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PUBLIC POLICY AND MANAGEMENT INSTITUTE

**“The evaluation of the impact of the EU
instruments affecting children’s rights with a view
to assessing the level of protection and promotion of
children’s rights in the EU”**

FINAL INTERIM REPORT

June-July 2010

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INTRODUCTION

This interim report has been prepared by the Public Policy and Management Institute as part of implementing the contract No JLS/2008/FRAC/PR/1006-30-CE-0306544/00-11 for the “Evaluation of the Impact of the EU Instruments Affecting Children's Rights with a View to Assessing the Level of Protection and Promotion of Children's Rights in the EU” commissioned by the Directorate General for Justice, Freedom and Security of European Commission. The timetable for evaluation is provided in the table below.

Action	Date
Signature of the contract	30 November 2009
Kick off meeting	15 December 2009
Draft Inception Report	29 January 2010
Meeting for the finalisation of the Draft Inception Report	5 February 2010
Final Inception Report	18 March 2010
Draft Interim Report	7 May 2010
Meeting for the finalisation of the Draft Interim Report	18 May 2010
Final Interim Report	8 July 2010
Draft Final Report	30 September 2010
Meeting for the finalisation of the Draft Final Report	20 October 2010

During the reporting period the evaluation team has successfully delivered all the activities planned in the inception report. The inventory of EU actions in the area of children's rights has been updated and the description provided in Annex 1 of this report. The interview guidelines have been developed and an interview programme has been implemented at the EU and Member State levels with key stakeholders and experts (Annex 2). A review of already existing research on the topics related to the evaluation of the relevance and coherence of EU actions in the area of children's rights has been carried out. The interim report presents a preliminary evaluation of relevance and coherence of EU actions in the area of children's rights (sections 2 and 3). Country reports have been drawn up on the institutions, policies and good governance practices in Member States with regard to the promotion and protection of children's rights. These formed the basis of the comparative analysis, presented in section 4. Finally case studies for an in-depth evaluation have been selected, to form the basis of the final phase of the assignment (Annex 3). Due to time constraints the work on the case studies has already started while finalising the current report.

The team responsible for this report would like to thank the interviewees for their input and expertise in evaluating EU actions as well as in analysing Member State institutions and policies in the area of children's rights, as well as the officials, experts and support staff in the European Commission, NGOs, international organisations and home institutes who helped in finalising this report.

1. METHODOLOGY FOR EVALUATION

Executive Summary

The main aim of the evaluation is to assess the impact and added value of EU actions to promote and protect children's rights. The inventory of such EU actions developed by the research team has shown that these actions can encompass hundreds of different interventions implemented in many different EU policy areas. Methodology for this evaluation is still evolving, in line with the challenges that are encountered in the research. The main challenge is providing a methodologically sound overall assessment of all the EU actions in the area of children's rights on the basis of relatively few pre-existing sources of evidence combined with the new data collection undertaken in the course of the assignment.

The main methods of data collection and analysis include literature review and analysis of secondary data, semi-structured interviews with the EU and national level stakeholders, statistical analysis of the inventory of EU actions, comparative analysis of Member State institutions and policies in the area of child rights protection, case studies (micro-evaluations) of selected EU actions, and a survey for one particular case study.

The current report does not aim to provide any evaluation judgement. The case studies, which will be central in making the overall judgement, will be implemented only in the next stage of the assignment. The detailed criteria for this judgement will be developed alongside the research planning for the case studies and agreed with the client prior to launching the data collection for case studies. The evaluation framework set out in this section is therefore open to amendment in the final stage of the research.

This section provides a concise discussion of the methodology employed in the evaluation.

1.1. Evolving Methodology

Evaluating an entire horizontal EU policy is not a common exercise and, as such, it presents a series of methodological challenges. Evaluations are usually undertaken of specific policy instruments rather than an entire policy area which, as in the case of EU child rights policy, can encompass hundreds of cross-cutting interventions. There is a further challenge in the newness of the policy area; EU actions in support of children's rights are relatively recent and there are no earlier policy evaluations, and academic research on the subject is relatively thin.

For these reasons, the analytical framework for the evaluation was developed in an iterative fashion, over a longer period than was initially foreseen. Methodology for the evaluation is still evolving, in line with the challenges that are encountered in the research. The next phase of the assignment will demand further refinement as the case studies are developed and carried out. Each case study will be, in essence, a micro evaluation of a specific EU action, each with its own distinct intervention logic

and analytical framework. Then the research findings from each case study will have to feed back to the general policy level, contributing to the overall evaluation of EU actions in the cross-cutting policy area of children's rights.

The current report does not aim to provide any evaluation judgement. The case studies, which will be central in making the overall judgement, will be implemented only in the next stage of the assignment. The detailed criteria for this judgement will be developed alongside the research planning for the case studies and agreed with the client prior launching the data collection for case studies¹. The evaluation framework set out in this section is therefore open to amendment in the final stage of the research.

1.2. General Objectives of the Evaluation

The main *aim* of the evaluation is to assess the impact and added value of EU actions to promote and protect children's rights. This will be achieved through a series of *objectives*, which include an assessment of the relevance, coherence, and effectiveness of the EU actions in the area of children's rights as well as a comparative analysis of Member States' child rights institutions and policies. A positive impact on children should be the result of relevant, coherent and effective actions on the part of the EU.

1.3. General Evaluation Criteria and Questions

The general evaluation criteria and questions to be answered at the end of the assignment are provided in table 1.

Table 1: Evaluation criteria and general evaluation questions

Evaluation criteria	Main question
Relevance	What are the priority areas for EU actions in the area of children's rights?
	Do these priority areas reflect the commitment to promote and protect the rights of children that are most commonly violated in the EU as a whole?
	Do changes in the context affect the relevance of EU actions (in short and medium term)?
Coherence	Are EU actions in the area of children's rights internally coherent and well co-ordinated?
	Are EU actions in the area of children's rights coherent and well coordinated with actions undertaken at the Member State level?
	Are EU actions in the area of children's rights coherent and well co-ordinated with international standards and the actions of other key international actors and NGOs?
Effectiveness	Have the planned EU non-legislative actions been delivered?
	Have planned EU-financed programmes and projects been delivered?
	Have planned EU-funded information and awareness-raising actions been delivered?
	Is there evidence of EU regulations or decisions being directly applied in MS?
	Have the Member States transposed the EU directives?
	Has the capacity and expertise in EU and MS institutions increased?
	Has the support to children's rights from decision makers and stakeholders in EU and MS grown wider or more intensive?
Impact, EU	Has institutional adaptation taken place at EU and national level to implement EU law?
	Have the results of EU action led to broader changes in understanding of children's

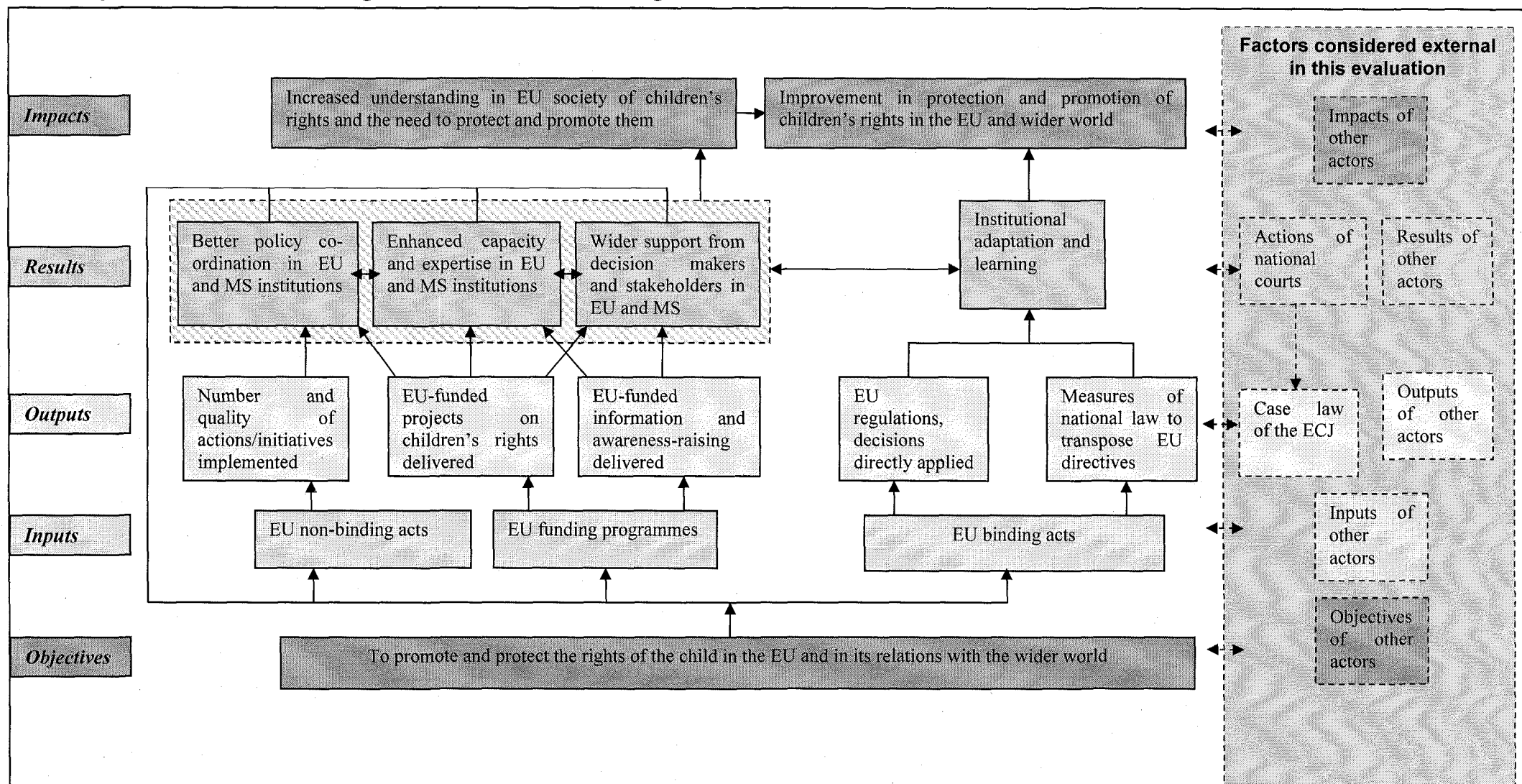
¹ The evaluation team will follow the EC guidance on the subject provided in http://ec.europa.eu/europeaid/evaluation/methodology/methods/mth_cri_en.htm.

Evaluation criteria	Main question
added value	rights in the EU?
	Has protection and promotion of children's rights in the EU improved as a result of EU actions?

1.4. The Intervention Logic

Diagram 1 presents a summary of the EU's intervention logic in the area of children's rights. The intervention logic summarises the relationships between EU policy objectives, inputs and expected policy outputs, results and impacts. While it broadly encapsulates all EU interventions in the area of children's rights, it also provides a clear conceptual map of how children's rights policy works within and between policy areas and decision-making levels. This logic will be tested in the next phase of the assignment, which will look into the effectiveness, impact and added value of EU actions in a set of case studies detailed in Annex 3 of this report.

Diagram 1: EU intervention logic in the area of children's rights



1.5. Research Design and Methods

A range of qualitative and quantitative methods are being used in the evaluation. Whilst quantitative analysis allows for the identification of general trends in EU children's rights policy, qualitative analysis permits an explanation and interpretation of those trends, as well as an exploration of the aims of policy and its subjective evaluation by key stakeholders. All the methods are briefly summarised below.

Analysis of Secondary Data

Secondary data provides the basis for evaluation of EU policy and comparative analysis of Member States' children's rights issues, institutions and policies. It includes various documentary and academic sources on all aspects of children's rights in both the EU and Member States. The core research team reviewed literature available in English relating to children's rights issues in the EU as a whole. Country experts reviewed literature in national languages relating to children's rights issues, institutions and policies in individual Member States. The list of literature already reviewed is provided at the end of the report. A further literature review will be undertaken when analysing specific cases of EU actions.

Semi-structured interviews

At the European level 28 interviews were conducted. Interviewees were selected in order to represent the following types of stakeholders: representatives of the European Commission's directorates and services dealing with different children's rights policy development and implementation aspects; and representatives of international organisations and of non-governmental organisations engaging with the EU institutions in the area of children's rights on a regular basis. At Member State level 158 interviews were conducted. They included interviews with policy stakeholders from relevant public administration institutions such as government departments, agencies, ministries, interviews with experts from NGOs and academia. The list of interviewees is provided in Annex 2. Further interviews will be conducted when preparing case studies.

Statistical Analysis of Inventory of EU Actions

The inventory of EU actions in the area of children rights was developed by the research team (on the basis of a review of EU documentary sources) and was used for a statistical analysis of EU actions in the area of children's rights. A brief description of the inventory is provided in Annex 1.

Expert Assessments

Expert assessments are useful when evaluation judgements have to be made in situations where information is incomplete. The expert assessments are sought from individuals who have a deep and independent understanding of aspects of EU policy or the development of children's rights policies nationally through years of academic research and (or) other professional experience. The need for expert assessments will become clear in the final stage of the assignment.

Comparative Analysis

The comparative analysis of Member States has already been conducted based on reports prepared by country experts. The reports were developed according to the detailed guidelines prepared by the core team. Each report relied methodologically on the review of literature, interviews and the judgements of national expert in child policy or child rights. The comparative analysis sets the context in which EU actions ultimately play out. If the national institutions inside Member States that deal with children's rights and children's welfare are under-developed or ineffective, then the impact of EU actions will be limited. The key areas for comparison include:

- Institutional framework for policy development;
- Mechanisms of policy delivery and monitoring;
- The role of civil society including children;
- Evidence of good practice.²

Case studies

Case studies of six discrete EU actions will be prepared in the next stage of the evaluation in order to provide an in-depth analysis of representative areas of EU policy and their impact on the promotion of children's rights in the EU. The aim of the case studies is to generate insights and gain a better understanding and deeper explanation of how the main types of EU instruments operate in different areas of children's rights. Case study analysis will be based on documentary analysis, interviews, surveys and secondary data, where available. The explanation of selection of cases and the descriptions of 6 planned case studies are presented in the Annex 3 to this report.

Survey

Data will be collected via a survey for Case 1 - European Forum for the Rights of the Child (Annex 3). The survey will target participants of all 4 Forums, who can be accessed via e-mail using an on-line survey tool.

² Please see Table 1 in Annex 4 for more information.

2. EVALUATION OF THE RELEVANCE OF EU ACTIONS

Executive Summary

The preliminary analysis reveals variation in the relevance of EU actions across rights and policy areas. Overall, EU actions have a significant role in children's rights by raising awareness, coordinating actions and providing resources. Targeting of priority areas at the EU level such as media safety, child poverty, Roma children, social exclusion and sexual exploitation have helped to protect children, but some issues are under-targeted or improperly targeted (including juvenile justice) and the rights of some groups of children (including migrating children, children in the asylum system and children in state institutions) are insufficiently protected. While EU policy areas cover most of the significant aspects of the UNCRC, some rights are not as consciously protected in EU policy. A more consistent approach to children's rights is needed. Any actions by the EU to protect children is a positive step, but a plan on how and what aspects of children's rights should be mainstreamed into all areas of policy could enhance targeting and relevance. In essence, while many of the actions related to children's rights taken by the EU are relevant to problems facing children, the lack of an overarching strategy for mainstreaming children's rights has also meant that many areas of concern, especially those of a cross-cutting nature, remain underdeveloped in EU actions. A more detailed analysis of the relevance of particular EU actions will be conducted via the case studies summarised in the Annex 3 of the report.

2.1. UNCRC and EU Actions

Although children's rights are becoming increasingly visible as part of the policy discourse in the EU and its Member States, there remain many issues that have a significant and often disproportionate effect on the rights of specific groups of children and children as a whole. Children who are particularly vulnerable include physically and mentally disabled children, migrant children and working children. These children, and indeed children in general, can pay a heavy price in terms of poverty and social exclusion and may suffer from violence, discrimination of many types and unequal access to health and education. Rights abuse issues are often interconnected. For example, discrimination against migrant children can affect their ability to integrate into the educational system, which may, in turn, also be affected by incompatibilities between educational achievement and lifestyle³.

Some of the most commonly violated children's rights areas in EU Member States can be identified by analysing the Concluding Observations on the country reports submitted by the Member States to the UN while the UNCRC (and its Optional Protocols) provides an analytical framework for evaluating the relevance of EU policy for children.

³ Study on the school education of children of occupational travellers in the EU. A Final Report to the Directorate General for Education and Culture of the European Commission. (2008). Available at http://ec.europa.eu/education/pdf/doc200_en.pdf.

Trends of EU Actions

The EU has gradually been working to more fully integrate children into legislation since the adoption of the UNCRC. The Treaty of Amsterdam made specific mention of children in several instances, including articles providing a legal basis for combating social exclusion and child poverty (Article 137) and a provision allowing for intergovernmental cooperation on tackling 'offences against children (Article 29). Other aspects did not specifically mention children but affected them in some way, including provisions on non-discrimination based on age (Article 13) and a commitment to respect fundamental rights as general principles of Community law (Article 6(2)). Changes to competence in areas of free movement, immigration and asylum allowed for the development of directives affecting asylum seekers and migrant children and children in transnational divorce cases.⁴

Factors Affecting EU Action

Internally, the most significant effect on policy is the level of EU competence in the area. The issue of competence is a difficult and complex issue, with competence varying not only across policy areas, but also within policy areas and even within aspects of specific issues. For example, in the issue of disability, EU competence fluctuates in areas of non-discrimination (exclusive/shared competence, depending on context), work conditions (shared competence) and infrastructure (limited competence).

The influence of Member States (internally) can be great, depending on policy area and their commitment to certain issues during presidencies. Third countries and international organisations (externally) can also play an important role in shaping some policy areas. Practical factors such as the difficulties of monitoring and reporting, a lack of resources and the newness of the area also affect the extent to which children's rights are mainstreamed and protected in the EU.

The work of some new EU bodies, most notably the Fundamental Rights Agency (FRA) is useful for assessing the relevance of EU actions in children's rights issues and areas. The FRA is undertaking projects directly related to children, including areas such as asylum, child trafficking, juvenile justice and the development of appropriate indicators for children. While this action is welcome, the approach to children's rights is still often dealt with on an issue-to-issue basis rather than holistically.

General Trends of EU Action in Children's Rights

It is important to remember that the following analysis is done on purely quantitative terms. As such, observations can be made about the number of actions undertaken in any given area, but this does not necessarily reflect on the relative importance of any individual action. Still, the numbers of actions provide insight into whether children's rights are regularly considered and integrated into EU actions, and they allow for a broad comparison of a significant quantity of data across policy sectors and institutions. While they do not provide a qualitative assessment of the importance of

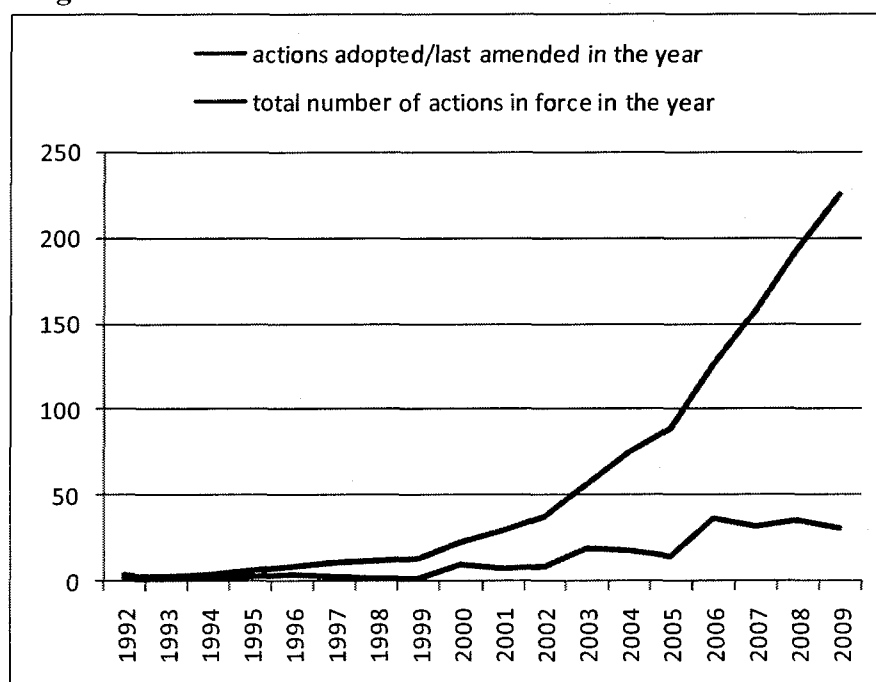
⁴ Please see Tables 4, 5 and 6 in Annex 4 for more in-depth information on these issues.

these actions, this was obtained through interviews with EU officials, representatives of NGOs and other international organisations, and will be examined in more depth through the case studies that will be presented in the draft final report. The EU contributes to children's rights in several ways with varying degrees of power and influence through:

1. Budgetary spending for projects directly related to increasing and protecting children's rights;
2. Legislative regulation setting rules for abiding by and implementing initiatives that support children's rights; and
3. Setting new objectives and strategies in strengthening children's rights.

