the criteria, and includes the ultimate possibility of postponement of accession by one year if the EU sees a serious risk that either country is unable to implement the required reforms.

Accession negotiations have not focussed much on children’s rights, however the state of institutions for children was for some time a significant obstacle to Romania’s candidacy. In the sections below, we highlight some key issues that have been considered during the accession process, and other aspects of children’s rights and welfare that should also be addressed.

Monitoring the circumstances of children in Bulgaria

The decline of the totalitarian regime in 1989 prompted profound political, economic and social changes in Bulgaria that affected children significantly. A UNICEF report in 2001³ concluded that during the 1990s there was a

decline in real income for all family types (and especially those with several children). Income inequality increased and children slipped down a widening distribution. One factor was the shrinking of social assistance, and in particular child benefits. The fall in income had a negative impact on children's nutrition and health; infant mortality stopped falling during the 1990s and child mortality, especially disease-related, remained at a high level. Costs of health care and education also had a disproportionate effect on poor families.

The non-existence of a range of social policy responses to the needs of impoverished families and lone parents also made placement in an institution the only available form of support to vulnerable children and families. This led to increasing numbers of very young children being placed in homes, and the numbers of children placed in institutions also increased. At the same time, concerns grew about deteriorating conditions in such homes.

More recently, an overview of the circumstances of children in Bulgaria undertaken by the COST Article 19 Programme⁴ echoed many of these conclusions on the effects of transition, and highlighted the low status of children in Bulgarian society, referring to them as "one of the most underprivileged social groups." The authors further suggested that children are treated more as passive objects for moralising, education and punishment, than active subjects within the family or wider society. Nevertheless, they acknowledged that substantial attempts are being made to improve social well-being, and that there are signs of progress.

The 2003 Accession Partnership Document (APD)⁵ sets out the main conditions Bulgaria must meet to accede to the EU. In relation to child rights, it states that the Bulgarian Government must: "ensure the childcare system is reformed so as to systematically reduce the number of children in institutional care in particular through developing alternative social services aimed at children and families" and that it must "ensure the full implementation of the UN Convention on the Rights of the Child."

In its 2004 Regular Report⁶ (the latest in a series of such reports) on progress towards the accession criteria and the measures set out in the APD, the European Commission noted some positive improvements in living standards. For example, since 2001 the unemployment rate—although still high at 13.6%—has dropped steadily, and since January 2004 monthly benefits for children up to age 18 have been increased by 20%. In relation to child law and policy, the Commission welcomed the introduction of a variety of strategies, actions plans and implementing legislation, and argued that "on the whole, significant progress has been achieved in adoption of the legislative framework related to child welfare." The report cited, for instance, the adoption of: a National Strategy and programme for child protection (2004-2006); a National Strategy and an Action Plan for protecting the rights of street children; and implementing legislation to improve the quality of services provided for children placed in institutions and to provide foster care (although this is still at an early stage in practice).

However the report also highlighted some continuing weaknesses. For example, although some progress was made in reducing the number of children placed in institutions, living conditions of children placed in institutions in some cases continued to be "inadequate." There was also "no comprehensive approach to the closure of institutions on the basis of agreed criteria" and to the development and promotion of alternative forms of care. Moreover, the number of children placed in institutions continued to determine the funds allocated to these structures, thereby failing to provide the necessary incentives for de-institutionalisation. And issues in relation to Ministry of Education and Science "special schools" were not addressed.

In relation to adoption, amendments to family law in 2003 allowed inter-country adoption only if all other options for placement with relatives, family friends or Bulgarian adopters have been exhausted. But "there is a lack of a nation-wide database of children potentially to be adopted and of a nation-wide register of appropriate domestic adopters."

Trafficking—particularly of children and women for the purpose of sexual exploitation—continued to be a significant problem, although there were no reliable data on the numbers involved. Despite recent improvements in anti-trafficking legislation, the number of convictions was limited. Effective witness protection schemes, and

"...The situation of children in institutional care is still worrying in a number of cases. Further steps are necessary to strengthen the bodies dealing with coordinating and monitoring the implementation of state policies in the area of child protection. Concerning the children at risk, the main challenge is the development of alternative services for them and their families, as well as an improvement of the provided services in the specialised institutions. The other important challenge is the active inclusion of the private and NGO sector as providers of social services for children."

European Commission/Bulgarian Government,
Joint Memorandum on Social Inclusion of the
Republic of Bulgaria, Brussels, 3 February 2005.

"There are a lot of cases of Bulgarian babies who are sold to foreign families, often Greek. Traffickers identify the pregnant women and convince them to sell their newborn babies. The criminals provide transport to Greece and place the women in specially prepared homes where the mothers give birth. The traffickers organize each step of the procedure, including the preparation of the adoption documents. Their Greek "colleagues" support the traffickers. The price of a child is then set—30000 levs for a boy and 15000 levs for a girl*. Mothers who sell their children receive less than half of that amount."

European Network Against Child Trafficking
(2004) A Report on Child Trafficking, Rome:
Save the Children Italy.

* One euro is equivalent to approximately two levs.

“We are talking now about children who are an object of prostitution, drug addiction and pornography... this is a business with very high profits and without any doubt with protection from high levels of the social hierarchy.”

Vladimir Iliev, Club friends of Europe – Bulgaria, Euronet seminar, Prague, 23 April 2005.

support for the social reintegration of victims were also weak (see *Violence against children*, page 49).

Whilst acknowledging the relevance of these criticisms, NGOs have gone further. Save the Children UK has argued⁷, for example, that the Regular Report fails to acknowledge the continuing high number of children in institutional care —according to official figures there are around 10500 children in specialised institutions, but this leaves out some 14000 children in “Special Schools” under the Ministry of Education. Save the Children goes on to cite the Bulgarian State Agency for Child Protection’s own assessment of specialised institutions, which reveals that: the number of children in some institutions has remained more-or-less constant over the last four years; little or no work is done with parents to support re-integration of children in institutions with their families and placement in an institution continues to be a common child protection measure; and there remains a built in financial incentive to institutionalise rather than support community-based alternative services (see *Residential care and adoption*, page 141).

Save the Children also suggests that greater resources —financial and human— must be dedicated to developing alternative services such as foster care: still only 29 children have been fostered in Bulgaria. Whilst there has been a welcome decline in the number of Bulgarian children adopted internationally, an independent assessment of national adoption legislation recommends amendments if the best interests of the child are to be met and the system is not to be abused for financial gain. There remain a large number of Bulgarian families available to adopt children and there is a need for active promotion of national adoption, including the development of a unified national register for potential adopters. There are recent indications of progress; the Ministry of Justice has reported a steady increase in the number of domestic adoptions and even increased preparedness by Bulgarian families to adopt children of ethnic minority origin.

Many children are also denied the right to a quality education. A disproportionate number of children from the Roma community and disabled children are denied quality education due to their placement in institutions or special schools, and segregated schooling remains widespread (see *Discrimination*, page 61).

Monitoring the circumstances of children in Romania

Following the fall of the Ceausescu’s regime in 1990, Romania has faced a difficult transition to a market economy. Economic and political change brought with it high unemployment (rising from 3 % in 1991 to almost 11 % in 1994⁸), especially in areas where unprofitable factories were closed and agriculture struggled. Real wages in Romania decreased by 20 % between 1989 and 1996, and inequality in the distribution of earnings increased remarkably during the same period. By 1997 31 % of the population had an income below subsistence level (less than US\$ 3 per day), and 18 % lived in acute poverty because of minimal income (less than US\$ 1 per day). Even higher percentages were in poverty in rural areas⁹.