Evaluations of EU children's rights policies by EURONET in 1999 and 2005⁵ indicate a steady improvement in EU commitment to children's rights. Since 2005, further steps have been taken to address children's rights, including new programmes and strategies in priority areas, new legislation (and steps towards introducing further legislation), a general move towards policy that directly addresses children or includes children as a specific target group and an increasing number of actions that include specific reference to children.

Diagram 2: EU actions from 1992 – 2010

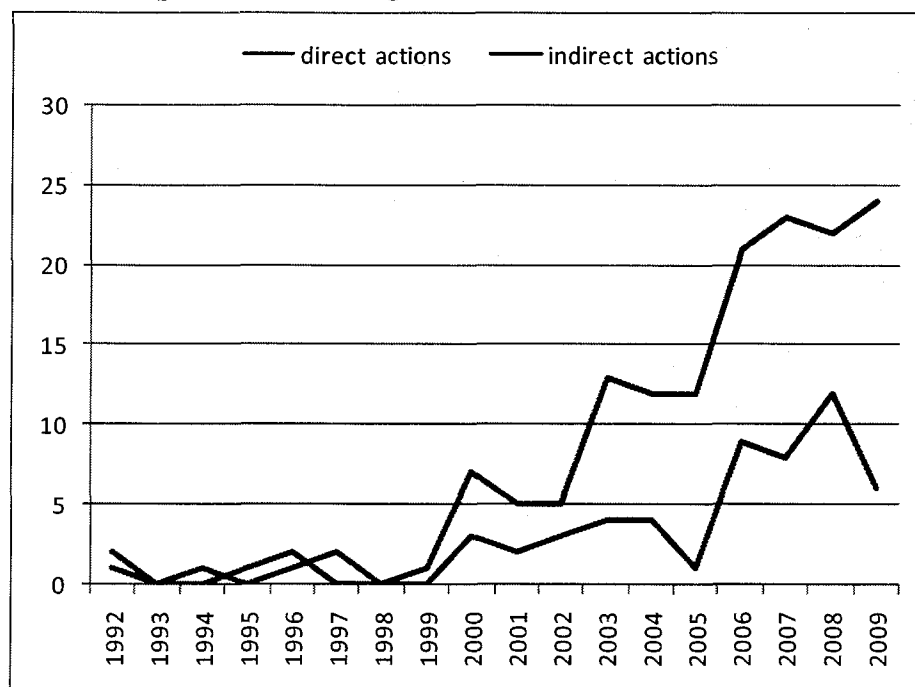


This figure includes the number of newly adopted or latest amended actions based on the inventory of EU actions compiled by the research team (description of the inventory is provided in Annex 1)⁶. The diagram shows the increasing levels of EU activity in protecting and promoting children's rights with particularly strong acceleration in 2006 and about similar levels in subsequent years.

⁵ Ruxton, S., What about us? Children's Rights in the European Union next steps. Commissioned by The European Children's Network, Published 2005 by The European Children's Network (an NGO).

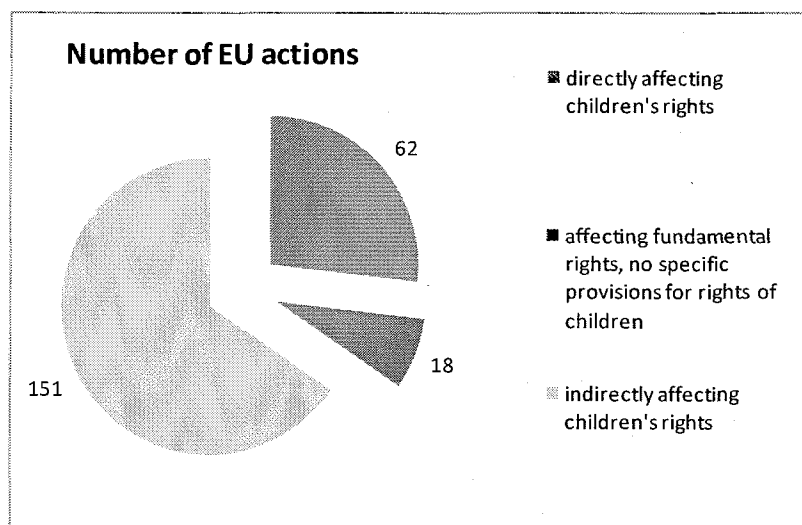
⁶ The actions were attributed to the year in which their last amendment (if any) took place. The diagram does not include actions that were adopted prior to 1989 (or after 2009).

Diagram 3: Number of adopted or amended EU actions in terms of their relationship to children's rights



As diagram 3 shows, the number of new EU actions affecting children's rights both directly and especially indirectly⁷ have increased considerably since 2006. This could be attributed to progress in mainstreaming children's rights into new EU policy instruments that have not targeted children before.

Diagram 4: Number of EU actions by the relationship to children's rights



Although policies specifically targeting children are still in their early stages since 2006 the number of actions specifically targeting children (as revealed in diagrams 3

⁷ An EU action (document) is considered as targeting children directly when it specifies protection or promotion of children's rights in its objectives. It is considered as targeting children indirectly when its main objectives are not centred on children, but the document contains provisions that explicitly address children.

and 4) has increased dramatically - a change that makes it more likely that the UNCRC will form part of the criteria for EU policy.⁸

The EU has established some areas of priority for addressing rights issues specific to children, some of which reflect areas of priority also identified by international organisations and NGOs. In recent years, specific programmes and strategies have been developed in several policy areas including:

- internet safety,
- child pornography on the internet,
- sexual exploitation and abuse of children,
- general youth policy,
- child safety and health issues connected with product safety,
- migration, with special emphasis on unaccompanied minors, and
- financial programmes specifically targeting children and youth in areas such as health and violence.

Other areas, however, still remain somewhat less developed.

The most productive EU policy areas in terms of child rights actions have been external relations and foreign affairs, asylum and immigration, poverty and social inclusion, health policies, and co-operation in the area of criminal justice, which correspond with some areas of the UNCRC, most notably special protection measures and health and welfare. Many areas that show the greatest disparity between actions directly and indirectly targeting children are also constantly often addressed in the UN's Concluding Observations as being violated by the Member States and lacking a consistent and proper legal base with regard to children in certain subsets of these policy areas. These include asylum and immigration, health, social inclusion, criminal matters and non-discrimination. EU took fewer actions especially those directly targeting children in specific areas such as data protection, and broader areas such as; disability and family matters were seen as under-targeted in certain cases or improperly addressed at the Member State level in certain situations, where children's rights were also repeatedly violated in the Member States. Overall in all UNCRC rights areas the EU employs a wide variety of binding, non-binding and financial instruments to address these violations and has achieved a very substantial progress over the recent years⁹. Nevertheless, there remain many areas where there is room for further improvement.¹⁰

Member State Perception of EU Actions

As EU actions are inextricably linked to responses and actions by the Member States, the perception of the Member States of EU actions is important. While not all country reports¹¹ mention any evidence of effects of EU actions at the national level, in those that did it was noted that policy with regard to children's rights tended to develop in an environment where the EU's influence was limited.¹² Other actors, such as the

⁸ Ruxton, S., What about us? Children's Rights in the European Union next steps. Commissioned by The European Children's Network, Published 2005 by The European Children's Network.

⁹ Please see Tables 7 and 8 in Annex 4 for a full quantitative breakdown of actions in each policy area.

¹⁰ See, for example, Eurochild (2010): Eurochild Proposals for the Development of the EU's Strategy on the Rights of the Child. Available at

http://www.eurochild.org/fileadmin/user_upload/Policy/Other/PolicyPositionEUStrategy.pdf.

¹¹ The reports reviewed in the institutions and policies of 27 Member States in the area of children's rights.

¹² 10 country reports explicitly commented on the EU's role in national policy making.

Council of Europe or the UN, were generally perceived to have a greater impact. Nevertheless, even if the impact of the EU was regarded as slight, various examples of EU influence were noted, e.g. through provision of funding and other resources. Other important activities undertaken by the EU and seen as important roles for the EU to play included information exchange, cooperation and policy learning (8 Member States), harmonisation of policies, standards and guidelines (9 Member States) and provision of data and monitoring instruments (6 Member States).

2.2. General Measures of Implementation

General measures of implementation affect children's rights in all policy areas. They also constitute a significant area of action in mainstreaming children's rights in EU policy.

Issues and Violations

Protection of rights (Art. 4)

This provision is meant to ensure that all specific rights regarding children are properly implemented and that state parties have undertaken all appropriate legislative, administrative and other measures to ensure this aim is met. The most significant general violations in Member States¹³ in this area include:

1. Inappropriate legislation and lack of implementing bodies,
2. Lack of coordination and coherence of implementation of the UNCRC, and
3. Inadequate resources allocated for the implementation of plans and programmes in children's rights.

Knowledge of rights (Art. 42)

A 2008 Eurobarometer of children on the rights of the child showed that 88% of respondents felt that children needed to be made more aware of their rights.¹⁴ The training of professionals and the awareness of children's rights in general is low across almost all Member States which is reinforced by a lack of resources for monitoring issues and developing capacity. In some Member States schools lack systematic and consistent education on basic human rights, children's rights, and the Convention. Therefore the level of awareness among children, professionals and the general public about the subject remains low. Information is not always made available to all groups with equal ease, with poverty, social and linguistic factors making it harder for some groups to obtain information.

EU Competence and Actions

18 actions have been undertaken by the EU since 1989 that directly or indirectly refer to and target children and focus on general measures of implementation. These cover a wide variety of policy areas such as criminal matters, external issues and parental

¹³ Where not explicitly stated otherwise hereafter the violations are those addressed in the Concluding Observations of the UN Committee on the Rights of the Child on Member States' reports to the UN. The latest available Concluding Observations have been used by the research team, which registered them all into a single database and used subsequently for the analysis of the EU performance as a whole.

¹⁴ 2008 Flash Eurobarometer 235.

responsibilities and family matters, and also contain the treaties governing the European Union. Of these general actions, three make specific reference to the child, and three others refer to policies on youth. Many of the actions undertaken by the EU that were identified as the most important by stakeholders revolve around general measures aimed at promoting children's rights across the policy areas. The 2006 Communication 'Towards an EU Strategy on the Rights of the Child', the Treaty of Lisbon, the Stockholm Programme and the 2007 'EU Guidelines for the Protection and Promotion of the Rights of the Child' were all highlighted as important general measures taken by the EU in the area of children's rights. Externally, general strategies on the rights of the child were also important, including the 2003 'EU Guidelines on Children Affected by Armed Conflicts', the 2008 'Council Conclusions on the Promotion and Protection of the Rights of the Child in the European Union's External Action', the 2008 Communication 'A Special Place for Children in EU External Action' and the resulting EU Action Plan on Children's Rights and External Action.

Main Areas of Concern Insufficiently Targeted by the EU

There are three main issues affecting proper targeting of general implementation measures:

1. Varying levels of EU competence across rights areas - General measures of implementation are a cross-cutting issue, but the scope and mechanism of implementation has to be different for different EU policy areas. This creates additional challenges in ensuring proper targeting of children's rights in new policy areas.
2. Improper targeting and scope - While the EU's role in awareness raising and advocacy is important, and some of these actions have helped to raise awareness of children's rights issues at the EU level, general implementation measures have not always been developed with clear goals. A firm, clear and overarching guiding plan would help to properly target actions and their implementation.
3. Lack of consultation - The EU needs to engage with all actors, including Member States, NGOs and children themselves, more regularly and more meaningfully. Tools like the Forum point to an interest in consultation, but these processes often lack a firm purpose and method of translating this consultation into EU action.

2.3. General Principles and Definition of the Child

Issues and Violations

Definition of the Child

Most violations in terms of the definition of the child are related to lower or unclear age limits for defining children and these issues of definition cover and cut across many policy areas in many Member States. Main violations in this area include lower age for criminal responsibility (as low as 9 or 10 years in some cases), lower age for military service and lack of clarity on ages for consent in legal, medical and sexual matters.

Non-discrimination (Art. 2)

EU role in the area of non-discrimination is complex. Member states are supposed to ensure that children's rights are applied consistently to all children without discrimination for any reason, including race, colour, nationality, ethnic or social origin, sex, language, religion, political opinion, disability or birth or property status. In addition, appropriate measures must be taken to ensure that all children are protected against all forms of discrimination or punishment on the basis of the status of the child or their parents, legal guardians or family members. Much of the research demonstrates that children belonging to ethnic minorities (especially Roma children¹⁵), migrant children and disabled children suffer discrimination through institutionalisation and limited access to citizenship rights, employment, education, health care and housing.¹⁶

Best interests of the child (Art. 3 (1))

The principle of the best interests of the child is now being increasingly considered in the EU legislative process and incorporated in some EU actions¹⁷, but this is not yet true in all EU actions related to children¹⁸ and is not widely reflected in national legislation in all Member States¹⁹. This principle is notoriously lacking in definition in all legislation, court decisions and policies and programmes affecting children. The levels of understanding of the application of this principle in across EU policy areas are mixed and substantial learning is necessary.

Respect for the views of the child (Art.12)

Respect for the views of the child is a primary concern, yet it is rarely taken seriously in legislation or practice in Member States and as such is not integrated into all policy areas and actions. Children are rarely informed adequately about how they can have input into policies that affect them or how their views will be taken into consideration (if they are taken into consideration). Children should be given the opportunity to be heard in judicial and administrative proceedings, but there is no adequate guaranteed right to be heard in most court or administrative proceedings affecting the child. In Member States, the views of the child are often insufficiently taken into account in the decision-making process regarding alternative care placement and custody cases, proceedings involving unaccompanied children applying for refugee status and juvenile offenders. There is a lack of specific provisions in criminal law and

¹⁵ 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. Farkas, L., "Segregation of Roma children in education. Addressing structural discrimination through Race Equality Directive", 2007, European network of legal experts in the non-discrimination field.

¹⁶ 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. Ruxton, S., "What about us? Children's Rights in the European Union next steps", Commissioned by The European Children's Network, Published 2005 by The European Children's Network.

¹⁷ Such as Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338 (2003) and examples in other EU policy fields.

¹⁸ Such as Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, O.J. L 7 (2009) and examples in other EU policy fields.

¹⁹ Based on the analysis of concluding Observations of the UN Committee on the Rights of the Child on latest Member States' reports to the UN.

procedures for the consideration of the views of child victims of crimes such as sexual exploitation and sexual abuse. Certain groups of children, such as disabled children, are also not given adequate forums where their views can be heard.

EU Competence and Actions

As with general measures of implementation, the cross-cutting nature of this rights cluster means that the competence of the EU in ensuring general principles of children's rights are met is highly dependent on the policy area in question. 29 actions were undertaken in this area that had general rights principles as a primary focus and made direct or indirect reference to the child. Of these, a majority of them (19) dealt with external issues, with the specific policy area most covered in internal action being the principle of non-discrimination.

Best Interests of the Child

While the EU has undertaken actions directly referring to the best interests of the child, there has been some difficulty in defining and operationalising the principle consistently across policy areas. Sometimes, the best interests of the child are superseded by other issues or roles played by the child (for example, in migration where children are viewed primarily as migrants) and children's best interests and rights are interpreted differently by different stakeholders both within and outside the EU. Best interests of the child are mostly mentioned in actions of asylum and migration, and criminal matters and some areas of family and civil law, such as matrimonial issues and parental responsibility.

Non-discrimination

Certain EU legislation, such as the Directives adopted on the basis of Article 13 EC have helped to reduce discrimination in Member States.. Directive 2000/78 on establishing a general framework for equal treatment in employment and occupation helped to reduce discrimination in the workplace based on disability and children. A 2008 proposed directive on non-discrimination aims to go beyond employment to cover non-discrimination in social protection, education, health services, consumer protection and more, and if adopted will have a great impact on non-discrimination in the Member States.

Respect for the Views of the Child

In certain areas, the EU has done better at targeting and involving children. Structured dialogue and well-targeted funding programmes with Member States, youth organisations and young people in general have resulted in more meaningful participation by young people in policies affecting them and some external areas also aim to increase participation of children and children's groups. EU actions in certain areas mention the right of the child to be heard in matters relating to them, such as in areas of matrimonial matters and parental responsibility. However, Respect for the views of the child is rarely mentioned in actions in many EU policy areas, including certain aspects especially in areas such as of family matters and disability, where it is not mentioned in any acts. This principle is covered in the Lisbon treaty, but it is too early to have resulted in much legal grounding in areas of EU competence.

Main Areas of Concern Insufficiently Targeted by the EU

As mentioned above, EU competence is a factor in mainstreaming cross-cutting issues such as general rights principles into all areas of EU policy. This is especially true with regard to defining the age of children in various contexts. Several other issues are important:

1. Mainstreaming of non-discrimination for all children; non-discrimination has become an important facet of EU policy and one that is being addressed and mainstreamed in many ways. However, attention must be paid to the specific problems of discrimination faced by particularly vulnerable children, such as Roma and disabled children. This requires consideration and balancing of all facets affecting these groups as children, as minorities, and as those with special needs.
2. The UN MDGs recognise children's right to participate in all matters affecting them, in accordance with their age and maturity. Within EU policy, there used to be a tendency to view children as rights 'objects', where children were considered primarily as dependents or "victims" in need of protection from violence and not rights bearers themselves.²⁰ This way of treating children's rights ignores the importance of children's active participation in shaping their futures (as in Article 12, UNCRC), and there has been some move towards treating children as more active rights 'subjects'. The focus on participation is not always thoroughly conceptualised and often dealt with through ad hoc, selective methods such as focus groups or surveys that only involve a small cross-section of children. A cohesive framework outlining the goals and methods of involving all children needs to be developed to ensure a meaningful and organic role for children in policy issues that affect them.

2.4. Civil Rights and Freedoms

Issues and Violations

Some of the greatest risks within the EU for children's civil rights are connected with the internet and other media including inappropriate advertisements, violent images in the media and child pornography.

Name and nationality (Art. 7)

Despite wide spread processes of registration there are still certain groups that are effectively excluded from the right to a name and a nationality, including the children of some marginalised migrant groups, stateless children or distinct ethnic, religious, linguistic and cultural groups such as the Roma. This is reflected in the rise in recent years of undocumented children. Stateless children are born to stateless persons who have no right of permanent residence; they do not automatically obtain a nationality.

Freedom of association and peaceful assembly (Art. 15)

²⁰ Sandy R. What about us? Children's Rights in the European Union next steps. Commissioned by The European Children's Network, Published 2005 by The European Children's Network.

Violations in this area were reported only in France and the United Kingdom. For example, in the UK restrictions have been imposed on the freedom of movement and peaceful assembly of children with anti-social behaviour orders (ASBOs) or through the widespread use of Mosquito devices which emit an unpleasant high frequency noise audible only to children and young people, and which have been installed in shops to deter young people gathering in public areas²¹. Even if specific violations in this area are not reported in other cases, child participation and issues associated with the right to association and peaceful assembly are not widely or actively promoted in Member States.

Freedom of thought, conscience and religion (Art.14)

There is some evidence that children and their parents do not have proper information in terms of their rights in relation to religious education and opting out.

Protection of privacy (Art. 16)

Countries must balance a need for information and monitoring of children with a respect for the privacy of personal data. Many violations in this area are a result of insufficient legal safeguards for the use of databases where personal information of children is gathered, stocked and used for a lengthy period. Also, children prosecuted in higher courts are not always provided with the same guarantees of privacy as other children.

Access to appropriate information (Art.17)

Violations in this area centre on media-related issues and include exposure of children to pornographic, racist, violent and violence-inducing images on the internet and in computer games and mass media outlets such as radio and television. Eight Member States identified as problematic the amount of illegal material found on the internet, and often service providers in these areas operate with minimal regulation that protects children against harmful information and materials.

The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Art.37(a))

There are a high number of reported incidents of excessive use of force against children by law enforcement officials, in particular by police officers, and a low rate of prosecution and conviction in these cases. Six Member States identified use of force against children by law enforcement officials as a problem.

EU Actions

Many areas of civil rights and freedoms are exclusively the competence of Member States or fall under shared competence, including data protection, audiovisual and media, and protection from violence and harm. In policy areas of priority for children's rights in the EU such as media and information society, European

²¹ Mosquitos are more widely used in the UK than anywhere else in the EU. Al Aynsey Green the former Children's Commissioner referred to them as representing a 'collective punishment' on children and young people *The Guardian* June 24, 2010.

citizenship and data protection, the EU tends to share competence with the Member States. Main actions undertaken in the field of civil rights tend to focus on citizenship and youth (in this context, a subset of children) and provisions regarding audiovisual media services and the internet, with 19 of the 22 actions placing a priority on civil rights falling into one of those two categories. Data protection and protection against torture and other cruel punishment were the focus of the remaining actions.

The EU helps to protect children from viewing harmful content in media (including the internet) through regulation and an encouragement towards self-regulation of the relevant industries. The role of the EU is important in setting minimum standards (e.g. Audiovisual Media Services Directive), helping exchange of good practices between national regulators and other relevant actors (bottom-up harmonisation), providing funding for projects (e.g. Safer Internet Programme), and encouraging self-regulation (e.g. Pan European Game Information – PEGI video game content rating system). The Audiovisual Media Services Directive is arguably the most significant piece of legislation as it sets basic rules and minimum standards for the area. It also promotes self-regulation in Member States and encourages the development of codes of conduct for the industry (e.g. in advertising of alcohol).

Main Areas of Concern Insufficiently Targeted by the EU

1. While EU actions focus on protecting children from harmful media and Internet content, this emphasis must be maintained and developed to keep in line with the rapidly changing nature of technology.
2. Children are protected under general provisions of civil rights of all members of society. While this has, in many cases, been adequate, efforts should be made to properly and more narrowly target specific areas of civil rights where children may be more vulnerable or have different needs than adults. This is true, and has been addressed, in issues surrounding the internet, and should also be considered in areas such as data protection, freedom of thought and freedom of assembly in some cases.

2.5. Family Environment and Alternative Care

Issues and Violations

This rights cluster is not widely mentioned in the Concluding Observations on Member States' reports to the UN as an area with significant violations. Most violations concern violence within the family (in the form of corporal punishment or domestic violence) and the role of the public sphere in dealing with family issues such as this. The continuing institutionalisation of children especially in Member States where fostering is not available is also a concern.

Parental guidance (Art. 5)

Inadequate support is often provided at the Member State level to families with children and especially to families in poverty, families caring for children with disabilities and single-parent households. There is also insufficient availability of

family counselling services, parental education programmes and professional staff trained to identify and address family problems.

Family reunification (Art.10)

Administrative burdens are one of the biggest roadblocks to family reunification, and the length of these procedures is often unacceptably long. There have been cases of legislative reform that have reduced the age limit of a child eligible for family reunification from 18 to 15 years.

Children deprived of their family environment Art. 20)

An increasing number of children, often from vulnerable groups like Roma children, are placed in out-of-home care,²² but a thorough assessment of the need for out-of-home placement does not always take place nor are the child's views expressly considered. Not enough efforts are made to return children to their families as soon as possible and children are often placed a significant distance from their parents who, in turn, may not be made aware of their visiting rights.

Periodic review of placement (Art. 25)

Periodic review of placement is not a regular practice in all alternative care placements, and the foster care system is often insufficiently regulated and resourced. The system of periodic review of placement does not adequately take into account the views and best interests of the child by providing appropriate counselling and support or finding forms of alternative care other than institutionalization.

Abuse and neglect (Art. 19), including physical and psychological recovery and social reintegration (Art. 39)

Much violence within the family remains hidden, and official data reflects legal definitions of "abuse" rather than the real extent of violence experienced by children, including corporal punishment²³. Corporal punishment is not expressly prohibited by law in all Member States and when corporal punishment is unlawful in the home, schools, penal system, alternative care settings, there are not always adequate safeguards in place to ensure that children are not subjected to this form of punishment.

EU Actions

In most areas of the family, the EU lacks competence and can only produce supporting (non-binding) actions for the Member States. However, the EU has more competence in certain issues such as balancing work and family life, issues that overlap with other policy areas, such as migration and, family reunification, and other cross-border family issues. The EU has competence in areas such as balancing work and family life, Member States have the power to establish their own rules and measures regarding family issues such as separation, divorce, maintenance and

²² Ruxton, S. What about us? Children's Rights in the European Union next steps. Commissioned by The European Children's Network, Published 2005 by The European Children's Network.

²³ Ibid.

custody within their borders. However, the EU has power to ~~and its main role in most family issues is coordinate~~ing law between Member States and establishing jurisdiction in cross-border ~~family~~ issues. This area of competence plays an important role in any family issues that cross internal EU borders, as principles such as the best interests of the child and respect for the views of the child²⁴ (included in actions such as Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility) must be formally considered in related Member State law and legal actions. Member States, however, have the power to establish their own rules and measures regarding family issues such as separation, divorce, maintenance and custody. Given these competence issues, the actions in this area that have a direct impact on children are mostly connected to issues of coordination and jurisdiction in deciding issues related to the family.

Main Areas of Concern Insufficiently Targeted by the EU

1. While principles of children's rights have been integrated into some family issues, they should be further addressed in areas such as child maintenance. Development of clear indicators and definitions of principles related to children would help to clarify what needs to be done and what can be done by the EU in family affairs. While progress has been made in key areas of EU competence as regards incorporating children's rights into EU actions, efforts should also be made to ensure that this incorporation results in action at the EU and Member State level. As in other policy areas, clear definitions, indicators, and measures in both hard and soft law measures can further increase the effective usage of the principles of the best interests of the child and the respect for the views of the child, which will ensure that these are consistently applied in all Member States. More specifically, mMonitoring procedures for reviewing placement of children deprived of their family environment should be developed to ensure acceptable standards in reasons for placement and quality of care.
2. Related to the first point, while principles of children's rights are being incorporated in some actions undertaken by the EU in this area, increased emphasis should be placed on raising awareness of viewing issues of family and civil law from a children's rights perspective. Parental rights and issues often take precedent over children's rights issues at the Member State level (such as areas of parental responsibility and abuse) and the root causes of family strife and institutionalisation are not always considered in crafting EU-level action. Even in areas not directly under EU competence, actions can be undertaken to raise awareness of these issues at a Member State and EU level. Soft law processes should be utilised in a way that is supportive of child-specific issues, as has been done to a certain extent in funding programmes such as the 'Civil Justice Programme'²⁵.

2.6. Basic Health and Welfare

Issues and Violations

²⁴ Included in actions such as Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

²⁵ Decision No 1149/2007/EC establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme Fundamental Rights and Justice.

Basic health provision and welfare remain an important issue in many different ways in the EU. Children's health issues such as childhood nutrition and obesity, use of medicines on children and alcohol, drug and substance abuse all continue to be problematic issues in certain Member States and the EU as a whole. Drug and alcohol abuse was reported as a problem in 18 Member States, and early pregnancies were also a problematic issue in 9 Member States. On a basic level, the right of access to health and health services remains inconsistent throughout the EU and is one of the most commonly violated issues in the Member States.

Health and Health Services

The right to health and health services, which is described in the UNCRC as the right of the child to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health, is the most violated sub area in the EU Member States. Problems can be classified as such:

- Limited treatment for substance abuse,
- Limited access to health services by minorities,
- Sexual health and early pregnancy,
- Limited treatment options for mental health issues,
- General unhealthy lifestyles,
- Lack of coordination between health areas, and
- Lack of information.

Disabled Children (Art. 23)

This area had 57 violations in 19 Member States, with many problems revolving around institutionalisation of these children, but there is a lack of effective monitoring and data collection in this area. In some Member States children with mental and physical disabilities are often placed in large residential institutions, which do not provide the professional competence and special equipment required for children and do not always respect all the rights of the child.

Standard of living (Art. 27(1-3))

Within the area of basic health and welfare, child poverty is a significant issue in terms of the number of children it affects and the attention it receives. While consistent and accurate measures of child poverty are often lacking, rates within the EU remain high, and overall a greater proportion of the population of children is affected by poverty than the proportion of adults.²⁶

Social security and child care services and facilities (Art. 26, 18(3))

This area was violated 21 times in 8 Member States. The main problems include the lack of development of a comprehensive strategy for dealing with street children. There is a general lack of access for street children to education and health services and a growing number of children living on the street in urban areas are vulnerable to sexual abuse, violence (including from the police), exploitation, substance abuse, STDs (including HIV/AIDS), malnutrition and a lack of access to basic services

²⁶ EU-SILC (2005).

including education. The primary response to the situation of these children is often institutionalisation.

EU Actions

The EU has some competence in many areas of health and welfare, including shared competence in areas such as consumer protection and food safety and environment. As areas such as disability cut across many policy dimensions, they have shared or limited competence in these areas depending on the issue in question. Most EU legally binding acts cover narrow actions in areas such as child safety, general product safety and use of medicine for children. While a significant number of actions directly affect children, many of them had an indirect effect on children as well. Priority areas in the general right to health and welfare include many actions regarding consumer protection, transport regulations, disability, poverty and social exclusion and general health measures.

Two priority areas in the EU are poverty and disability. Current EU actions target children with disabilities in several ways. They provide financial assistance through structural funds to build appropriate infrastructure and work to de-institutionalise children, they set regulatory frameworks to protect the rights of disabled children and they provide a framework for developing and exchanging examples of good practices at an EU and Member State level. However, most actions addressing disability do so in a broad manner and do not directly address specific issues facing children with disabilities. In the area of poverty, the EU has undertaken many actions specifically targeting child poverty and ones that target poverty in a more generalised or thematic way – such as poverty and education, development aid, employment, family matters and – most notably – social exclusion. In addition, reduction of child poverty plays an important role in the Social OMC.

Main Areas of Concern Insufficiently Targeted by the EU

1. Consumer protection, particularly in regard to children, is ultimately under Member State competence, but the EU can make significant contributions in this area especially under common market considerations. A clear and coherent approach to protecting children's rights as consumers is necessary, as the current approach often does not take into account the specific needs of children.
2. Children with disabilities are covered by the UNCRC and also by the UN Convention on the Rights of People with Disabilities (UNCRPD). While EU efforts to mainstream issues affecting people with disabilities have proven effective, the ratification of the UNCRPD by the Member States would almost certainly result in more precise targeting at the EU level of disabled issues that have a specific impact on disabled children, especially in efforts to stop institutionalisation of disabled children.
3. Action in child poverty has helped the protection of vulnerable children, but the focus has mostly been on the economic aspect of poverty. More effort is being made to focus on the social and cross-cutting aspects (such as social inclusion) of poverty, and this approach must be further developed. Likewise, in the area of disability, the focus should move away from infrastructural development to a focus on actual provision of inclusion and care services.

2.7. Education, Leisure and Culture

Issues and Violations

Results from Eurobarometer 2009 show that 77% of young people (15-18 years-old) from the 27 EU Member States think that education is the most important area in which governments or public administrations should take the particular interests of children into account.²⁷ School-related stress continues to be an issue in many EU countries.²⁸ Early school leaving (drop out) rates are high in seven Member States, and there is a lack of resources to develop recreational and playground areas for children in several cases. Vulnerable groups especially disabled, Roma and migrant children also face a lack of resources in educational provision.

Main violations in educational provision in Member States include:

- Quality and access to education;
- Inappropriate, discriminatory and segregated treatment of vulnerable children, including Roma and disabled children;
- Insecure and unsafe school environments (ie. Bullying and corporal punishment);
- Inadequate guidance for children;
- Inadequate participation for children in educational decisions affecting them;
- Inadequate provision of services for children.

EU Actions

Specific provisions of education, youth, culture and sport fall under the competence of the Member States, but the EU is still able to act, mostly in non-binding ways, to protect and facilitate the recognition of children's rights in this area. In addition the EU has shared competence in the area of migration where more action can be taken in areas affecting education of migrant children. There were 27 EU actions in this area, tending to fall under areas such as general provision and access to education, mobility of children within the EU, youth policies (including a subset of children) and culture and sport.

Main Areas of Concern Insufficiently Targeted by the EU

The EU has done significant work in education, in so far as its competences allow it to. As the EU has some power to coordinate Member State action, continued and targeted efforts should be made to consider the specific needs of vulnerable groups of children as well as the general needs of children as a whole.

2.8. Special Protection Measures

The special protection measures' cluster of UNCRC covers a wide variety of issues, including but not limited to criminal matters, sexual exploitation, economic exploitation, substance abuse, asylum and immigration issues, protection from violence and harm and protection of minority rights. For instance, violence against

²⁷ Eurobarometer 2009

²⁸ Bradshaw J., Hoelscher P. and Richardson D., "An index of child well-being in the European Union" Social Indicators Research (2007) 80: 133–177, Springer 2006 DOI 10.1007/s11205-006-9024-z, p. 162

children was considered to be the problem that should be given the first or second priority in their country by 45% of young EU citizens. Roughly 4 in 10 young people also indicated that sexual exploitation of children should be addressed nationally. Violence against, or the sexual exploitation of, children was the most commonly mentioned problem in children's rights in more than half of the Member States.²⁹ This broad rights cluster has the most violations in Member States, which is partially due to the wide scope and large number of sub-groups in this area. The EU has shared competence in many of these areas, including policies related to drug abuse, asylum and migration, sexual exploitation of children and child pornography, economic exploitation (including child labour), and trafficking, which makes it an important policy actor.

Issues and Violations

Refugee Children (Art. 22)

Migrant children from outside the EU are a particularly vulnerable group. Migration can create policy issues or exacerbate problems in areas such as child trafficking, abuse, rights to education and healthcare and measures to combat discrimination, and this issue is interconnected with other areas such as children in armed conflict. This rights area was violated 76 times in 24 countries. These violations resulted from factors such as insufficient reception facilities, lack of specific regulations for unaccompanied minors, issues of family reunification and lack of adequate funding and resources for support of refugee children.

Administration of juvenile justice (Art. 40)

This is one of the most violated sub-sections of children's rights in EU Member States. The main violations of these rights are:

1. Minimal age of criminal responsibility;
2. Rehabilitation of juvenile offenders;
3. Treatment of juvenile offenders.

This area remains under-targeted by EU actions; although the FRA has begun to do some work in the area.

Economic exploitation of children, including child labour (Art. 32)

Child labour is primarily an issue in external relations, but also has relevance in some Member States. In Central and Eastern Europe an ILO review indicated four main trends of child labour in the EU: working street children, children working in agriculture, working Roma children, and child trafficking.³⁰ UNICEF has also raised concerns about trafficked children working in restaurants, nail bars and food processing factories in the UK.³¹

Drug abuse (Art. 33)

²⁹ Eurobarometer 2008.

³⁰ Ruxton, S., What about us? Children's Rights in the European Union next steps. Commissioned by The European Children's Network, Published 2005 by The European Children's Network.

³¹ UNICEF UK *Child Exploitation: End Child Labour Today* London 2007

This category clearly cross-cuts with health issues and some violations are reported in that area. Common violations include a lack of protection for children from illicit drugs, high incidence of drug use and a lack of drug abuse rehabilitation services for children.

Sexual exploitation and sexual abuse (Art. 34)

Research on child sexual exploitation shows that many of those who travel abroad for the purposes of child prostitution come from Western Europe, and the issue of child prostitution is also closely linked to broader issues of child trafficking and child pornography.³² This area had a large number of violations, with 45 reported in 21 Member States. These included inadequate legislation to protect children, inadequate protection for victims of sexual abuse and limitations in data and monitoring.

Sale, trafficking and abduction (Art. 35)

Child trafficking remains an issue both into and between EU states. These children are often trafficked for sexual reasons and other forms of exploitation such as begging and crime. They usually lack legal status and are therefore unable to seek protection, as they are often treated as illegal migrants, criminalised, detained and deported back to their country of origin. These issues have a wide sweeping effect on trafficked children that cuts across policy areas.³³ There were 22 violations reported in 15 Member States in this area.

Children belonging to a minority or an indigenous group (Art. 30)

Violations in this area often focus on the situation of Roma children, including negatives stereotypes and representation in the media, discrimination in access to health, education, housing and employment, lack of instruction and education in a minority's mother tongue and a general lack of legislation protecting the rights of persons belonging to minority groups.

EU Actions

Special protection measures are taken by the EU in criminal matters, sexual exploitation and child pornography and asylum and immigration policy areas. Child sexual exploitation and pornography remain potentially serious issues in the EU and are being targeted with several actions. The EU's contributions are three-fold. First, they provide legislative ground work that aims to harmonise regulation across the EU and monitor action in the Member States. Second, they provide funding for projects aimed at combating child sexual abuse. Finally, they help to coordinate and harmonise Member State actions and provide appropriate and consistent protection of children throughout the EU. Certain coordination issues still remain however, such as the automatic disqualification of child abusers from working in other Member States.

The EU has competence in most issues related to asylum, immigration and visas since the Treaty of Amsterdam. This has resulted in numerous binding, non-binding and

³² Ruxton, S., *Child Sexual Exploitation: An Action Plan for Europe*, Save the Children Sweden, Stockholm, 2001.

³³ Van Reisen, M., Stefanovic, A., *Lost Kids, Lost Futures: the EU's response to Child Trafficking*, Terre des Hommes, Geneva, 2004

financing actions by the EU in this area that have a direct or indirect effect on children. There are fewer direct actions however, with the ones that do exist exploring issues such as unaccompanied minors and protection of the rights of the child in development co-operation. EU actions can help in several ways. First, they are able to set up a binding regulatory framework with provisions protecting children. Secondly, they are able to provide funding and aid in helping Member States to deal with asylum seekers, such as the European Refugee Fund and the European Return Fund (both part of the General Programme on Solidarity and Management of Migration Flows). They are also able to provide a forum for exchanging good practices and Member States are currently working to develop a Common European Asylum System to ensure that asylum seekers are treated similarly across the EU. In addition, a new Action Plan on Unaccompanied Minors aims to further protect this group, and the FRA is undertaking a study on separated children seeking asylum, as well as one tackling human trafficking.

Main Areas of Concern Insufficiently Targeted by the EU

1. Juvenile justice and detention remains an underdeveloped area in EU policy and the Commission does not deal with this issue in a coherent manner. The profile of juvenile justice should be raised by appointing somebody within DG JLS to address, coordinate and raise the awareness of these issues.
2. The effect of broad asylum issues on children, including unaccompanied minors, is a major issue in EU policy. Children are often treated more as migrants than children, especially when they enter with their family, and are mostly treated as objects of their parents' rights, rather than rights bearers themselves. A consistent policy should be developed that takes into account the specific threats facing vulnerable children but also treats all children equally in terms of rights.
3. The emphasis of policy at both EU and Member States levels is often on the legal aspects of migration and social issues involved with immigration are not always properly addressed. A more holistic and integrated approach to dealing with migrants should be developed, with connections to related issues such as education, health and social welfare.

2.9. External EU Policy Areas

Issues and Violations

External EU policy is not directly linked to one UNCRC rights cluster, but instead cuts across all areas and covers a wide range of issues in external relations. Many of the policy issues that affect children in the EU are also problematic to a greater extent in external situations. In developing countries, issues in areas such as poverty, discrimination, civil rights, parental responsibility, institutionalisation and access to health and education are common concerns.