Children were also significantly affected by the transition. A European Commission/WHO study¹⁰ at the end of the 90s found, for example, that although Romania’s infant mortality rate declined by 24 % between 1985 and 1998, Romania still had the highest rate among the new EU Member States and Bulgaria¹¹. And whilst immunization coverage of 96 % or more was reported for all diseases (except measles and polio), in the mid-1990s, 49 % of children under 5 years of age were anaemic. HIV/AIDS has also been an increasing problem, with Romania having the highest rate of Aids cases among children and young people in Central Europe (see *Child health*, page 81).

Echoing this background, the UN Committee on the Rights of the Child concluded in 2003¹² that Romania “continues to experience difficulties related to the transition to a market-oriented economy, including high unemployment, growing poverty, coupled with a deterioration in primary health care and other services, which nega-

tively affect families with children.”

In the same year, the European Commission's Accession Partnership Document¹³ committed the Romanian Government to a range of measures in relation to children and children's services, including:

- Ensuring full implementation of the UNCRC.
- Continuing reform of the public child care system by closing old-style institutions, de-institutionalisation and providing alternative social services for families and children.
- Developing adequate national standards for all child protection services, and improving capacity to perform inspections at the local level.
- Working towards closure of the existing special schools through the development of an inclusive education system.
- Maintaining a moratorium on international adoption until new legislation compatible with the best interests of the child and Romania's international obligations is in place and the administrative capacity to implement the new legislation is ensured.
- Providing adequate financial support and administrative capacity in order to implement the national strategy on the improvement of the situation of Roma.

In the 2004 Regular Report¹⁴, the Commission concludes that: “As regards children's rights, continued progress has been made with the reform of child protection through the closure of large old-style institutions and the creation of alternatives. The total number of children in residential care is 37 000. Some 85 large institutions remain, most of which are providers of residential special education. In general living conditions are appropriate. Due attention should be given to the exercise of parental rights and to facilitating contact between children in public care and their parents where this is in the interest of the child.” (See *Residential care and adoption*, page 141.)

It also notes that national standards for child protection services have been adopted, and that regional differences in standards of child protection are being addressed. Local reorganisation of child protection departments should lead to improved coordination and cooperation of services, and better targeted social assistance to families and children.

In relation to inter-country adoption (see *Residential care and adoption*, page 141), the report highlights that in 2003, 503 exceptions were made to the moratorium. However new legislation in 2004 on Children's Rights and Adoption has limited inter-country adoption to extreme cases, and the Commission comments that: “These rules appear to meet the requirements of the UN Convention on the Rights of the Child as well as the practices of EU Member States.” It defines the priority as developing the administrative capacity to implement the new legislation.

The Commission acknowledges that the Roma minority continues to face widespread discrimination, social inequalities remain considerable, living conditions are poor, and access to social services limited. But it notes more positive developments in the field of education, where there is an increased number of teachers specialised in working with the Roma children, encouragement for active participation of parents, and improvements to the school curricula. The problem of segregated education is also being addressed within a National Strategy to Improve the Situation of the Roma (see *Discrimination*, page 61).

Trafficking remains a serious problem, with traffickers particularly targeting young women and girls who are sexually exploited in destination countries. Children are also trafficked in order to be used in begging on the streets. Whilst poverty is a central factor, tackling trafficking requires attention to other problems encountered by families. These include: domestic violence, alcoholism, social marginalisation, low levels of parental education, low wages for unskilled work and job insecurity, the perceptions of both parents and children that they cannot attain the standard of living they desire in their own country, undervaluing of education, and lack of awareness of the reality of trafficking¹⁵. Whilst positive legislation was introduced between 2001 and 2003, the enforcement process is just

“The economic situation will improve in time and also the standard of living.”

“Corruption will probably decrease, work and true qualities will be more appreciated, and human rights will be (well, maybe in a few years) truly respected.”

“From the advantages I could mention the freedom to travel without a visa, to study or work abroad without so many formalities. In addition to this, Romania could grow to reach the level of the other countries (in time of course).”

Romanian children's views on EU membership, Opinion Yes: the magazine of children and young volunteers from Save the Children Romania, No 2, 2004.