EU Actions

The EU has shared competence in many external areas, such as development cooperation, humanitarian aid and general external relations, and has exclusive competence in developing common trading policy, which gives the Commission great

powers to act in certain ways that mainstream children's rights in external actions. In these external areas, the EU undertakes numerous actions that directly and indirectly affect children in areas such as health, cooperation and children in armed conflict. Many of the EU's most effective and important actions in children's rights are seen to be taking place in external actions, with instruments such as the European Instrument for Democracy and Human Rights (EIDHR) being vital in supporting children's rights as one of their objectives.

The EU's competence in trade gives some room for the EU to act in the area of child labour. EU actions affecting child labour take many forms, but most often utilise non-binding instruments. One potentially influential trade policy that can help to address child labour issues is the General System of Preferences plus (GSP+) that sets out a list of rules (including UNCRC and ILO conventions on child labour) for third countries that they must follow in order to receive preferential treatment in accessing the EU common market. While this is helpful, countries that take advantage of the GSP+ tend not to be the worst offenders in terms of child labour and there is a lack of proper monitoring and data to enforce these conditions.

Main Areas of Concern Insufficiently Targeted by the EU

1. Trade approaches to reducing child labour that focus on the corporate level do not fully address the underlying cause of child labour such as family poverty and access to education which are closely interlinked with child labour and often better treated through development cooperation instruments. Child labour therefore also needs to be more explicitly targeted in development policy.
2. Child labour policies focus on large-scale corporate exploitation of children but should also address child labour in non-corporate environments, such as domestic work and agriculture.

2.10. Conclusions

Returning to evaluation questions posed in the methodology section, the preliminary analysis provided above shows that the relevance of EU actions varies significantly across rights and policy areas. While competence has a significant impact on EU action, other factors such as coordination and clear strategies and targeting have as much if not more of an impact on the relevance of EU actions. Targeting of priority areas at the EU level such as media safety, child poverty, Roma children, social exclusion and sexual exploitation have helped to protect children in certain contexts, but under-targeted and improperly targeted areas such as juvenile justice, migration, institutionalisation of various groups of children and other issues remain. While EU policy areas cover most of the significant aspects of the UNCRC, some rights areas are not as well developed in EU policy areas. Any actions by the EU to protect children are seen as a positive step, but these actions would be better targeted if they were developed with an overarching plan on how and what aspects of children's rights should be mainstreamed into all areas of policy. In essence, while many of the actions related to children's rights taken by the EU are relevant to problems facing children, the lack of an overarching strategy for mainstreaming children's rights has also meant that many areas of concern, especially those of a cross-cutting nature such as participation and general implementation, remain underdeveloped in EU actions.

While comprehensive evaluation cannot be undertaken before analysis of the case studies, some preliminary issues regarding relevance can be raised.

General EU Areas of Progress

The EU has made significant progress in several areas in dealing with children's rights.

1. Treaty level – The ratification of the Treaty of Lisbon marks a significant first step in formally entrenching children's rights in the EU by specifically mentioning children's rights as an area of priority. The Charter of Fundamental Rights is now legally binding, although it only applies to EU institutions and Member States when they implement EU law.
2. Firmly targeted goals – in certain policy areas, the EU has developed actions with clear goals and concrete plans to achieve these goals. This is evident in areas such as child internet safety and child pornography and the internet, where actions have been well coordinated between EU policy areas and with Member States. Other areas such as child poverty, discrimination of various groups and social exclusion, while still of concern, have received substantial attention in EU actions.

General Areas of Concern in EU Policy

1. Proper targeting of actions. Many issues are addressed by EU action in these areas, but actions are not always seen as properly targeted (e.g. in juvenile justice) and can often have unintended results in defining the status of children (e.g. unaccompanied minors versus minors in family situations). While more work must be done, some attempts at standardisation of ideas and targeting have been made, through increased reference to the idea of the best interests of the child and the creation of general policy documents such as the 2006 Communication.
2. Mainstreaming of children's rights in all policy areas. Most generally and noticeably more actions need to be taken in the area of general measures of implementation to ensure mainstreaming of children's rights across policy areas, which requires an overarching strategy to deal with children's rights. The 2006 Communication went some way to redress this, but still focused on some specific measures and needed a clearer approach on how to implement the measures introduced.
3. Children's participation and having their views heard. Child participation in the EU is currently mostly focused on selective methods such as focus groups that only give some groups or cross sections a voice in certain aspects of EU action.
4. Limited resources and capacity. Funds specifically earmarked for children are somewhat limited, and many sources of funding are targeted at other groups as well as children. In addition, general 'youth' policies and funding target youth aged 15-25 (and sometimes broader), which overlaps and encompasses some, but not all, children. In many cases, there is a lack of comparative data on children, due to a fuzziness of definitions and a lack of consistent indicators in many areas. This makes it difficult to identify children's wider needs and what issues need more action.

A more detailed analysis of relevance of EU actions will be conducted in the case studies summarised in the Annex 3 of the report and will provide an additional basis for evaluation judgement.

3. EVALUATION OF THE COHERENCE OF EU ACTIONS

Executive Summary

Coherence as a concept is best understood on a micro level, looking at whether the different objectives of the same intervention are aligned in a clear hierarchy, with those at the bottom logically contributing towards those above, and whether the objectives of the intervention correspond to those of other public interventions which interact with it. Evaluating the coherence of EU children's rights policy as a whole is a much more complex task, which in theory would require looking at the coherence across a multitude of policy areas and hundreds of interventions. The evaluation ultimately aims to assess the overall coherence of EU policy by looking at a set of different types of EU interventions selected as case studies.

The section on the coherence of EU policy in the current report only provides a background for the further analysis of coherence in the draft final report and a qualitative assessment of perceptions of efforts for the EU to coordinate policy and create a coherent strategy. It does so by looking at three dimensions of policy coherence: internally between the EU actions, at a European level - between interventions of individual Member States and those of the EU and externally - between the EU and other international organisations.

Internally, recent attempts to develop a clearer strategy on children's rights - notably the 2006 and 2008 Communications - have greatly enhanced the coherence of the EU's approach to children's rights. While this has been welcomed, it is generally felt that more effort needs to go into translating the broad goals of the Communications into specific and internally coherent actions.

At the European level, the nature of the policy process has ensured some level of coordination and coherence between the EU and the Member States. However, the added value of EU actions above and beyond the actions of many Member States has been less clear for the non-EC stakeholders.

Externally, EU actions are largely coherent with the international bodies with which the EU shares the strongest connections, namely the Council of Europe and the UN. Even though in many cases EU actions closely cohere to the UNCRC, more effort should go into avoiding duplication of actions and further coordinating with these bodies to allow for greater synergy in supporting children's rights both within and outside the EU.

Very little literature exists on the topic of coherence and it is a contested term.³⁴ When defining the criteria for evaluating policy coherence, a distinction is usually made between internal and external coherence. Internal coherence indicates the extent to which the different objectives of the same intervention are aligned in a clear hierarchy, with those at the bottom logically contributing towards those above. External coherence indicates the extent to which the objectives of an intervention correspond to those of other public interventions which interact with it. For the

³⁴ <http://www.three-cs.net/3Cs-Defined>

purposes of this evaluation, coherence looks at these internal and external dimensions, and also considers the coherence of EU objectives with Member State objectives.

Evaluating the coherence of EU children's rights policy as a whole is a complex task, which in theory would require looking at hundreds of interventions. The evaluation ultimately aims to assess the overall coherence of EU policy by looking at a set of different types of EU interventions selected as case studies (see Annex 3 for short summaries of planned case studies). The section on the coherence of EU policy in the current report only provides a background for the further development of analysis of coherence in the draft final report and a qualitative assessment of perceptions of efforts for the EU to coordinate policy and create a coherent strategy. At a macro level coherence also refers to actions within EU institutions, between the EU and its Member States and the coherence of actions with other non-EU initiatives.³⁵ This section will examine all three types of coherence (internal, inter-EU and external) and aims to answer three broad but crucial questions on the coherence of EU actions:

- Are EU actions in the area of children's rights internally coherent and well co-ordinated?
- Are EU actions in the area of children's rights coherent and well coordinated with actions undertaken at the Member State level?
- Are EU actions in the area of children's rights coherent and well co-ordinated with international standards and the actions of other key international actors and NGOs?

Like any horizontal issue, EU actions in the area of child rights depend on multiple policy areas for planning and implementation. Mulgan (2009) in "The Art of Public Strategy" maintains that "cooperation isn't natural", but at the same time it is crucial if policy is to be formulated and delivered coherently and achieve its intended effects. This adds another essential (policy process) dimension to evaluating coherence – the quality of co-ordination between different stakeholders in formulating and delivering EU actions in the area of children's rights. While coordination is a separate issue from coherence, it has a significant effect as a lack of coordination can lead to inconsistencies in goals and approaches.³⁶ There are a number of factors that might affect coherence of policy objectives and the process of policy co-ordination. Not all are equally relevant to every EU action (including those selected as case studies for in depth analysis in the next phase of the assignment), but together they can support more coordinated and coherent policies. These include:

- A clear over-arching goal, which is shared by all relevant actors, nationally, regionally and internationally. A clear strategy is one in which both the policy issues and the actions to deal with these issues are clearly defined.
- Clear institutional responsibility and implementation capacity that works to support EU policy goals.
- Clear leadership in one institution which can streamline and champion all relevant EU actions.
- Consultation process both formal and informal to take on board opinions of institutional actors and stakeholders must be both regular and, well structured - involving all relevant institutions and providing feedback on relevant policy

³⁵ Hoebink, P. "Evaluating Maastricht's Triple C: The 'C' of Coherence, 2001, CIDIN. Available at http://www.euforic.org/job/publ/workdocs/evaluation_1.html.

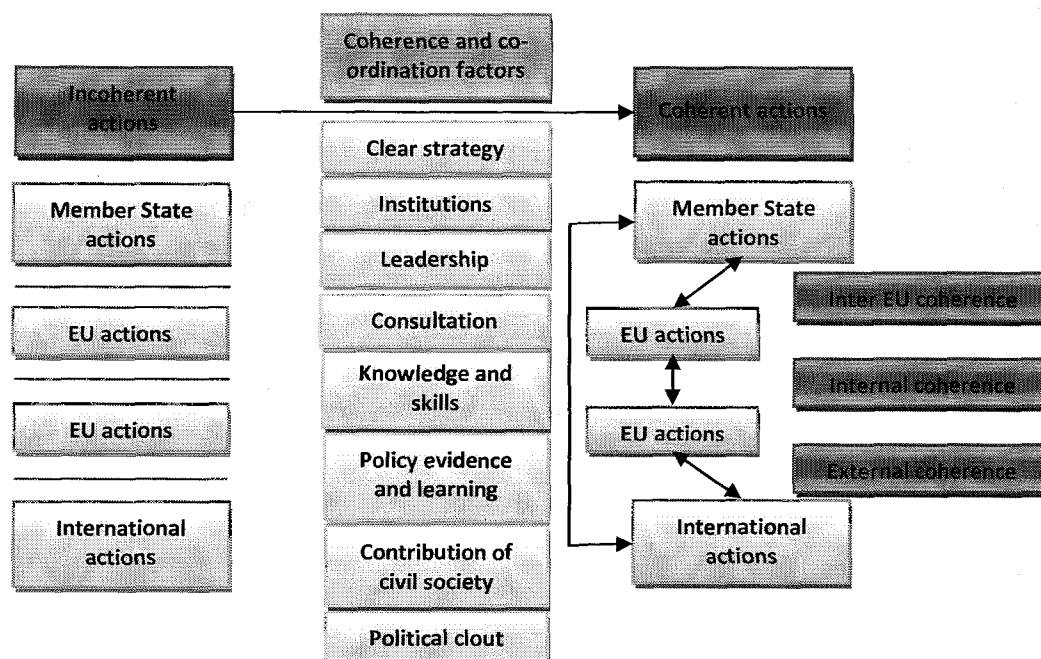
³⁶ 'The 3Cs Defined' Available at <http://www.three-cs.net/3Cs-Defined>.

initiatives. This is a key process in co-ordination between policy actors in different policy areas, which is then vital for the overall coherence of EU actions.

- Appropriate knowledge and skills across the relevant actors so as to ensure policy consistency.
- Availability of well-documented policy evidence on effectiveness of different EU actions: each key intervention should have a monitoring system complete with clearly-defined indicators, infrastructure and capacity for data collection and analysis.
- Openness to contributions from civil society and engaging their efforts for achieving EU policy goals helps ensuring coherence of policy by bringing valuable expertise. NGOs often have first-hand expert knowledge of the effects of policy measures, which is helpful in fine-tuning these measures so that they do not contradict between themselves and the effects on children are those as intended. As with consultation, this should be regular and well structured.
- Supporting international initiatives that are consistent and coherent with policy goals, in order to contribute to the external coherence of EU actions.

The logic for analysing coherence of EU actions in the area of children's rights is summarised in the diagram 5 below. It demonstrates how coherence and co-ordination factors listed in the middle column of the diagram (acting as a type of filter) are expected to help turning the potentially incoherent actions of EU, Member States and international organisations (demonstrated as having no connecting arrows) into coherent ones (which are well-connected between themselves).

Diagram 5: Summary logic for analysing overall coherence of EU actions in the area of children's rights



Source: prepared by the authors.

While every effort possible has been made to craft a qualitative assessment of the perceptions of coherence of EU actions internally, within Europe and externally, this cannot be accomplished in a high level of detail across all EU policy processes that affect children's rights. The main evaluation of coherence will be presented in the draft final report, where coherence of each of the six case studies can be analysed in more depth at all three levels. This only represents a broad overview of coherence issues as they relate to children's rights and all conclusions should only be considered as preliminary. Currently, analysis is based on desk research and interviews with the European Commission (EC) officials, representatives of NGOs that engage with the EC on child rights and international organisations active in the area (Unicef and Council of Europe). A triangulation of interview data, documentary analysis and other sources of data has been attempted where possible in reaching the preliminary conclusions. The list of interviewees is provided in Annex 2 of this report.

3.1. Internal Coherence

Internal coherence aims to ensure that EU policies – either in EU external or internal dimensions- do not contradict the intended results of themselves or any other policies developed by EU institutions within or outside that policy area. This can be examined in both broad terms across different policy areas within the EU, and also narrowly looking at specific policies that tackle certain aspects of children's rights.

The few studies that have written on policy coherence related to EU human rights actions have been quite critical. Looking at the broad approach towards EU human rights policy in general, Smith (2010) maintains that the EU does not have an overall strategy – either in general or within the UN system: "It is not clear what the EU's priorities are – either for human rights policy or in terms of the importance that considerations of human rights and democracy should play in wider relations,

particularly relative to other values and interests”.³⁷ Greer and Williams (2009) suggested that with regard to the EU internal human rights dimension³⁸, the “mechanisms for standard setting, scrutiny and enforcement, upon which human rights litigation and practice ultimately depend, have largely been eschewed in favour of the main purpose of the EU: the construction of an internal market. The economic interpretation of ‘well-being’ is still predominant”.³⁹ The authors also concluded that “the EU’s human rights regime has developed along considerably ambiguous lines. The institutions may be seen to have assumed a form of responsibility that incorporates elements of a duty to act to respect human rights wherever possible but they have done so whilst embracing a contradictory, incoherent system of application.”⁴⁰

Attempts to bring all EU child rights’ actions under a single policy framework have been more systematised since the 2006 Communication “Towards the Strategy on the Rights of the Child”. This short time period creates some limits in what can be evaluated as regards achievements in mainstreaming children’s rights, and as such the focus of this research is more on policy processes and resources to ensure coherence than on coherence of results. The 2006 Communication proposed a common framework for the EU in the area of child rights, but consisted of a mixture of very specific short term objectives (like the 116 Hotline) and broad long-term goals (general mainstreaming of children’s rights) that specifically targeted some areas but did not comprehensively address children’s rights with a specific plan. Although the Communication contained specific measures that required joint action by several EC DGs and Member States, the Communication lacked specific targets relating to what the EU wanted to achieve overall.

One significant boost to internal coherence provided by the 2006 Communication came from the appointment of the EU Co-ordinator on the Rights of the Child and the restructuring of the Fundamental Rights and Citizenship unit into the Fundamental Rights and the Rights of the Child unit in DG JLS in 2008. This has created a leadership focal point and enabled a systematic scrutiny of all EU legislation through the EC interservice consultation procedure from the perspective of child rights. The new capacity has also enabled the co-ordination of EU actions affecting child rights on a much wider scale, including policy co-ordination mechanisms of varying degrees of formality, including the EC Inter Service Group (ISG) on the Rights of the Child, other fora, ad hoc meetings and contacts. An unprecedented number of people across the EC directorates and other EU institutions have thus been more involved in developing EU child rights actions. EC officials who are now responsible for child rights issues in all DGs still have to deal with problems common to cross-cutting policy issues, such as dealing with different policy agendas and priorities. In addition, attendance at the ISG meetings from relevant EC directorates was viewed as less than satisfactory. This may point to the need to focus in the ISG on more strategic issues that would be relevant and important to more DGs.

³⁷ Smith, K.E. “The European Union at the Human Rights Council: speaking with one voice but having little influence“, *Journal of European Public Policy* 17: 2 March 2010: 224–241.

³⁸ The authors specifically write about the in-consistency between EU internal and external policies, which are attributed to internal coherence issues according to the definition of coherence provided in this report.

³⁹ Greer, S., Williams, A., “Human Rights in the Council of Europe and the EU: Towards ‘Individual’, ‘Constitutional’ or ‘Institutional’ Justice?“, *European Law Journal*, Vol. 15, No. 4, (July 2009), pp. 462–481

⁴⁰ Ibid.

Coherence in delivering EU child rights actions has been further strengthened by regular (annual) training of external relations officials from EU institutions and Member States on child rights, which has received more attention in recent years but needs to be developed much more comprehensively in order to be effective. The training helps to address the steep learning curve characteristic of any new cross-cutting policy area, where those responsible for developing children's rights in different policy areas may not have significant experience in the field. The EC has also commissioned UNICEF to prepare an elaborate child rights protection toolkit for external actions for child rights practitioners and decision makers in public administration and NGOs. The toolkit will be accompanied by a round of training for EU officials, and there is some indication of mutual learning between different DGs. For example, co-operation and learning worked well between the DGs on issues relating to child pornography on the internet and convincing Member States to filter or block certain internet websites across the EU.

While many stakeholders within and outside the EU have felt that the 2006 Communication is a step in the right direction for coordinating actions internally and ensuring that policies in various fields do not work at cross purposes, there was also some perception that the Communication and the EU's approach to children's rights as a whole was, at this stage, more about potential than concrete action. The interviews revealed that the interpretation of the best interests of the child and how they were addressed was not consistent across all EU policy areas, thus adversely affecting broad coherence of EU objectives in children's rights. Some interviewees observed that the principle of the best interests of the child was being used as label on policy, but policy instruments were often lacking specific definitions. There was still a great need to transform the 2006 Communication into concrete, strategic actions, complete with mechanisms, tools and guidelines for effectively implementing the goals of the Communication. In addition, the 'soft law' nature of the 2006 Communication has meant it has been unable to have much concrete budgetary impact in supporting children's rights. Finally, while the position continues to be developed and defined, the mandate of the post of EU Co-ordinator on the Rights of the Child has remained vague and it is not always clear on the role played by this coordinator in relation to other EU and Commission institutions.

Another very important institution that improved the EU capacity to develop and promote a systematic approach to the rights of the child is the Fundamental Rights Agency, which started work in 2007 and expanded on the preceding European Monitoring Centre on Racism and Xenophobia. While the FRA deals with rights affecting *all* EU citizens, some specific work has been done on looking specifically at children's rights within and across policy areas.⁴¹ The mandate of the FRA is defined in its founding regulations, which directs all FRA activities – including those dealing with the rights of the child – to evidence based advice that the Agency should provide to EU institutions and the Member States. The FRA's Multiannual Framework (2007-2012) includes children's rights among the FRA's priority policy areas. This includes research, analysis, awareness raising, human rights education, and networking.