“Supporters of this trade (in Romanian children) claim it provides loving couples with a baby whose life would otherwise be miserable. While this can be true in some cases the reality for many children is very different. Children exported abroad, often against their will, are just as likely to be subjected to paedophilia, child prostitution or domestic servitude. Since 1989 this trade has grown endemically and boosted the corruption which has seeped into many aspects of Romanian public life.”

Emma Nicholson MEP
(former European Parliament Rapporteur on Romania), Red light on human traffic Guardian newspaper, 1 July 2004.

"He told me: "It's no use to cry. From now on, you're ours."

"They destroyed my papers; they gave me another name; they stole my identity."

"I was pregnant for about 6 months. They forced me to have an abortion and after a week the pimp beat me again to go back to the clients."

"When I came back, I had to leave my native village because all my neighbours were giving me bad looks and considered me a prostitute."

Extracts from young women's testimonies, *Travel Journal, Save the Children Romania*, Bucharest, 2004.

"The focus of the social support system remains unbalanced: until recently, more effort has been made to improve the situation of children in public care than to support children in families or in the community."

European Commission/Romanian Government, *Joint Memorandum on Social Inclusion of the Republic of Bulgaria*, Brussels, 20 June 2005.

beginning. Convictions have increased, but improved inter-agency co-operation and the development of reliable statistics are necessary. Further measures are required, such as the introduction of a witness protection scheme—the number of victims prepared to be witnesses remains low, partly due to their fear of being punished for illegally crossing the Romanian border (see *Violence against children*, page 49)¹⁶.

Overall, it seems clear that the Romanian Government has made significant strides in recent years towards meeting the criteria in relation to children's rights set out in the Accession Partnership Document. In particular, the country has made rapid progress in addressing the needs and rights of children in institutions and overhauling the existing outdated child welfare system (although much remains to be done in bringing the number of children in institutions down further, and in improving conditions). It has been suggested that such reforms in Romania may provide a model for similar processes elsewhere in Central and Eastern Europe, including Bulgaria¹⁷.

Nevertheless, significant gaps remain. According to the 2005 Joint Memorandum on Social Inclusion prepared by the European Commission and the Romanian Government as part of the EU's social inclusion process¹⁸, the incidence of poverty among children is visibly higher than the average: 30 % for children below the age of 15, 32 % for young people aged 15-24, compared to 25 % for the total population in 2003. The poverty risk is highest for single-parent families, families with many children, and Roma children. The Memorandum comments that the increase in poverty is not only the result of economic polarisation, "but also the consequence of deficient social support policies aimed at children. Child allowances have deteriorated rapidly since 1990, from approximately 10 % of the average wage to 4.4 % in 2003."

Although the Committee on the Rights of the Child has welcomed a range of measures taken by the Romanian Government¹⁹, it concluded²⁰, among other things, that the general principles contained in the Convention—the right to non-discrimination (Article 2), the best interests of the child as a primary consideration (Article 3), the right to life, survival and development of the child (Article 6), and respect for the views of the child according to age and maturity (Article 12)—are not fully reflected in legislation, policies and programmes at the national and



local levels. The Committee also noted concerns over a range of issues, including: non-registration of children at birth and the high number of stateless people; poor quality primary health care and high levels of infant mortality; the difficulties facing children with disabilities; and the incidence of HIV/AIDS among young people (especially minorities) and children²¹.

There are also street children (especially Roma children) in the main urban areas, involved in activities such as begging, washing cars, and stealing. They are particularly vulnerable to economic and sexual exploitation, and even trafficking²². Street children often come into contact with the justice system, and there are allegations that have not been properly investigated of children being ill-treated and tortured by law enforcement officials. There are also no judges specially trained and appointed for cases involving children, and high numbers of children in pre-trial detention²³.

Recommendations

Bulgaria

- Progress towards meeting the 2003 EU —Bulgaria Accession Partnership commitment to “systematically reduce the number of children in institutional care” remains limited. Much more needs to be done to promote alternatives to institutional care, including promoting fostering and national adoption services whilst ensuring that the international adoption system is not open to abuse.
- The Bulgarian Government must indicate its commitment to continued reform of children’s services by dedicating sufficient financial resources from the 2006 budget. The recruitment of an adequate number of social workers in the child protection departments is long overdue and cannot be delayed further without jeopardising the outcome of the overall child welfare reform.
- National and inter-country adoption law should be reviewed in order to ensure that it is internally consistent, can be fully and easily implemented and is in line with the best interests of children (Article 3, UNCRC).
- The 2003 Accession Partnership Document states that Bulgaria must “ensure full implementation of the UN Convention on the Rights of the Child”, however its 2003 report to the UN Committee monitoring the UNCRC is overdue. The European Commission should urge the Bulgarian Government to publish the report as soon as possible; this would help to provide a comprehensive overview and would stimulate further discussion and action.

Romania

- As set out in the 2005 Joint Inclusion Memorandum, the Romanian Government should seek to: develop integrated social services and social assistance at local and family levels (including day centres, family centres, counselling services, and services to prevent the abandonment of children); reform juvenile justice law and process; promote reintegration of the street children into family and social life and provide temporary shelters; ensure access of all children to medical and education services; and strengthen measures to protect children from violence in the community.
- The Romanian Government should continue its efforts to meet all the recommendations set out in the Concluding Observations of the UN Committee on the Rights of the Child in 2003. In particular, it should “increase the budget for the implementation of children’s rights, prioritising budgetary allocations to ensure implementation of the economic, social and cultural rights of children in particular those from socially marginalized groups, to the maximum extent of its available resources” (Article 4, UNCRC).

Footnotes

1. Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia.
2. Croatia and Turkey are candidate countries. Potential candidate countries are Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (including Kosovo, as defined by the UN Security Council Resolution 1244).
3. GANCHEVA, R., KOLEV, A., *Children in Bulgaria: Growing Impoverishment and Unequal Opportunities*, Innocenti Working Papers No 84, UNICEF, Florence, 2001.
4. RAYCHEVA, L., HRISTOVA, K., RADOMIROVA, D., GINEV, R., "Bulgaria: Childhood in Transition", in JENSEN AN-MAGRITT, BEN-ARIEH ASHER, CONTI CINZIA, KUTSAR DAGMAR, NIC GHIOLLA PHÁDRAG MÀIRE and WARMING NIELSEN HANNE (eds.), *Children's Welfare in Ageing Europe*, Norwegian Centre for Child Research, 2004, www.svt.ntnu.no/noseb/costa19/.
5. Commission of the European Communities, Proposal for a Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria, COM(2003) 142 final, Brussels, 26 March 2003.
6. Commission of the European Communities, 2004 Regular Report on Bulgaria's progress towards accession, COM(2004) 657 final, Brussels, 6 October 2004.
7. SAVE THE CHILDREN UK, *European Commission's 2004 Regular Report on Bulgaria's progress towards accession*, Save the Children, London, 2004 and SAVE THE CHILDREN UK, *Submission to the European Commission 2005 Comprehensive Monitoring Report on Bulgaria*, Save the Children, London, 2005.
8. Actual unemployment is probably higher because of hidden unemployment and underemployment.
9. UNITED NATIONS DEVELOPMENT ASSISTANCE FRAMEWORK, *Common country assessment: Romania*, United Nations, New York, 1998.
10. WHO Regional Office for Europe/European Commission, *Highlights on Health in Romania*, WHO Regional Office for Europe, Copenhagen, 1999.
11. Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.
12. Committee on the Rights of the Child, Concluding Observations: Romania, Thirty-Second Session, UNCR/C/15/Add.199, 18 March 2003.
13. Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania, Brussels, 8 May 2003.
14. Commission of the European Communities, 2004 Regular Report on Romania's progress towards accession, COM(2004) 657 final, Brussels, 6 October 2004.
15. THE RESEARCH INSTITUTE FOR THE QUALITY OF LIFE AND SAVE THE CHILDREN ROMANIA, *Rapid Assessment of Trafficking in Children for Labour and Sexual Exploitation in Romania*, International Labour Office, Bucharest, 2003.
16. Commission of the European Communities, 2004 Regular Report on Romania's progress towards accession, COM(2004) 657 final, Brussels, 6 October 2004.
17. HIGH LEVEL GROUP FOR ROMANIAN CHILDREN, *De-institutionalisation of Children's Services in Romania*, Government of Romania/UNICEF, Bucharest, 2004.
18. European Commission/Romanian Government, Joint Memorandum on Social Inclusion of the Republic of Bulgaria, Brussels, 20 June 2005.
19. E.g. The enactment of new legislation and the adoption of national strategies and programmes in relation to child protection, street children, institutionalised children; trafficking, domestic violence and child abuse, child and family health, HIV/AIDS, and discrimination against the Roma population.
20. Committee on the Rights of the Child, Concluding Observations: Romania, Thirty-Second Session, UNCR/C/15/Add.199, 18 March 2003.
21. See also SAVE THE CHILDREN ROMANIA, *Report to the UN Committee on the Rights of the Child concerning the Second Periodical Report by the Romanian Government*, Bucharest, 2002, <www.savethechildren.net/romania_en/resurse/studii.html>.
22. European Commission/Romanian Government, Joint Memorandum on Social Inclusion of the Republic of Bulgaria, Brussels, 20 June 2005.
- 24 GREGORIAN, R., HURA-TUDOR, E., FEENY, T., *Street Children and Juvenile Justice in Romania*, Asociatia Sprijinirea Integrării Sociale (ASIS) and Consortium for Street Children, 2004.