⁴¹ For example, recent reports have focused on broad issues such as the development of indicators for the protection, respect and promotion of children's rights and specific issues such as unaccompanied minors and child trafficking in the EU.

Some other fora were also identified as useful for developing coherent policy on specific issues related to children's rights. These included the European migration framework and the EU High Level Group on Disability. The Commission Inter Service Group (ISG) on Disability is quite similar to the ISG on the Rights of the Child and is meant to achieve a more consistent approach between EC stakeholders, but this group received additional impetus when the European Community signed the UNCRPD as a state party. The Convention requires the EU to set up a co-ordination mechanism, which will mean that the existing ISG on Disability will be strengthened and the EU will report regularly to the UN. This will help to reinforce monitoring of the rights of children with disability at the EU level and develop better informed and more coherent policy.

The perception of coherence differed when looking more specifically at certain policy areas. Many interviewed EC officials perceived internal policy level co-ordination between EC Directorate Generals and Services (further - DGs) to be good, especially in external actions.⁴² Six EC external relations' directorates and services co-operate actively through an informal co-ordination group on children's rights, which meets on a monthly basis (also attended by the EU Child Rights Co-ordinator) and is in contact on almost a daily basis. Strong mechanisms are in place to coordinate development policies in general, looking at issues on both geographic and thematic terms, with consultation between officials delivering the different streams of funding. This helps to ensure the internal coherence with regard to external policy and additionality of different EU funding streams. However, the monitoring system for EU development co-operation programmes seems to have some flaws from the perspective of child rights' protection. The lack of evidence and systematic monitoring of programmes makes it difficult to see the aggregate value of EU actions on developing children's rights. The CRIS monitoring system, which is used for EU external funding programmes, has no search option for programmes with a child rights theme and it does not allow filtering of all children's rights projects that the EU funded globally, which would help to establish what areas of rights they addressed and what effects they have had.

Coordination of external actions has also been further bolstered in recent years by the 2008 Communication "A Special place for children in EU external action". The Action Plans attached to the Communication support an enhanced role for the EU in the global challenge to ensure the respect and promotion of children's rights together with identifying specific actions on the part of the European Commission. The 2008 Communication has added children's rights theme to many other EU external policy themes, but there has not been any significant increase in overall resources. Interviews with EC officials suggest that desk officers in external DGs have many thematic areas to cover and thus cannot provide significant expertise in all areas. This has an adverse effect on the knowledge base of EU institutions in regard to child-specific issues and children's rights as a whole, a perception that was shared in several NGO interviews as well.

Several other issues related to coherence of the EU children's rights approach are important to note. Although the EU has long had its structural funds, which supported an extremely wide range of initiatives direct and indirectly relating to children, there

⁴² Please note that this still refers to actions of the EU and internal coherence of EU policy. External actions of the EU should not be confused with external coherence, which will be discussed later.

is no requirement to make them child rights proof. For example, interviews revealed that attempts were being made to use ERDF and ESF to support deinstitutionalisation of disabled children. ERDF will be able to finance the new building of services infrastructure alternatives to residential institutions and ESF will be able to pay for new services for the disabled – for example education of children with special needs and care services for children with severe disabilities in a family setting. This is a very positive trend, but one that has been slow in developing. This points to the need for mainstreaming a children's rights perspective into all EU internal social and economic development programmes, establishing child-rights related targets and monitoring their achievement. This is vital for the internal coherence of EU actions in the area of children's rights.

There is also incoherence in defining problems and appropriately targeting issues in some policy areas. For example, treatment of largely similar target groups in EU asylum and migration policy instruments is not always coordinated. EU funding instruments – the European Refugee Fund and the European Fund for the Integration of Third-country Nationals – in asylum and immigration policy differentiate between refugees and third country nationals and cross-financing between the instruments and their target groups is forbidden although the needs and models for integration of these groups are mostly the same. In an example of improper targeting, EU institutions are trying to address the issue of child labour in third countries. At the same time many European companies are supplied with materials and produce from countries where child labour is used extensively. Although many EU companies maintain high ethical standards, more could be done in promoting corporate social responsibility of doing business in third countries.

Despite these problems, certain policy-specific cases can be held up as examples of good practice in developing a coherent approach to children's rights. Child poverty and social exclusion are common and shared problems affecting all Member States and efforts have been made to develop a coherent strategy to deal with these issues. Frazer and Marlier claim that in most Member States children are at a greater risk than adults of experiencing poverty and social exclusion.⁴³ Addressing child poverty and social exclusion have become more important political priorities across Member States in recent years, and there has been a strengthening of the overall policy framework in many countries. However, it is unlikely that significant progress at the EU level will be made unless all Member States work to develop and implement a more strategic and focused approach to preventing and eliminating child poverty and social exclusion. While much of the impetus falls on the Member States, the EU has made significant progress in getting the issue on the agenda and coordinating actions. Child poverty cuts across many policy areas and as such it is important that child poverty and social exclusion are fully taken into account in a broad range of EU level policy-making, including policies and initiatives in the area of immigration, discrimination, gender equality, active inclusion, flexible working and early education.

⁴³ Frazer and Marlier, "Tackling child poverty and promoting the social inclusion of children in the EU", Synthesis Report, 2007 available at <www.peer-review-social-inclusion.net> last accessed 25 April 2010.

3.2. Inter-European Coherence

Coherence can also refer to how well EU actions avoid unintended and contrary effects that undermine or conflict with the policies of Member States. The coherence of EU actions with respective Member States national policies (where they are undertaken independently of the EU) is important to consider separately from internal EU coherence and external coherence with international bodies, as it refers neither to the coherence of EU actions on their own, nor EU actions in relation to the international community.⁴⁴ In the EU, children's rights issues cut across national boundaries in the same way as in nation states they do across sub-national units, but the major difference of the EU from most nation states is that its constituent states have highly diverse child rights protection systems and policies (see analysis in Section 4), which are often insufficiently compatible to allow for equal and comprehensive protection across the EU. As there exist 27 Member States with different children's rights approaches, inter-European coherence (ie. between the EU and the Member States as a collective group) can only develop as far as the Member States are coherent with each other. Country boundaries are not a barrier to many issues that affect children, such as protection from harmful online content, protection from harm and free movement of citizens, but policies on certain issues may differ significantly from Member State to Member State. EU institutions and policies are generally well placed to help Member States co-ordinate their legal practices so that children receive a similar high standard of protection everywhere, but this requires a certain level of coherence between EU actions and Member State responses.

The country reports highlight the level of coherence of EU policies with the Member States. Among those reports that referred the EU's role, many Member States (11), especially the new accession countries, felt that the EU has some effect on coordinating and enhancing Member State policy (either on children's rights as a whole or in particular policy areas). Some of the Member States (3) feel that EU actions are broadly in line with their own country actions in the field of children's rights, but they also felt that the EU gives too little priority to this area and does not necessarily add value above the Member States' own actions. Other countries noted a lack of reference to EU actions in children's rights in the Member States and feel that the EU has little effect on policy (5), which may highlight some deficiencies in coordination and consultation. Overall, coherence of EU actions with Member State approaches appears to be relatively high, but relevance of approach may be more lacking (see Section 2 for more detail).

Some of the impetus for EU action often comes from the Member States themselves, which helps to develop a coherent strategy on certain issues. Most interviewed stakeholders praised the Swedish presidency, which helped to raise the profile of children's rights in the EU (notably through the adoption of the Stockholm Programme). Some other Member States have also set youth and children's rights related priorities for their forthcoming EU presidencies (in 2010-2011): Spain – social inclusion, Belgium – youth work and Hungary – participation and active citizenship. This gives promise of further advances in EU policy to make it more comprehensive and coherent in protecting and promoting the rights of the child.

⁴⁴ Hoebink, P. "Evaluating Maastricht's Triple C: The 'C' of Coherence, 2001, CIDIN. Available at http://www.euforic.org/iob/publ/workdocs/evaluation_1.html.

Coordination of policy can also be an issue. The EU is reliant to a great extent on the actions of its Member States in both developing and implementing policy at the national level, but coordination between the approaches of the EU and its Member States is not always fully developed, which can have an effect on coherence. For example, the 2006 Communication lacked formalised consultation with the Member States, and there is generally a need for greater involvement of Member States in any further development and implementation of EU child rights actions. Still, there has been success in certain policy areas related to children's rights in developing coherence between EU and Member State actions. EC officials highlight how the EU has been able to achieve better coherence in child rights policies among Member States by adopting legal acts that set minimum standards in areas of competence or by bottom-up co-ordination through exchange of good practices in areas of limited competence. In the area of protecting children from child sexual abuse, exploitation and pornography, all competencies granted to the EU institutions by the Treaty of Lisbon have already been utilised to develop new proposals for directives, including one that provides for automatic disqualification of convicted child abusers from child-related work in all the EU territory and a general alignment of all related practices for the effective exchange of information among the Member States.

Child poverty, which initially was considered a priority issue and championed only by a handful of Member States, has gradually risen in prominence and has become a priority issue in almost all Member States. While still under Member State competence, this perspective on poverty has enabled the EU to look at multiple issues relating to social exclusion (as causes and effects in poverty), rather than focusing only on material deprivation. In addition, this focus on social exclusion has allowed for development of cross-cutting approaches in related areas such as education. Step-by-step social inclusion of children - an exclusive policy domain of the Member States - has become a highly visible EU-level policy topic. The utility of the Social OMC in providing a good structure for coordination of child poverty and social inclusion issues across the EU was noted by several interviewed stakeholders. Furthermore EU-wide policy targets have been set for child care under the Employment OMC and the Education OMC has also set the targets for increasing early childhood education, reducing early school leaving and improving achievement at school. Having clear targets shared across Member States and EU institutions results in better targeted and coherent policies.

While the Social OMC goes some ways to coordinating Member State action on poverty, some work still needs to be done to further coordinate Member State action. The universal support systems and safety nets in the States must be further supplemented with targeted positive action to redress major inequalities, and many Member States' policies still tend to look at children as rights objects of their parents. For example, in child care services there is a focus on getting mother into the labour market rather than providing the child with quality care and education services. Finally, there is a lack of inclusive public services for disabled children (education, health, and social care) and substantial differences between Member States, which makes it difficult to find common ground and set minimum standards at the EU level.

The Youth OMC is another good practice example of the EU working within its very limited competences to develop a coherent European approach in dealing with certain issues. While the concept of 'youth' is different than children and encompasses a flexible range of ages, including some children, youth policy addresses many of the

cross-cutting issues that also affect all children, such as social inclusion, participation, education and health. Much work has been done in the area to develop a coherent strategy that actively involves all stakeholders, including youth themselves. Structured dialogue between youth and EU institutions is informally attached to the Youth OMC and rather unique in EU policy. It directly involves children and youth in the development of EU policy through formal consultative structures. This framework could be used more widely in discussing broader child rights policy issues relevant to many other DGs and would allow for a more formalised method of presenting and discussing policy options with representatives of children in a structured manner.

The EU has also been successful in other policy-specific areas by using its legislative competence to align the standards of Member States in regulating audio visual media services and the internet in order to protect children from legal but harmful content. In this area the EU advanced further in regulation and implementation of international norms and principles than other international actors. The EU has been able to strike a good balance between minimum regulation at an EU level, coordination at the Member State level (and applying the subsidiarity principle) and encouraging preventive self-regulation of industry (e.g. through PEGI video game content rating system). Other policy areas that have developed rather elaborate EU-level regulation by setting minimum standards, aligning Member States' practices and addressing the status of children include EU asylum and migration policy, health and consumer protection policy and other policy areas.

The scant evidence that exists from the EU Common Foreign and Security Policy on inter-EU policy coherence shows a certain degree of such coherence. De Burca (2010) exemplified the complementary efforts and adjustment by a number of actors to develop a common EU position. "The EU delegation worked to maintain a united front during the UN negotiations and to protect the appearance of a consensual EU position as far as possible. It seems also that the influence of disability NGOs, and particularly of the umbrella European Disability Forum (EDF) of the European Union was very significant, and may have led to the development of a more cohesive and well-co-ordinated EU approach in the end. The EU Member States continuously worked to co-ordinate their positions, and the Commission played an important part in this co-ordination process. In the Commission's view, a significant part of its role was to provide expertise for the Member States in relation to existing EC disability policy, including the provisions of Directive 2000/78."⁴⁵ In another example Smith (2010) has analysed the widespread assumption that if the positions of the Member States are unified on human rights issues, the EU will be able to exercise much influence in accordance with its global political and economic weight. She concludes that "the case of the EU and the Human Rights Council shows that even though the EU is united (and more so than it was in the CHR), its influence is quite restricted."⁴⁶ But Smith also points out that "the EU Member States have quite different views on how much human rights should be emphasized in any given situation. In sum, the external context alone cannot be blamed for the EU's problems at the HRC."⁴⁷ In this

⁴⁵ De Burca, G., "The European Union in the negotiation of the UN Disability Convention", *European Law Review*, (2010). Vol. 35(2), 174-196

⁴⁶ Smith, K.E., "The European Union at the Human Rights Council: speaking with one voice but having little influence", *Journal of European Public Policy* 17: 2 March 2010: 224-241.

⁴⁷ Smith, K.E., "The European Union at the Human Rights Council: speaking with one voice but having little influence", *Journal of European Public Policy* 17: 2 March 2010: 224-241.

case inter-EU coherence seems to be a vital element for the EU to wield any influence in its external policies.

Some policy areas have fared less well. Lack of an EU mandate was mentioned as a barrier to more effective harmonisation of Member States' policies and practices in treating asylum seekers including children. EU migration policy was perceived as still very young and there were doubts and resistance from Member States regarding the added value of the EU in this area. In yet another example, many Member States were perceived as being unable to cope effectively with child sexual abuse, exploitation and pornography especially when these crimes had a cross-border dimension. Therefore there was a need to do more at the EU level to help individual Member States. For example, differences between Member States impeded the exchange of information on the criminal records of child abusers, as there were different rules on where and how this data could be used in different Member States.

Depending on the division of competence between the EU and its Member States, the EU can stand as both its own entity and as a representation and complement to Member State actions, and as such the policies created at the EU level must be coherent with those undertaken by the Member States. In areas of EU competence, issues of coherence may still arise when policies are implemented by the Member States, and in areas where the EU lacks competence it becomes doubly difficult to coordinate and develop a coherent approach to children's rights. Overall, Member State and EU policies and approach work towards the same objectives, either through legally binding measures in the EU, or through coordination methods such as the different OMCs. Issues that arise between Member States and the EU tend to revolve around the relevance of EU approaches (see Section 2) rather than coherence, as many Member States had difficulty seeing the added value of EU actions.

3.3. External Coherence

Finally, external coherence aims to examine whether EU actions fit with the actions of other international bodies. In the case of children's rights, this focuses mainly on work done by other international organisations such as the UN, the Council of Europe, the OECD, the WHO, the ILO and others that work partially or wholly in the broad field of children's rights. The EU can draw inspiration from other international organisations, but often EU looks to member states rather than International bodies when setting standards.⁴⁸ The UNCRC provides a strong base upon which to establish children's rights measures. Although the EU makes mention of the UNCRC in developing children's rights policies, most notably in the 2006 Communication, 'EU legislation of relevance to children very seldom draws inspiration explicitly from the instrument, and even where it does, provides little guidance on the meaning or scope of this ascription.'⁴⁹ However, aspects of the EU's approach to children's rights run the risk of unnecessarily duplicating provisions found in other international actions, such as the Hague Convention.⁵⁰

⁴⁸ Stalford, H and Drywood E (2009) "Coming of Age? Children's Rights in the European Union". *Common Market Law Review* vol 46 issue 1 pp 143-172, 153.

⁴⁹ *Ibid*, p. 160.

⁵⁰ McEleavy, P. (2003). "The Communitarisation of Family Law: Too Much Haste Too Little Reflection?", K. Boele-Woelki(eds) in *Perspectives for the Unification and Harmonisation of Family Law in Europe*, Intersentia, Antwerp, pp. 509 – 526.

The coherence of EU child rights actions with international standards is part of a wider question on how coherent international actions in general are in the area of children's rights. The inventory of EU actions in the area of children's rights prepared by the research team identified more than 40 different international conventions, their protocols and other documents, which set certain international standards in areas important for the protection and promotion of child rights. They included only those which directly related to specific legally binding acts adopted by the EU. Such international legislation was mostly developed and adopted in the framework of the United Nations or the Council of Europe, and the evaluation focuses on those two main institutions. The coherence in objectives is important from both sides, in order to ensure that international organisations are not working at cross purposes. The EU is perceived as an important actor by other international actors due to its political and economic weight, which often means other actors with similar goals are willing to engage and co-ordinate their actions with the EU. The EU is the biggest development aid donor globally and has considerable influence by being able to stand by its financial commitments.

The EU has political co-operation agreements with many international organisations and third countries, which cover among other issues co-operation in the area of child rights protection and promotion. Following the 2006 Communication and especially after development of a more detailed child rights policy framework in EU external policies in 2007-2008, the targeting of EU development co-operation and other external policy instruments towards child rights has improved. This has helped to maintain coherence between EU and other international approaches.

Coherence with the actions of the UN

As highlighted in the inventory (described in Annex 1), one of the most significant connections for the EU is with the UN, and this has a significant effect on external coherence. All the key EU policy documents on child rights including 2006 Communication make direct reference to the UNCRC, its Optional Protocols, Millennium Development Goals (along with the European Convention on Human Rights and the European Charter of Fundamental Rights) as the main guidance documents in developing and implementing policy. Thus ensuring external coherence of EU actions with international standards is a clear and explicit policy goal.

A number of works focus specifically on the relationship between the UN and the EU. Authors in "European Union Law in a Global Context"⁵¹ note that the EU and UN are "natural partners" in multilateralism and that a comparison of the principles and purposes of the two organisations affirms the like-mindedness of the two institutions. The authors suggest that given the extensive workload of the UN it would be beneficial to have an able and willing partner to alleviate its financial and logistical burdens and to provide political and diplomatic support for the implementation of common policy goals (such as those in protecting children's rights). On the other hand, the authors suggest that taking collective action under the auspices of the EU bolsters the ambitions harboured by many EU Member States to make the EU a "global actor". Bretherton and Vogler have also commented on the role of the EU as a global actor. They examine the emergence, role and future of the

⁵¹ Hartley (ed), (2004), Cambridge University Press.

EU as an actor in world politics,⁵² synthesising theory from both the EU and international literature in analysing the core areas of European foreign policy. Lavranos also looks at the connection between the UN Security Council and the EU, and more broadly at the progressive interaction between EU law, international law and human rights law, and highlights globalisation's blurring of the boundaries between what have been traditionally distinct and autonomous legal systems.⁵³

The EU is connected to various UN bodies in more specific ways. The EU co-operates regularly with UNICEF on all aspects of children's issues. In asylum policy, the EU consults with the UN High Commissioner for Refugees on all its major actions. International organisations are extensively consulted by the EC on targeted actions in EU development co-operation programmes. Some UN organisations (e.g. UNICEF) receive EU funding to provide EU the necessary expertise and to deliver projects for protection and promotion of children's rights in third countries. The cooperation between the EU and Unicef on the Unicef toolkit for EU external relations also exemplifies the efforts to develop a coherent and coordinated approach. The EU also plays an active role at multilateral fora, annually tabling resolutions on the rights of the child at the UN General Assembly III Committee and the UN Human Rights Council (further – UN HRC), participating in debates on children's rights in these settings and supporting the UN special rapporteur (UN SR) on violence against children and the UN SR on children in armed conflicts, among others. Smith (2010) maintains that “the EU's internal effectiveness (the extent to which the Member States can agree on ‘output’ to present to the rest of the UN, in the form of statements, resolutions, proposals and so forth) has improved, with evidence that EU Member States are acting more cohesively within the UN HRC than they did within the old CHR”.⁵⁴ “EU Member States also make statements and intervene in debates and dialogues, just as they did in the CHR. In addition, since 2005, EU Member States have agreed to speak for ‘one message but with many voices’; that is, they should all intervene in debates to reinforce the EU's message”.⁵⁵

On disability issues the EU takes part in the UN Committee on Disabilities - so far as an observer, but in the future as a full member when the UN Convention on the Rights of People with Disabilities (further - UNCRPD) is ratified. The UNCRPD is only one of several UN human-rights treaties, but academics have noted the positive influence of the EU and its governance methods on other international approaches. “Since the European Union was actively involved in drafting and negotiating the Disability Convention, it seems reasonable to assume that the European Union played a role in influencing the experimentalist features of the CRPD.”⁵⁶

Coherence with the actions of Council of Europe

The Council of Europe represents another important international actor against whom the EU's external coherence should be assessed. In many ways, the EU is externally coherent with stakeholders such as the Council of Europe. As regards children's

⁵² Bretherton C., Vogler, J., “The European Union as a Global Actor” 2nd ed., (2005), Routledge.