Glossary of terms

EU Institutions

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The Council of Ministers is the EU's principal decision-making body, and each Member State Government has a seat on the Council (although voting is weighted). In practice, unanimity tends to be the rule, but some decisions can be taken by qualified majority.

The EU Presidency is responsible for setting the priorities for the Council of Ministers and will usually set particular objectives it hopes to achieve. The Presidency is held for a six-month term by every Member State in turn.

The European Commission proposes and executes Community policies. It also acts as a mediator between Member States and can take cases to the European Court of Justice for breaches of Community law (Member States can also take the Commission to the ECJ). It is composed of 24 directorates general, each headed by a Commissioner.

The European Parliament (EP) The Amsterdam Treaty extended the powers of the European Parliament. The Parliament is a co-legislator in the areas covered by the codecision procedure. Codecision gives the same weight to the European Parliament and the Council on a wide range of areas (for example, transport, the environment and consumer protection). Two thirds of European laws are adopted jointly by the Parliament and the Council. The Parliament also has budgetary powers and adopts the EU's budget every year.

The European Court of Justice (ECJ) rules on questions of EU law and whether actions of the Commission, the Council of Ministers, Member State governments and other bodies are compatible with the Treaties. Judgements are directly binding on all parties. It should not be confused with the European Court of Human Rights (see *Other* below)

The Economic and Social Committee (ECOSOC) is an advisory body (composed of employers, workers, and other interest groups) which can be consulted by the Commission and the Council of Ministers, and must be consulted where the EU Treaties so provide. It can also develop opinions on its own initiative.

EU law and action

PRIMARY LAW

The EU Treaties make up the primary law of the European Union, operating as a written constitution. The original **1957 Treaty of Rome** has been amended on several occasions. The **1986 Single European Act** aimed

to promote the free movement of goods, services and people and brought about significant changes to the EU institutions. The **1991 Treaty on European Union (“The Maastricht Treaty”)** expanded many of the existing responsibilities of the European Community (introducing the Social Chapter; further institutional reform; setting the goal of EMU; extension of competence in relation to several policy areas). The “European Community” also became only one of the three pillars of “European Union”, the other two being foreign and security policy, and justice and home affairs. These latter activities would be conducted largely on an inter-governmental basis. The **1997 Amsterdam Treaty** (ratified in early 1999) marks a number of limited further changes. For example, asylum policy moves from the “third pillar” to the “first pillar”; new anti-discrimination and social exclusion provisions are written into the Treaty; and a chapter on employment is added to the Treaty.