⁵³ Lavranos, in Wouters, Nollkaemper and de Wet (eds), (2008), Cambridge University Press.

⁵⁴ Smith, K.E., „The European Union at the Human Rights Council: speaking with one voice but having little influence“, *Journal of European Public Policy* 17: 2 March 2010: 224–241.

⁵⁵ Ibid.

⁵⁶ De Burca, G., “The European Union in the negotiation of the UN Disability Convention” *European Law Review*, (2010). Vol. 35(2), 174-196.

rights, the Lisbon Treaty formally entrenches the fact that the 'Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms', which originated with the Council of Europe. Other actions include things such as the 1996 European Convention on the Exercise of Children's Rights and more policy-specific documents such as the 2003 Convention on Contact Concerning Children, the 2005 Convention on Action Against Trafficking in Human Beings or the 2007 Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse. These actions give the Council a significantly longer formal history in dealing with children's rights as a separate issue, but lack the stronger legal backing that the EU brings to the issue.

The EU and the Council of Europe ~~work closely together~~ cooperate in the area of children's rights. The Council has its own programme dealing with children's rights (Building a Europe for and with children) that aims to promote children's rights and to protect them from violence. ~~to complement and add to EU work in the area.~~ As it currently stands, many key policy issues affecting children are highlighted by both organisations, ensuring that they rarely work at cross purposes. However, some issues do get more notice – and different emphasis – in the different bodies, such as child-friendly justice, an important facet of Council work, but explored to a lesser extent by the EU up until now. ~~and less important in the EU.~~ While this can create effective policy by focusing energies on different issues, care must be taken to ensure that these different approaches do not contradict each other. There exist many formal and informal processes by which the two actors coordinate, with information sharing, dialogue, awareness raising and coordination being the focus of relations. However, care still must be taken not to duplicate CoR actions. The strongest tool at the disposal of both groups in order to avoid duplication and develop a coherent approach is the UNCRC. If actions of both actors use the UNCRC as a guideline, coherence can be strengthened between the Council and the EU.

Another important factor to consider in assessing external coherence is the role played by the international NGOs. All interviewed EC officials maintained that they have consulted relevant NGOs in certain ways in developing their policy. Most often this was motivated by the need to draw on external sources of knowledge and understand better how child rights protection and promotion could be improved at the EU level. Interviewed NGOs also maintained they had no difficulty in accessing, constantly communicated and collaborated with their relevant EC Directorates General and other EU institutions on children's rights. NGOs work to deliver services to children using their own resources as well as EU funding and they also serve an important monitoring function on the ground, reporting on child rights violations. NGOs can play an important "watch-dog" function in EU internal policy by helping to monitor how Member States implement EU directives and the EU often relies on some international organisations to implement children's rights projects in rights areas where the EU still lacks expertise or in countries where the EU has limited access (for example, working in Burma through UNICEF).

Some interviewees pointed out that although civil society was often consulted (and the interviewed NGOs have agreed they had direct and regular contacts with various EU institutions in certain ways), the structured involvement of NGOs was lacking in developing EU child rights policies. Dialogue needed proper discussion, regularity, joint conclusions and follow-up actions. The European Forum for the Rights of the Child did not serve this purpose effectively – an opinion shared by some EC officials

and NGOs participants of the Forum. Structured dialogue in EU youth policy was mentioned as a good practice example for structured involvement of children and youth in EU policy development, but it still lacked a rights based approach to children.

Many interviewees pointed to limited capacity and expertise on children's rights as one of the most significant challenges for mainstreaming this policy theme into all EU policy areas – together with the above deficiencies in co-ordination. Although many noted the mainstreaming carried out through the work of Child Rights Unit in DG JLS as a very positive achievement, they also maintained that the current approach has had limited reach and impact. This was attributed to limited capacity for the immense job of covering all internal EU policy areas that have an impact on child rights. There was a need for pro-active involvement of all other relevant EC directorates in developing child rights dimensions of their policies in order to ensure that it is mainstreamed in all areas.

The interviews with EC officials, representatives of international organisations and NGOs carried out by the research team indicate that EU actions in the area of child rights are generally perceived as broadly coherent with respective international standards and rather well co-ordinated with the actions of other international organisations in specific EU policy areas.

3.4. Conclusions

Ultimately, coherence is concerned with ensuring that the objectives of any intervention do not operate at cross purposes, and that the process of co-ordination works well to ensure the coherence in policy development and implementation. This is often assessed on an intervention-by-intervention basis, and becomes more difficult once the concept is applied to a wide and cross-cutting policy field such as children's rights, with hundreds of interventions and many different actors developing and implementing them at different levels of governance. In addition, the nascent nature of EU children's rights policy means that in many cases it is too early to evaluate whether the effects of any given policy (or the broad children's rights strategy as a whole) are in line with the objectives and goals of these policies. While coherence over a broad, cross-cutting policy issue such as children's rights is difficult to analyse deeply internally, within Europe or externally, several preliminary issues affecting the coherence of EU actions can be identified on the basis of preliminary analysis.

Internal Coherence

The internal coherence of EU policy as it relates to children's rights has been greatly aided by the 2006 Communication for internal actions, the 2008 Communication for external actions, and specific actions based on those documents. Both documents – especially the 2008 Communication – help to develop an approach to children's rights that is internally coherent and helps to ensure that EU policies do not work at cross purposes. The broad goals of policies and actions undertaken in the EU in the area of children's rights aim to mainstream these issues into all policy areas. This broad goal must be translated into specific policy that is internally coherent. As wide-sweeping documents, the Communications help to identify the goals, but translation and effects of these goals is not always readily apparent. While it is still too early to

judge, specific measures to translate these broad goals into specific interventions is necessary in order to ensure that policies are coherent in the EU, both within specific policies and between policy areas. Within these specific policy areas, the case studies will help to provide a more in-depth understanding of the coherence of specific actions and how they fit into the EU's approach to children's rights.

Inter-European Coherence

Although due to the nature of the policy process the actions of the EU and Member States are often somewhat coordinated, there can still be issues of coherence that arise in translating policy from the EU to the Member State level. Based on the country reports, interviews and analysis of relevant documents, issues between the EU and Member States appear to be less about ensuring coherence between the two actors, and more about ensuring that EU actions add value to approaches already undertaken by the Member States. Given the complex inter-relationship between EU and Member State policy processes, a clearer picture of coherence between EU and Member State actions can be produced when looking at specific initiatives, which will be undertaken in the case studies.

External Coherence

Given the wide range of international actors involved in developing children's rights, the external coherence of EU actions is largely contingent on which international actor the EU is being compared to. The UN and the Council of Europe represent the most common and clear connections to EU policy, and significant coordination takes place between these actors. Thus, policies are often coherent, but the connection between actions of different international actors often needs to be more explicitly outlined. Many EU actions broadly follow the approach of the UNCRC, and this connection should be further exploited to ensure that the EU adds value in these areas and makes use of monitoring mechanisms provided through the UNCRC. This also feeds into coherence with the Council of Europe, an organisation with a long-standing background in addressing children's rights. Significant work has been done to coordinate with the Council, but there is still a risk of actions being unnecessarily duplicated.

Overall policy coherence of the EU children's rights approach is difficult to assess across policy sectors at this time, and can only provide a general, qualitative assessment about perceptions on the alignment of policy within the EU, between the EU and Member States, and externally with other international bodies. This analysis, however, proves useful in contextualising and developing the approach to analysis of coherence of the case studies and a broad indication of whether the EU is functioning to produce child rights policy that is coherent within and across policy areas.

4. COMPARATIVE ANALYSIS OF EU MEMBER STATES' CHILD RIGHTS' INSTITUTIONS AND POLICIES

Executive Summary

The institutional and policy structures in place in the Member States follow either a 'rights' approach or a 'welfare' approach to children's rights. The 'rights' dominant policy approach sees children's rights as a 'universal category' to be mainstreamed across all institutions of government, while the 'welfare' dominant policy approach regards children policies as almost entirely a matter of welfare. The institutional framework for policy development varies significantly with some Member States having separate, core departments of government in charge of children's rights policy development, while in others addressing children's rights through welfare-focused institutional structures at central level. The institutional architecture relating to the promotion of children's rights across the Member States is also fundamentally shaped by the unitary/federal distinction. In unitary states, central government departments take responsibility across national territory for the promotion of children, while in federal systems, welfare and education policies are designed and delivered between the federal authorities and the state level. The Ombudsman's for Children Office constitutes one of the principal ways to raise awareness of children's rights at the national level, although its remit and actual impact in practice varies across countries. Some Member States have incorporated children's rights into the Constitution and have also adopted primary legislation on this area. Others deal with children's policies via a range of broader legislation that are not exclusively aimed at children, such as family policy. The legislative provisions on children's rights are translated into practice through various policy mechanisms, with the introduction of national action plans or national strategies being the most common. National systems of data collection regarding children are not uniform across the EU: some government ministries or departments collect the data themselves or they commission statistical data collection to semi-autonomous statistical institutes.. In some Member States there are no clear separations between the central institutions in charge of policy development and those that are responsible for policy implementation. In others, central level institutions have policy making responsibility, with policy delivery occurring at regional and local level. In federal systems both policy making and policy delivery may be devolved. What is perceived as good practice in relation to children's rights policy varies across EU Member States. Some countries have institutionalised effective mechanisms of policy development, while others have been more successful with regard to the policy and service delivery aspects.

4.1. Institutional Framework for Policy Development

It is important to recognise at the outset that there is no single European model with regard to the protection of children's rights. In some Member States established family or child welfare institutions and policies have accommodated rights-based approaches; in others, children's rights have shaped institutions and policies more directly. Whilst all EU Member States have recognised the need to develop policies

in relation to the rights of the child to some extent, the institutional mechanisms for making and delivery policy vary greatly. In some cases this is a consequence of the structure of government and in others it is a consequence of legal traditions and/or perception of the priority of the issue. One of the crucial distinctions is between those Member States that have created separate institutions with a clear responsibility for the development of children's rights and those which see children's rights being pursued through interdepartmental organisations without viewing children as a policy responsibility in their own right. In addition, some states have developed children's rights as a 'universal category' which needs to be integrated into all aspects of policy, whilst others tend to focus issues in relation to children around aspects of welfare policy, be it child welfare, child and youth policy or family policy (See *Chart1 and Chart2 in Annex1*). Thus, certain EU governments deal with children's rights protection within broader social policy frameworks, of which family policy of child welfare are the most common.

Variable institutional architecture: which departments of government are responsible for children and the question of mainstreaming?

For most EU Member States, the introduction of various forms of welfare systems for children preceded the introduction of children's rights which shapes the institutional structure with regard to children and youth. As a result, there is a clear institutional bias towards understanding rights as part of the delivery of welfare and in many EU Member States children's rights are seen as an aspect of family/welfare policy rather than a policy domain in its own right. The result is that children's rights issues are often implicitly subsumed into children's welfare, which is itself often regarded as an aspect of family policy. Family policy is often broadly defined and can include: infancy, reconciling family and professional life, help to parenthood, the introduction of safer internet practices and policies to deal with numerous families. In addition, within such approaches a range of policies can affect the wellbeing of children including education and issues relating to crime and immigration (for example, the criminal system for juvenile offenders or unaccompanied foreign minors). As a result, across the EU, the institutional structures that uphold children's rights within government tend to be primarily welfare-focused and are not yet robust enough to fully protect all categories of children's rights. Certain rights – to protection from poverty, access to education and employment and protection from violence, for example – remain institutionally better protected than, for example, the right to participation and having their views taken into consideration in all matters that affect them. This is the case whether Member States have established a fully separate department of government for children or not, although the balance between rights and welfare approaches varies between Member States.

In some cases, there are core departments of government that take over-arching responsibility for children, in many cases as an outcome of welfare practices established prior to ratification of the UNCRC. However, there is variation as to which department of government this falls to. In some cases (e.g. Latvia, Lithuania and Spain), children's rights sit within departments of social security and labour. In others, responsibility for children falls primarily to departments of government concerned with children, education and families. In other countries, however, there is no clear 'lead' department with over-arching responsibilities and the task of coordination, as in France or Greece. Even in the cases where a 'lead' department has been created, other departments of government also have discrete competences

relating to children (Ministries of Justice and Health, for example) that make determining which is the most appropriate single institutional point of contact for the protection and promotion of children's rights in all domains difficult to determine.⁵⁷

Within this variable institutional architecture, there remains an essential difference between those Member States that see children's rights as a 'universal category' to be mainstreamed across all institutions of government and those that regard children policies as almost entirely a matter of welfare; a difference which is not necessarily captured either by whether there is a single coordinating or responsible department or by the name of that department. This difference reflects the different ways in which the UNCRC has been interpreted, different legal traditions and the different models of welfare and education and different family and religious traditions across the EU. In other words, those countries that see children's rights broadly and regard mainstreaming as important have not necessarily established separate departments of government concerning exclusively with children and young people. Some countries, such as Sweden, Spain and Ireland, have opted instead to flag the importance of children's rights via National Action Plans. Others have established inter-ministerial teams to coordinate policy as in Italy; whilst some Member States regard the creation of an Ombudsman's Office with a specific remit to promote children's rights in government as sufficient.

⁵⁷ Please see Table 9 in Annex 4 for more information.

Diagram 6: 'Rights' based approach.

Countries: Austria, Bulgaria, Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Romania, Portugal, Slovenia, Slovakia, Spain, Sweden, U.K.

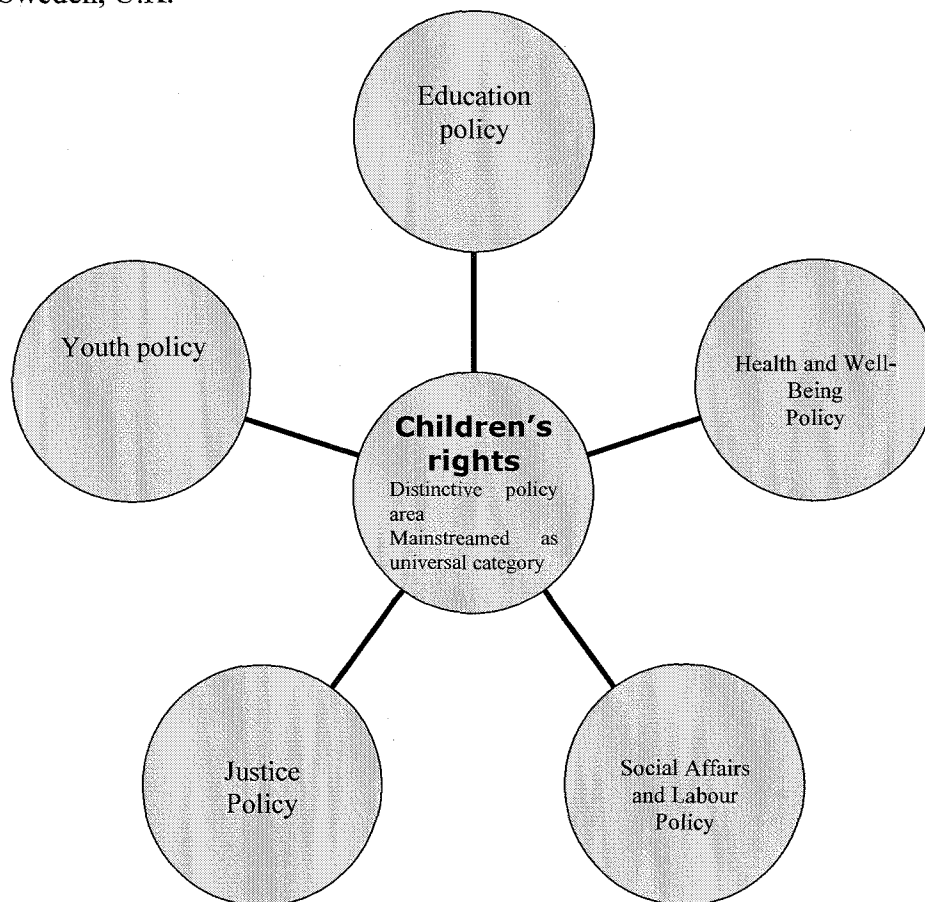
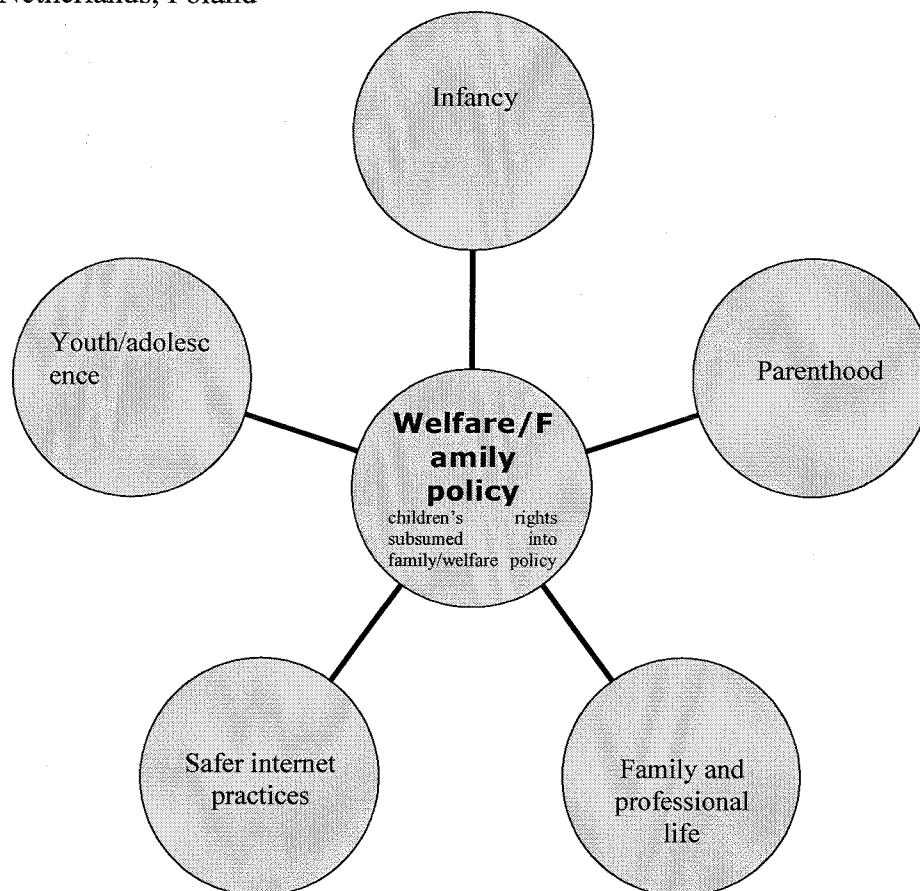


Diagram 7: 'Welfare' based approach.

Countries: Belgium, Cyprus, Denmark, Estonia, France, Luxembourg, Malta, the Netherlands, Poland



The UK, Estonia, Slovakia, Romania, Hungary have opted to try and mainstream children's issues and to integrate services in relation to children within a specific department which has primary responsibility for key policies (though not all policies relating to children). In the UK, Sweden, Slovakia, the Netherlands and Romania, children are treated as a distinctive policy area with a specific government department focussed on developing policy in relation to children. Only in some cases, however, has this led to the creation of government departments that are exclusively concerned with children and young people. In the UK, the Department for Education clearly has a broadly remit than that of simply promoting children's rights. This is also the case in the Netherlands, although in this case, children's rights are explicitly regarded as forming the building blocks of policy making. The Dutch Ministry of Youth and Families understands its primary responsibility to be the gradual incorporation of rights into policy. In all these cases, equivalent departments of government are concerned not only with developing policy in relation to children but also with mainstreaming children's rights into all aspects of policy. In Slovakia, this has given rise to a very explicit commitment on the part of the state to incorporate the principle of best interests of the child throughout all its policies, and functions in all national programmes, strategies, concepts, action plans in various areas and levels. In Sweden, children's rights are defined as a distinctive policy area and the Swedish government is committed to mainstreaming children's rights in all its policies via soft

modes of regulation. The Swedish Government has one of the clearest and most explicit policies on children's rights in the EU, aimed at implementing children's rights on the basis of the Convention on the Rights of the Child (CRC). The objective of the child rights policy is to ensure that children and young people are respected, that they have the chance to develop and enjoy security, and that they are able to participate and influence the things affecting them. To this end, child rights policy aims to ensure that a child rights perspective is reflected in all policy areas and services affecting children. Nevertheless, Sweden has not created a separate department of government for children. Instead, the responsibilities for designing children's policies rest within the Ministry of Health and Social Affairs.

Latvia is another example of the way in which the association between child policy and welfare fundamentally shapes the institutional structure of contemporary children's rights policy. Children are regarded as an integral component of family-related issues and the Ministry of Welfare is responsible for national policy on children. The key areas for action reflect this welfare-oriented approach: the delivery of the action plan, 2004-2013, coordination of the programme 'Latvia Suitable for Children' within the Cabinet, and programme to reduce family (not specifically child-focused) violence.

In some cases, particular events have driven change and encouraged governments to opt for institutional reform leading to a more integrated approach to children's rights. One of the best examples here is Romania, where international media reporting of the orphanages and adoption procedures, combined with EU pressure, prompted the adoption of national legislation on child welfare and child adoption which made children's rights a discrete area of public policy. Children's rights policy in Romania is now treated as a self-standing issue and is underpinned by legislation on the 'Protection and Promotion of the Rights of the Child'. But it is also true of the UK, where the way children's policies are delivered has been shaped by failures on the part of the state to protect vulnerable children. In 2003 the British Government published a Green Paper called Every Child Matters as a result of the death of Victoria Climbié which established that the protection of children and the promotion of children's rights are the responsibility of the Department for Children, Schools and Families (now re-branded as the Department for Education), although policy development and delivery is clearly cross-sectoral (including for instance the Department of Health). This led to the Children Act in 2004 which is the main legislative package underpinning English policy on children's rights. This legislation is the underpinning for Every Child Matters, which sets out the Government's approach to the well-being of children and young people and is the equivalent of what in some Member States would be regarded as a national action plan. Institutional reform continued in 2007, and now the Department for Education has a specific remit to network across government to deliver early years policies, education, care of looked-after and at-risk children, deliver reforms in the education and care sector that promote children's rights and well-being and aspects of family policy that are directed related to children. A Children, Schools and Families Committee was established in November 2007 to oversee the work of the Department and liaise with non-governmental public bodies.

In contrast to these countries, Portugal, Malta, France, Poland and Finland have not yet established coordinated bodies with the responsibility for mainstreaming children's rights. In Italy, policies for childhood and youth are divided between

different departments of government although an inter-ministerial committee for human rights (not simply children's rights) assumes some responsibilities in this area. National action plans for children also lag behind. In Portugal the mechanisms for protecting human rights generally are weak and children's rights remain low priority on the political agenda. A separate department for Social Welfare, Family and Children was briefly created in 2004 but it was reincorporated into the Ministry for Labour in 2005. In Greece, there is no department of government with ultimate responsibility. The Departments of Education and Religious Affairs, Health and Social Security, Justice, Defence, Transport, Employment, Interior and Communications and Information each have different jurisdictions. Ireland also lags behind in terms of institutional coordination. The Office of the Minister for Children and Youth Affairs, which operates under the auspices of the Department of Health and Children has a limited remit. However, in this case, there is a gradual shift towards deeper coordination. The National Children's Strategy 2000-2010 is explicitly based on the UNCRC and its implementation is the responsibility of the Office of Children and Youth. In Malta, there is no single department of government that is responsible for designing or delivering policies for children. Children's welfare (and by extension in Malta, also children's rights) mainly fall within the remit of the Ministry of Education, Employment and the Family. But there is no coordination with the Ministries of Health, Justice and Home Affairs. In France, meanwhile, despite the prominence of children and young people as a political issue, children's welfare concerns form part of the Secretariat of State for Family and Solidarity within the Department of Employment, Solidarity and the Civil Service but children's rights concerns are scattered across the Departments of Education, Family Health and Sport, Justice, Home and Overseas Territories and Foreign Affairs and there are few mechanisms of institutional coordination between these various departments of government.

The Structure of Government

The institutional architecture relating to the promotion and protection of children across the Member States is also fundamentally shaped by the prevailing structure of decision-making within each Member State and in particular the unitary/federal distinction. So, whilst nearly all EU Member States children's rights policy accept that children's rights are essentially cross-cutting and need to be integrated into broader policy frameworks such as education, health or family policy, legal responsibilities, as well as responsibility for policy formation, budgets and policy delivery are not always clear between the tiers of government. This is a particular issue inside federal systems of government (although unitary systems do not escape in practice the problem of indeterminate or overlapping competences between levels of government).

Unitary states

In unitary states, such as Poland, France, Greece Malta or Cyprus, central government departments take responsibility across national territory for the promotion and protection of children. This does not necessarily mean greater coordination in government; but it does mean that, formally, a single institutional architecture prevails and competences are shared between national departments of government, sometimes with a 'lead' department. The result is an apparently more straightforward institutional structure So, for example, in Lithuania, the Ministry of Social Security

and Labour, which is responsible for managing the protection of children's rights, has the following formal responsibilities:

- shaping and implementing child protection policy and protection of children's rights;
- liaising with and other state and local institutions to ensure the protection of children; and
- providing methodological assistance advice to local municipal authorities and institutions in charge of the delivery of services.

But the Ministry of Social Security and Labour, in practice, has to share competences and decision-making with other departments of governments. Education, health and criminal are in the competences of other departments, some of which have larger budgets and more authority, including the Ministries of the Interior, Justice and Health. Consequently, despite an apparently straightforward structure, in fact, the structure of policy making is complex as the diagram in the appendix indicates. A similar situation prevails in Romania, where the key institution in charge of policy development at the national level, the National Authority for the Protection of Family and Child's Rights, forms part of the Ministry of Labour, Social Solidarity and Family. Its main role is to ensure that both at the central and local levels children's rights are respected. At the governmental level, the National Authority for the Protection of Family and Child's Rights has the role of ensuring that all policies drafted by the government respect children's rights, while locally, it coordinates directly the General Directorates of Social Assistance and Child Protection (DGASPC). This gives rise to a tiered institutional structure outlined diagrammatically in the appendix.

Moreover, despite the apparent hierarchy that prevails in unitary systems, sometimes the problems of coordination and competition for budgets and resources between the various ministries of government can complicate the institutional structure, blur the lines of responsibility and affect responsibilities for rights protection and rights delivery and, therefore, the extent of protection afforded to children. We identified above the range of government departments responsible for policy in Greece; in Poland, the various ministries with competences in children's policies include the Ministry of National Education, which has the responsibility of overseeing reports to the UN Committee on the Rights of the Child but not for overall policy coordination in matters concerning children. In the past the Ministry for Education in Poland was also responsible for fostering and institutional care. Other departments of government with an important institutional interest in children include the Ministry of Labour and Social Policy; which is responsible for family policy, foster care, adoption and domestic violence; the Ministry of Justice, which exercises competence in the area of criminal and civil law concerning children's rights; the Ministry of Health, which is responsible for the organisation of the health care system; the Ministry of Interior, which is responsible for safety and protection, prevention of trafficking, internet policy, and issues connected to nationality and repatriation, migration, national and ethnic minorities; the Ministry of Higher Education, which deals more with the education of youth; the Ministry of Sport and Tourism which is responsible for promotion of different sport for children.

Centralisation has sometimes allowed governments to attempt to introduce an integrative, cross-cutting or multi-sectoral approach to children's rights. An attempt in this direction by the UK government is outlined above, for example (although it

should be noted that it refers to England and not all the territories of the UK, since the trend towards devolution of powers has complicated the institutional map). Similarly in Sweden, the Ministry of Health and Social Affairs also has the responsibility for policy coordination with regard to children, as does the Ministry of Youth and Families in the Netherlands. But even in these cases, lack of clarity about ministerial competences mean that the institutional maps are more complex than might be expected.

Unitary architecture does not mean that there is no institutional decentralization. In fact, children's services are delivered locally in the UK, complicating the structure of children's rights protection but, potentially, delivering children's services that are more in tune with local needs. The Children Act in 2004 specifically acknowledged the leadership role of local governments in a range of areas, including establishing partnerships and safeguarding boards to protect vulnerable and at-risk children. Bulgaria has more recently (since 2003) explicitly embraced a decentralisation of services for children, especially in the field of child protection, partly in response to dissatisfaction and criticism with the way in which the care homes for children with disabilities or without the protection of their families had been run by the Ministry of Labour and Social Policy. This makes for yet another variation in the institutional architecture of Member States' children's rights policies (see annex).

Federal states/states with strong regional governments

In federal systems, welfare and education, and therefore children's rights policies almost by implication, tend to be designed and delivered between the federal authorities and the state level, although the degree to which policy making is decentralised varies between systems. In Belgium where the trend towards devolving power to the regions is greatest, competence for children's rights is, in effect, divided between 58 ministries and secretaries of state, making it difficult to design a comprehensive and coherent children's rights policy. Furthermore, each of the 3 regions has adopted a different institutional structure to oversee children's rights policies. Laws concerning children are shaped in five different parliamentary assemblies, according to the region:

- Federal parliament;
- Parliament of the French community;
- Parliament of the Flemish region;
- Parliament of the German community;
- Parliament of the Communities common commission (for Brussels region).

Moreover, the Flemish Community opted to try and coordinate policies across departments via the creation of a Minister for Youth in 2001, whilst the French Community leaves policy coordination in the hands of the Minister-President.

In Austria the development of policies for children falls under the jurisdictions of either the federal government or the federal states (Länder). In order to take into account the interests of each of the federal, regional and local authorities, in the enactment of legislation, draft bills are first disseminated and debated and institutional mechanisms have been developed for the exchange of information between the tiers of government, including institutionalised conferences between the heads of the regional social divisions, the conference of the heads of the regional

youth divisions, and the conference of the heads of the regional family divisions. In Germany, these mechanisms extend to the incorporation of local governments within the Länder, as well as the state and federal levels. Nevertheless, at the Lander level, there are division of responsibilities between the different departments remains problematic, although there are a range of conferences and boards that try and coordinate policies for children and young people. At the federal level, meanwhile, the Ministry for Family, Senior Citizens, Women and Youth has only a small secretariat for children that is responsible for child rights, whilst other departments of government, such as the Ministry of Labour and Social Affairs and the Ministry of Justice, which is responsible for child protection, play a significant role.

In addition to formally federal systems, several Member States in the EU have strong traditions of regional government. These include Italy and Spain. The Italian state is based on the division of powers between the national and regional levels. The regional governments taking exclusive responsibility for social policy, although the central state takes responsibility for identifying the Basic Levels of Social Services (LIVEAS) which should then, ideally, be respected and delivered across the country. Local authorities (regions, provinces, municipalities) are expected to organize and manage services for children and, in collaboration with the Health Service, implement the integrated system of social services, which focuses on providing support for children and their families, but they do so differently and with different levels of expenditure and priorities according to region.

Spain also has a highly regionalised system of government, with some regions (Catalunya and Madrid) clearly having higher levels of per capita spending on social services, education and child protection than other regions. So, although formally children's rights in Spain are dealt within a common policy framework nationally, the institutional structures vary considerably within the regions. Education and social welfare are largely the responsibility of the Autonomous Communities, which also have separate budgets for young people and young offenders.

Ombudsman's Office

The creation of an independent Ombudsman's for Children, funded by the state, has been identified as one of the principal ways to raise awareness of children's rights, and children's rights violations, in all countries that have ratified the UNCRC.⁵⁸

In fact, however, although most Member States have created Ombudsman's Offices, the role of played by Children's Rights Commissioners or Ombudsman for Children varies considerably between countries, both in terms of its remit and competences and more significantly, in terms of its actual impact on the level of protection of children's rights in practice. Some federal states, such as Germany, do not have a Commissioner for Children at the federal level, only at the level of the region or Lander. In some countries, such as Slovenia, Slovakia or Hungary, the protection of children's rights falls under the remit of the general Ombudsman for Human Rights and thus these countries have not established a separate Ombudsman to deal with children's issues,

⁵⁸ Please see Table 10 in Annex 4 for more information.

Member States where the Ombudsmen for Children play a broad and active role

The responsibilities of the Ombudsman vary among the EU Member States. In most cases its remit involves primarily advisory and monitoring roles. The role of the Ombudsman is connected both to the respect of the UNCRC and the observance and monitoring of national legislation and policies on children's rights. Sometimes, but not always, the Ombudsman enjoys the right to hear individual complaints. Additionally, s/he can pursue claims on behalf of children generally and may supervise and monitor the implementation of the UNCRC through, for example, follow-up reports and proposals of reforms to the government. The Office can also be crucial in terms of public awareness campaigns.

Member States where the Ombudsman plays a reasonably strong role include Malta, Belgium, Germany (at the Lander level), Sweden and Scotland. In Sweden the Office of the Ombudsman was created as early as 1993 and was strengthened in 2002. In addition to the compiling of an annual report on progress towards compliance with children's rights, the Swedish Ombudsman also plays a key role in the development of National Action Plans. In addition to requesting information from government, the Ombudsman can also ask the government directly to discuss key issues relating to children's rights and welfare. In 2006, a second Ombudsman's Office was opened to deal specifically with education issues, investigate reports of harassment and, unusually, can prosecute individual cases or sue municipalities on behalf of children if schools have failed to take action to defend children's rights. This Ombudsman also counsels schools directly on how to avoid bullying, discrimination and harassment.

As an example of an Office with wide-ranging responsibilities, the Ombudsman in Malta is responsible for:

- overseeing the incorporation of the UNCRC into domestic law;
- overseeing the adoption of a National Policy and National Strategy for Children;
- the publication of a directory of services for children outlining the role and responsibilities of each entity involved;
- measures relating to the Family Court mainly the establishment of a fast-track system for Court cases involving children, and mechanisms to enable more participation and access in court proceedings;
- various measures relating to the juvenile justice field, such as the provision of more services for children and young people who are in conflict with the law and raising the age of criminal responsibility;
- various measures relating to sport, including child protection in sport and the monitoring of facilities;
- has a particular concern with regard to absenteeism in schools;
- the adoption of measures relating to children in care, including increasing the use of foster care instead of residential/institutional care and catering for a larger number of children in need of residential placements, residential care facilities in the island of Gozo;
- the setting up of a hotline to fight child abuse over the internet;
- the establishment of a child sex offenders register;
- regular monitoring of services and the establishment of internal and external evaluation systems; and
- the introduction and implementation of a National Sexual Health Policy.

With a remit as broad as this, however, it is unclear the extent of implementation.

This pattern of legally strong Offices, with a more limited range of action in practice, is also present in Belgium where both the French and the Flemish Communities have a children's rights Ombudsman. Both have consultative and advisory functions and monitor whether proposals of decrees comply with the Convention on the Rights of the Child. Their missions are four-fold:

- Collecting complaints on children's rights;
- Promoting the International Convention on Children's Rights;
- Inspect and control services in relation to their respect of children's rights;
- Call upon decision-makers in policies related to children's rights.

The remit, though broad, is vague, especially in comparison with the Swedish model, which is widely regarded as one of the most effective. Moreover, there are regional disparities in the Offices with the Flemish Ombudsman counting on more resources than the French.

The French Ombudsman for Children (Défenseur des enfants) role is to defend and promote children's rights, such as defined by national law and international commitments. It is an independent institution in theory, although it is appointed by the President of the Republic for a non-renewable term of six years. The Ombudsman for Children can receive individual complaints from children, their parents or guardians or members of their family, medical and social services, Members of Parliament and State-approved associations of defence of children's rights. The Ombudsman can also make suggestions to modify law or practice and offer his/her opinion on bills related to children. S/he also publishes an annual report and can publish in addition thematic reports. In recent years, reports have focused on the problems of teenagers, children caught up in matrimonial disputes or divorce and the condition of children living on the island of Mayotte.

In Austria there are Ombudsmen for Children both at the federal level and at each of the 9 Landers (since 1995). They carry out individual case work, counselling, mediation, intervention, promoting children's rights projects (e.g. sexual abuse/domestic violence), awareness raising, information activities and networking. They are also formally responsible for the implementation of children's rights in the society. The Committee of the Ombudsperson – a standing body of the federal and all federal states (Länder) ombudspersons – meets twice a year to try and coordinate actions nationally and to work together to comment on legislative proposals that might affect the rights of children.

Ombudsmen with a limited role

In some of the EU Member States, although an Ombudsman exists, their role is much more circumscribed than in the cases above. This would be the case in Lithuania, for example, where any recommendations made by the Ombudsman are not authoritative and do not tend to trigger government action. Also indicative of the way in which the Ombudsman's role is downgraded in practice is the fact that his/her formal responsibilities tend to overlap with those of other institutions. In Slovakia, there is no specific Ombudsman for children although the Ombudsman for Human Rights

also covers children's rights issues, indicating once again a very weak commitment on the part of the Slovakian state to independent oversight of its child rights policies.

Member States with no Ombudsman for Children

Some countries do not have an Ombudsman for Children, these include the Netherlands. In the Dutch case, the Minister for Youth and families favours the creation of an Ombudsman's office and a bill has been promised. The fact that there is no timetable however, indicates how low the priority is inside the government. Equally, there is no ombudsman's Office in Romania or Bulgaria.

Key Legislation and Policy Mechanisms

Member States have incorporated the principles of children's rights and codified their obligations to protect children into legislation in different ways. In some cases, children's rights have been directly incorporated into the Constitution. Additionally, in some Member States, a discrete body of unifying or primary legislation has emerged, which has in some cases generated secondary legislation around how the primary legislation should be delivered. Others deal with children's policies via a range of broader legislation that affect children but that are not exclusively aimed at children (family policy, efforts to reduce domestic violence etc). The legislative provisions on children's rights are translated into practice through various policy mechanisms, with the introduction of national action plans or national strategies being the most common.

Children's rights in the Constitution

Some EU Member States have provisions on children's rights in their national Basic Law or in the constitution (in Austria and Germany, children's rights have been incorporated into the constitutions of some Lander). However, in many cases, the constitutional rights of children have not translated into policies or practices. So, for example, Poland has provisions on the protection of children's rights in their Constitution via Article 72 that proclaims that 'The Republic of Poland shall ensure the protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense'. Nevertheless, institutional reform to ensure the delivery of these rights for Polish children lags behind. Equally, Article 69 of the Portuguese Constitution sets that right of children 'to protection by society and the State in order to fulfil their integral development'; but children's rights issues and even issues around basic welfare provision are low on the political agenda. However, codifying the legal obligations of Member States and setting the rights children enjoy in law can provide an important baseline for non state groups and Ombudsmen in their monitoring and review of government actions.

Legislation

Many Member States have now primary legislation that focuses explicitly on the promotion and protection of children's rights. For instance, Romania adopted in 2004 Law no. 272/2004 on the 'Protection and Promotion of the Rights of the Child' which establishes a legal edifice with protection and the 'the best interests of the child' at its core. The Romanian law is based on the key provisions contained in the UNCRC and

the European Convention on the Human Rights. The Romanian primary legislation on children's rights covers a wide range of social, political, economic and civic rights which Romanian public institutions have an obligation to protect. For instance, protection rights are reflected by the provisions such as children's right to be protected against economic exploitation (Article 8), any form of violence, abuse and neglect (Article 85), sexual exploitation and sexual abuse (Article 99), any form of corporal punishment and any other form of degrading treatment (Article 28 and 90). Development rights include rights such as the right to education, the right to health care or the right to social security. According to Law 272/2004, children have the right to receive education which would allow them to develop their capacities and personality in non-discriminatory conditions (Article 47), children have the right to be brought up together with their parents (Article 30) who are responsible for the upbringing of their children (Article 31) and the child has the right to a living standard which would enable his/her physical, mental, moral, spiritual and social development (Article 44).. Participation rights provide children with a say in their own lives. The Romanian law stipulates that children have the rights to freely express their opinion on any matter which concerns them (Article 24), to be heard in all procedures which involve them (Article 24) and to freedom of expression (Article 23) and freedom of thought, of conscience and religion (Article 25).