Secondary law

Regulations are immediately binding on Member States once they have been adopted (usually by the Council of Ministers). They may also bind individuals without further implementing legislation.

Directives are forms of EU law which require legislation in each Member State to give effect to them. Member States have typically two or three years to implement a directive.

Communications are advisory statements produced by the European Commission which examine the context and content of particular policy issues and explore EU policy objectives in relation to these. However they are not binding on Member States.

Recommendations and Opinions are advisory statements on policy, but have no binding legal force. They are usually aimed at encouraging good practice across the Community. Like other forms of EU legislation, national courts are bound to take them into consideration when interpreting national law.

Joint Actions are Actions adopted under the third pillar of the EU Treaty (e.g. on an inter-governmental basis). Under Joint Actions, Member States jointly agree to meet certain goals by a certain time.

Council of Ministers Conclusions are a statement of policy or intent arising from Council of Ministers meetings which have no binding force, but can be used as a limited basis for Community action.

Action Programmes have been adopted in the social policy field on several occasions, and have been used to develop policy statements and fund research studies and awareness-raising activities. The issues covered have included poverty and social exclusion; disability, and the needs of older people. However a ruling by the European Court of Justice on 12 May 1998 has tended to undermine the legal basis for Action Programmes (and other relevant social budgetlines).

Other

The Council of Europe should not be confused with the Council of Ministers of the European Union. The Council of Europe is a distinct organisation with a wider membership than the EU, which focuses on the protection and promotion of human rights and democracy.

The European Convention on Human Rights (ECHR), the most important instrument developed by the Council of Europe, enables one State to sue another for breaches of human rights, and under certain circumstances empowers citizens to sue their governments for such breaches. Complaints go to the European Court of Human Rights (ECtHR) for final decision.

The European Union Charter of Fundamental Rights sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. The EU Charter governs the EU institutions, which must conform to the rights and observe the principles laid down by the Charter. The Charter also applies to all EU Member States, but only when they are implementing EU law.

The United Nations Convention on the Rights of the Child (UNCRC) was formally adopted by the UN in 1989 and has been ratified by 191 states worldwide (only the USA and Somalia have failed so far to do so). The CRC provides a set of minimum standards relating to children's civil, political, economic, social and cultural rights. By ratifying, a government is under a duty to comply with the CRC provisions, and must report regularly to the UN Committee on the Rights of the Child on its progress towards implementation.



EURONET Member Organisations

International Save the Children Alliance — EU Office

BICE, Bureau International Catholique de l'Enfance — EU Office

EACH, European Association for Children in Hospital

EFSCW, European Foundation for Street Children Worldwide

OMEP, World Organisation for early Childhood Education — EU Office

Child Helpline International — Netherlands

Die Kinderfreunde (Austrian Coalition of Child Rights NGOs)

— Austria

Kind en Samenleving — Belgium

Our Child Foundation — Czech Republic

Red Barnet — Save the Children Denmark

Pelastakaa Lapset — Save the Children Finland

COFRADE (French coalition of children's NGOs) — France

Deutscher Kinderschutzbund — Germany

Institute of Child Health — Greece)

ISPCC, Irish Society for the Prevention of Cruelty to Children — Ireland

Save the Children Italia — Italy

FICE — Luxembourg

DCI, Defence for Children International — Netherlands

(on behalf of Dutch Children's Rights Coalition)

Nobody's Child Foundation — Poland

Our House — Poland

Polish Forum for Child's Rights — Poland

IAC, Instituto de Apoio à Criança — Portugal

Plataforma de Organizaciones de Infancia — Spain

Rädda Barnen — Save the Children Sweden

(on behalf of Swedish Children's Rights Coalition)

Save the Children Fund — United Kingdom

NSPCC, National Society for the Prevention of Cruelty to Children

— United Kingdom



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