Other primary legislation is much less explicitly based on the UNCRC and combines welfare and rights approaches. This is true of the UK' Children's Act and the Children's Acts in Ireland. The Irish Child Care Act in 1991 (Amended 2007) covers child protection and alternatives to family care and pre-school childcare services and ensures both that the welfare of the child is of paramount consideration and that children - with due regard to age and maturity - are heard in all administrative and judicial procedures affecting them and, additionally, that due weight is given to their views. Another piece of primary legislation - Children Act 2001 - is concerned with children who come into contact with the criminal justice system and it addresses juvenile detention and alternatives to this, as well as children who are not in conflict with the law but who require special care.

Most EU Member States also address children's rights within broader legislation concerning family law, education, citizenship, violence, policing, health etc. In Slovakia, for example, the Family Code is the principal source of law concerning childhood, but children's rights have been legally incorporated into the Civil Code, Rules of Civil Procedure, the School Act, the Criminal Code, Rules of Criminal Procedure, Rules of Administrative Procedure, laws regulating various kinds of financial support for children, laws in social sphere or laws governing health protection, such as the Healthcare Act and the Public Health Act. In brief, children's rights are addressed indirectly, via legislation or legal instruments that affect different aspects of children's rights policy. This kind of legal fragmentation is something of a reflection of the ways in which children's rights principles are being disseminated into different domains of policy but it also coordination of the promotion and protection of children's rights difficult.

Policy Mechanisms

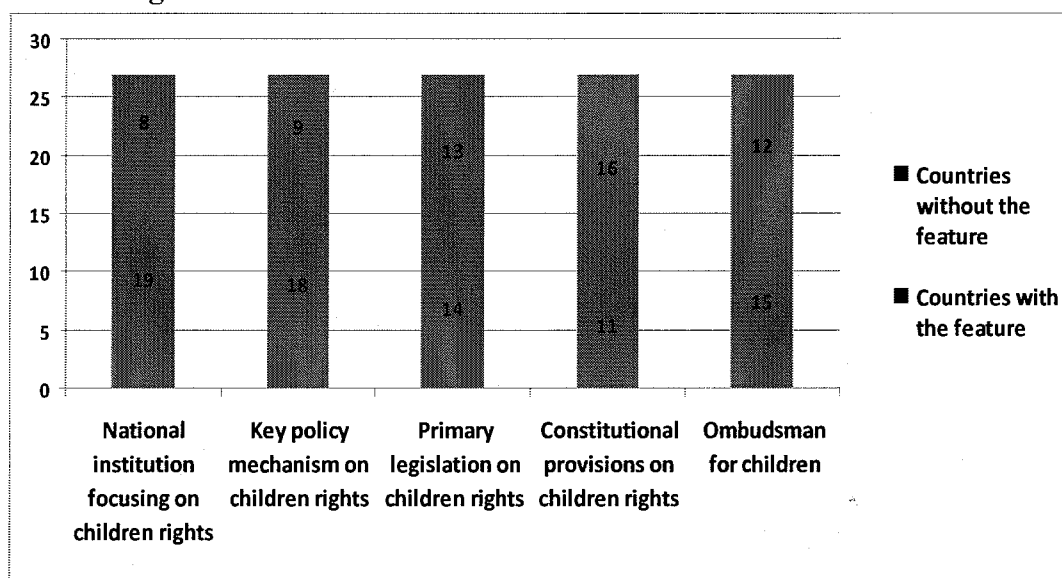
In the face of fragmentation, one common way governments try and bring policy together is via the adoption of national strategies or national action plans. National action plans or strategies focus on children's rights as a self-standing policy area and

they generally cover a period between 2-10 years. They set out policy objectives, operational plans and measures to be implemented in practice by different governmental agencies or ministries. These national strategies usually take the UNCRC provisions as a reference point and try to indicate how some of the principles underpinning UNCRC are to be translated into policy. These national action plans or strategies also set out useful indicators that are meant to benchmark progress at different stages of the plan. They thus become useful monitoring tools – but only with regard to the targets that governments set for themselves.⁵⁹

Although national action plans set policy goals, they do not necessarily try and resolve the problems engendered by the fact that the policy will be delivered by multiple departments and agencies. So, for instance, in Slovakia the responsibility for the policy development for the National Action Plan for Children is divided among a range of departments:

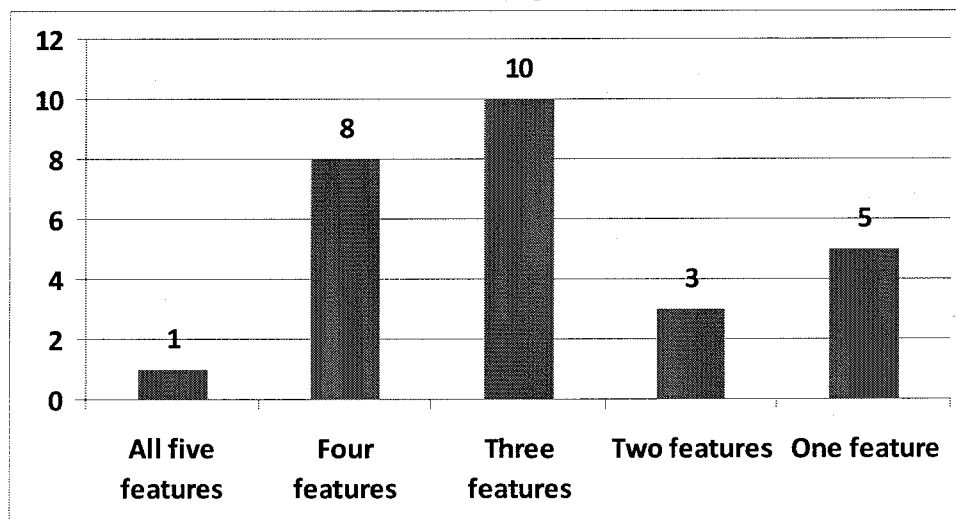
- Education, upbringing, leisure and free time and cultural activities – mainly the Ministry of Education and Ministry of Culture.
- Children and family, family environment and foster care – mainly Ministry of Labour, Social Affairs and Family and Ministry of Justice.
- Health, healthcare and child nutrition – mainly Ministry of Health and Ministry of Labour, Social Affairs and Family and Ministry of Education.
- Social and other measures to increase the standard of living of children and their families – mainly Ministry of Labour, Social Affairs and Family, regional government units and municipalities and Ministry of Interior.
- Special protective measures - mainly Ministry of Labour, Social Affairs and Family and Ministry of Justice.

Diagram 8: Number of EU countries that possess the following features on children rights



⁵⁹ Please see Table 11 in Annex 4 for more information.

Diagram 9: Number of EU countries that possess the total number of the aforementioned features on children rights.



National Systems of Data Collection on Children

Our research on the Member States so far indicates that national systems of data collection regarding children are not uniform across the EU; moreover, Member States tend not to collate the data on children in one single budget line. Partly because of complex architecture of policy-making, where a range of departments share competences and policy is carried out by different tiers of government, accessing secure total figures for spending on children is almost impossible. Data on various aspects pertaining to children's rights is collected by different departments and national statistics institutes. Some government ministries or departments collect the data themselves or they commission statistical data collection to semi-autonomous statistical institutes: based on this data, they compile their own annual or biennial reports. The methodology used to collect data is not always transparent and it is not always clear where figures deployed by departments of government derive from.⁶⁰

Priority Areas and Groups

EU Member States sometimes identify certain groups of children as in need of special levels of protection. There are some common priority areas among EU Member States, such as child poverty, violence against children, education, social exclusion or the rights of unaccompanied children of migrant workers. However, some countries have distinctive priority areas of children's rights, such as the protection of Roma children or children belonging to ethnic minorities, children with disabilities or children in institutional care. It should be noted that these are priority areas of children's rights policy as identified by governmental actors, i.e. various ministries at the national level, while non-state actors or NGOs may consider other policy areas as equally important.⁶¹

⁶⁰ Please see Table 12 in Annex 4 for a full breakdown of data collection in each Member State.

⁶¹ Please see Table 13 in Annex 4 for a detailed look at priority groups and areas for children's rights in each Member State.

4.2. Mechanisms of Policy Delivery and Monitoring

The nature of policy delivery and monitoring is influenced both by the way in which issues relating to children are conceived and the institutional frameworks of Member States. In some Member States there are no clear separations between the central institutions in charge of policy development and those that are responsible for policy implementation. In others, central level institutions have policy making responsibility, with policy delivery occurring at regional and local level. In federal systems both policy making and policy delivery may be devolved.

In the case of UK, the Department for Education is responsible for the making of policy but delivery is generally via a range of local bodies including local government and local education authorities. Policy monitoring occurs through a variety of different regulatory bodies, some national and some local. In other countries, such as Estonia, the delivery of policies is decentralised and there are no single implementing bodies. This is representative of a general problem in that those who make policies in relation to children and children's rights tend not to have control over those who deliver the services. As a result the policy making institutions have few sanctions over those who deliver and they are limited to campaigns of information and persuasion rather than sanction. In addition, there can also be confusion, as in Estonia, over which institution has responsibility for a particular policy.

What is clear is that the delivery of policy occurs largely within a regional and local context, within a framework set by national or regional level governments. Despite the significant constitutional differences between federal and unitary systems, there are actually often only small differences in the process of delivery. In nearly all systems – whether federal or unitary – the delivery of policy occurs primarily at the local level. For instance in Ireland, a unitary state, the implementation of policies relevant to children is part of the local authorities' competence. The key policies delivered locally include the provision of appropriate childcare facilities in social housing developments under the Childcare Investment Programme and the delivery of the Social and Community Facilities Grant Scheme, which funds youth and recreation facilities in disadvantaged areas. Each local authority in Ireland has a County or City Development (CDB) which co-ordinates the delivery of public services for children and families at local level. Each authority also has a County or City Children's Committee and a multi-agency Children's Services Committees (CSCs) have been established in four areas with a view to progressing the implementation of strategic plans and policy documents already devised in relation to children's services in Ireland. The Irish case is a good example of how the bulk of policies and services on children's rights are delivered locally, by local bodies and structures.

Localisation has gone further in the Netherlands. The Netherlands has a completely decentralised system of policy delivery. Since the late 1980s, Dutch authorities have decentralised the delivery of youth policy to provincial and local levels, in accordance with the view that a decentralised delivery of policy in this area will offer

better (local) solutions to local issues, needs and demands than a centralised nationwide youth policy. Local authorities are thus responsible for developing general and preventive youth policy, and building parental support – within the framework set out by national authorities including the Ministry of Youth and Families – and provincial authorities are responsible for managing the Youth Care system. So, the Ministry of Youth and Families states that every Centre for Youth and Family (CJG) should offer basis preventive youth policy services, health care, developmental support and family coaching but the responsibility for setting up the CJGs and the coordination of care lie entirely with the municipalities. Municipalities also have the freedom to decide which other organisations and functions are included in their CJGs (e.g. health care, GP, police). As a result, in practice, the kind of services they deliver can vary considerably across the country. The extent to which local governments deliver child-friendly environments, also promised by government, also varies. The Ministry also promises that the eviction of families with children will be avoided as far as possible; but housing is regulated at the local level. Finally the extent to which children and young people have spaces to express their views and participate is primarily determined in practice at the local level.

In short, across most of the EU, services for children are fragmented. Even in Member States where there is a single organisation responsible for policy making, there can be considerable fragmentation in policy delivery. It has been relatively easy for most Member States to conceptualise a unified set of policies for children's and even to legislate to promote and protect their rights; but meeting the goals set out by the policies is complicated by the fact that delivery of services occurs through a complex myriad of organisations. For example, in Italy the childhood protection system spreads across central and local administrative bodies, judicial authorities, social and health services, public bodies and third sector organisations and the needs of vulnerable children and the multidimensional nature of their problems means that support services are delivered by a range of overlapping (and sometimes duplicating) bodies. So, for example, in Italy the child of drug addicts will be subject to a child protection service that includes the social service, health service, a cooperative for the employment of social disadvantaged groups and an association for support of mutual aid. In effect, it is witnessed, not uniformly but in a number of countries, the integration of policy making functions within a single department or set of institutions at the national state level (or sometimes the federal level) but the fragmentation of services at the delivery level. This is for four main reasons:

National states are rarely responsible directly for the delivery of services and in most political systems process of delivery occur at the point of need. What varies is the extent of discretion at local level, which can be high in the federal systems of Germany, Spain and Belgium and low in the unitary systems such as France and the UK.

Increasingly, states have reformed the delivery of public services and, in the process, have opted to focus on developing alternative mechanisms for delivery. They have therefore increased the range and the number of service providers (to include the private and the third sector). There is a growing view across a number of countries that services are best delivered through partnerships of public, private and third sector organisations (this is the case in for example Italy, Germany, UK and Sweden).

In addition, some Member States have shifted from a conception of universal welfare provision based on collective identities to rights based provision based on the individual. This has led to a view that services, of all kinds including those for children, should be personalised. As a result a complex repertoire of services delivery has been established that is particularly intensive in the provision of services in cases of severe problems. Children who face domestic violence, for example, often also have poor housing, education and health and, as a consequence, dealing with these problems involves a range of service providers. Clearly, the provisions of services in these cases is resource-intensive and one consequence of this is that it effectively means that what are seen as priority cases or areas can consume most attention whilst other cases or areas that are seen as more marginal may not receive sufficient attention. The increasingly cost of multi-agency interventions or support mechanisms and the identification of priority groups can thus become a double-edged sword which leaves the rights of children who fall outside this remit with less effective protection.

The inherent difficulties of mainstreaming children's rights and the fragmentation that this brings with it, as rights issues inevitably seep across policy areas. So, many Member States have tried to create single institutional points of contact or bodies responsible for rights delivery to try and ensure the delivery of unified or joined-up policy and move beyond welfare approaches to the promotion and protection of children's rights; in this sense the decision making process appears at first sight to have become less fragmented. But in the effort to mainstreaming rights, central state institutions have also brought into departments of government and institutions into the governance frame. The inevitable consequence is that more departments and agencies are involved in delivering services for children. In other words, the process of trying to unify policy making has further fragmented policy delivery.

The task, then, is how to coordinate delivery of children's rights in a fragmented delivery system. Germany provides a good example of an attempt to do so. In Germany the process of delivery is highly complex, not only due to the federal system but also because services for children are delivered by a range of private, public and third sector bodies (also the case in a number of countries such as England and Sweden). Nevertheless, in an example of good practice, Germany has taken important steps to resolving the issue of the fragmentation of policy delivery through the establishment of Youth Welfare Offices in every Lander and Community. The Youth Welfare Offices work on a partnership basis a board with representatives from the Community/Lander, private organisations and those involved in the delivery of services. As a consequence, at the level of delivery there is a mechanism for ensuring local services are tied together (a system with similar ideas has been piloted in parts of England through the concept of Total Place, where the delivery of services is organised according to the outcome required and not the functional divisions of service delivery).

Nevertheless, there are some important differences with regard to policy mechanisms between federal and unitary Member States that refer not to the process of delivery – which in general is a varying geometry of local delivery involving complex relationships of public, private and third sector partners – but to the fact that the

federal authorities provide an additional frame for policy.⁶² In other words, in federal systems multi-level governance means that policy can be made at national and regional level and local deliverers have to respond to both frames. So, in the case of Italy, there is a vertical division of responsibilities between the central, regional and local levels in terms of social service and policy provision: the central state has the task of supervision and coordination of regional priorities. Italian regions have the power to legislate and provide funds to local authorities for operational assistance with the service and policy delivery. The regions also contribute to the integrated planning of interventions and social services through the collection of data and they can provide, upon request by municipalities and local authorities concerned, the necessary support for the coordination of the formulation and implementation of social plans for the area.

A further form of complexity is added because issues of child protection and defence of children's rights are often part of a judicial process and criminal justice systems. In many countries – and indeed before the development of children's rights most countries – the protection of children was not seen as an issue of 'dealing with problems' or ensuring the delivery of positive children's rights but offering them legal protection. Hence child abuse or exploitation is an issue requiring legal protection and is governed by a range of laws that applied to crime in general such as violence, murder etc (although a rights-focus would add to this a range of other measures to protect victims and promote their rights in a positive sense). This means that the police and the judiciary are also centrally involved in the delivery of policy but awareness of the importance of developing understanding of children's rights and their consequences of policing has sometimes been slower than in other policy areas, such as the delivery of welfare. Nevertheless, there are signs that this is beginning to change in some countries. For example, in Greece the police have recently launched a three year programme of action to identify the abuse of children focusing around criminal activities such as drug protection, alcohol, economic exploitation and children involvement in criminal activities; and in the UK, a national police unit has been set up to consider the implication of trafficking for children and young people.

4.3. Evidence of Good Practice

What is perceived as good practice in relation to children's rights policy varies across EU Member States, not only nationally but also depending on different actors. Some countries have institutionalised effective mechanisms of policy development, while others have been more successful with regard to the policy and service delivery aspects. The policy sectors which are considered to have had greater positive impact on the protection of children's rights also vary significantly. For instance, in some countries, such as Ireland, evidence of good practice is to be found in the delivery of social policies, while in Greece, policies targeted at education are regarded nationally as examples of good practice with regard to children's rights.

Some EU Member States have established good policy development practices. These practices focus on how the policy is developed and the input of key actors, such as children or civil society organisation, in the processes underpinning policy-making. For instance, at the federal level in Germany, regular hearings are organized by the

⁶² Please see Table 14 in Annex 4 for more information for a detailed analysis of levels, institutions and monitoring mechanisms used in each Member State.

federal parliamentary Sub-Commission on Children (a sub-committee of the Committee on Family Affairs, Senior Citizens, Women and Youth) with regard to child-rights issues, in which representatives of civil society organisations and academia are invited to present their expert opinions. At the Länder level, within policy consultation mechanisms such as Youth Welfare Board, representatives of the administration and of civil society organisations discuss the situation and influence policy development and delivery. Furthermore, at the local level, so-called 'children's parliaments' facilitate children's participation with regard to consultations that have impact on their rights.

Examples of good practice include the development and actual impact of national policy mechanisms targeted at children. For instance, the National Strategy for Children's Rights in Ireland seems to have genuinely enhanced the inter-departmental structures for children's rights policy development and delivery by involving civil society representatives in the policy-making process and, above all, children themselves in different aspects of the policy. The Irish case provides examples of good practice with regard to inter-departmental and multi-agency working structures, adoption of a holistic view of the child, consultation with children and young people on key issues and the development of significant participation structures for young people and engagement with civil society.

With regard to policy delivery, the example of Germany and the creation of the Youth Welfare Office discussed above, along with the creation of children's parliaments and children's offices to provide opportunities to children for participation can be highlighted.

Other good practices include:

- The decision by the Greek Ministry of Justice that children of parents whose status is uncertain (and who may be eventually judged to be illegal immigrants) have the right to attend school; the Greek Ministry of Justice has also upheld the rights of Muslim children in the public schooling system.
- The rapid advances in child health programmes and the consolidation of a health service that acknowledges a central role for children's voice in Spain.
- The revision of the law pertaining to domestic violence in Cyprus in 2000, which effectively repealed the evidence law, meaning that children who have been, or who are thought to have been, abused can give evidence on video-tape – a system that has also been adopted in the UK.
- The creative ways in which the UNCRC has been embedded and adapted into national policy in Sweden, which means that, according to Save the Children, that the Swedish parliament 'owns' the UNCRC rather than courts. In turn, this allows a method of consensual 'soft regulation' as a way of promoting children's rights through, for example, dialogue and information exchange between the central government and local municipalities. This is a particularly interesting approach, given that rights are generally seen as being best promoted through the legal system.

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