

SAVE THE CHILDREN BRIEFING NOTE ON THE STOCKHOLM PROGRAMME

Executive Summary: Save the Children Recommendations for the Stockholm Programme

All EU measures must respect and promote children's rights as set out in the UN Convention on the Rights of the Child and recognized in the Charter of Fundamental Rights of the European Union.

Where an EU policy specifically addresses or has an impact on the situation of vulnerable children, the EU must ensure that its actions secure children's rights to protection, by placing child protection concerns at the very centre of policy development.

Enhancing EU action on child protection throughout the area of freedom, justice and security should be a political priority.

The EU Strategy on the Rights of the Child will serve as a key instrument to securing an integrated and balanced approach to children's rights in EU actions in both internal and external relations.

In its asylum, migration and trafficking policies, EU action should be anchored in the recognition that migrant children are to be treated as children first and foremost. They must benefit from their rights as children without discrimination.

The EU should reflect on horizontal measures to ensure that all unaccompanied and separated children receive protection and assistance within the EU. The EU should identify actions which will support Member States in finding secure, concrete and durable solutions that are in the best interests of each child.

The EU should develop a coherent and broad approach to fighting child sexual abuse, exploitation and child abuse images, including concrete prevention and protection measures.

The core objective and foundation of actions to fight child sexual abuse, exploitation and child abuse images should be to identify and protect children who are at risk or have been subjected to such crimes

The EU should be vigilant in ensuring that all actions with an external dimension focus on securing children's rights, including protection, rather than taking crime and migration control as their primary goals.

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Children's Rights and Child Protection in the Stockholm Programme

Save the Children recognises the important role of the European Union to contribute to the promotion, protection, respect and fulfilment of *children's rights* throughout its policies. In those areas where EU measures may have an impact on the situation of vulnerable children, the EU should specifically consider in what way EU measures secure the rights to *protection* of these children. We welcome that the recent Communication from the Commission to the European Parliament and the Council "An area of freedom, security and justice serving the citizen" has clearly identified the need to take child rights "systematically into account" and the "special attention" which should be paid to children "in particularly vulnerable situations".

In anticipation of the development of the next five year programme in the field of justice, freedom and security ("the Stockholm Programme"), Save the Children here sets out some recommendations for Member States and the European Parliament to achieve a Stockholm Programme that will have a real and positive effect on the lives of children affected by EU action.

We first look at: (1) the role of the EU in promoting and respecting children's rights across its policies and the implications this has for EU policy making generally. Against this backdrop, we address: (2) how children's rights should form part of the general orientations and priorities of the Stockholm Programme; (3) our recommendations on securing children's rights to protection under the EU asylum, migration, trafficking and sexual exploitation policies in the Stockholm Programme; and (4) how child protection must form a core element of the external dimension of freedom, security and justice. We conclude with a summary overview of our recommendations.

*The UN Convention on the Rights of the Child (UNCRC), adopted in 1989, is globally recognised as the key international instrument addressing **children's rights**. The UNCRC encompasses the spectrum of human rights: civil, political, economic, social and cultural.*

*Certain articles within the UNCRC specifically address children's right to protection from abuse, neglect, exploitation and violence. Key **child protection** articles in the UN Convention on the Rights of the Child are Articles 9 (family separation), 10 (family reunification across borders), 11 (illicit transfer of children), 16 (right to privacy, honour and reputation), 19 (protection from violence, injury, abuse, neglect, maltreatment or exploitation), 20 (alternative care), 21 (adoption), 22 (refugee children), 23 (disabled children), 24 (harmful practices), 25 (periodic review of alternative care), 32 (economic exploitation), 34 (sexual abuse and exploitation), 35 (abduction, sale or trafficking of children), 36 (other forms of exploitation), 37 (juvenile justice and protection from torture or other cruel, inhuman or degrading treatment or punishment), 38 (protection in armed conflict), 39 (recovery and reintegration) and 40 (children in conflict with the law).*

All 27 Member States of the EU have ratified the UNCRC. The European Court of Justice has affirmed that the European Union must take due account of the UN CRC when applying the general principles of Community law. The European Commission has recognised that it is "vital that children's rights be recognised as a self-standing set of concerns and not simply subsumed into wider efforts to mainstream human rights in general. This is appropriate since certain rights have an exclusive or particular application to children".¹

¹ Communication from the Commission "Towards an EU Strategy on the Rights of the Child" COM (2006) 367 final.

1. The Role of the EU in Promoting Child Rights and Ensuring Child Protection

The EU is founded on the principles of liberty, democracy, human rights, fundamental freedoms and the rule of law. The EU shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (which contains provisions that affect children) and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

In the sphere of development cooperation, the Community policy shall, inter alia, contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

As the European Union's competence has grown into areas of justice, security and freedom, there has been a growing recognition of the need to ensure that EU actions fully respect human rights. Successive amendments to the European Treaties, European Court of Justice Judgements and the adoption of the EU Charter of Fundamental Rights have brought this requirement to respect human rights to the fore of EU policymaking.

The European Court of Justice has expressly recognized the need to respect children's rights and requires EU law to take due account of the UN Convention on the Rights of the Child.² The EU Charter of Fundamental Rights clearly reaffirms the EU's commitment to human rights and, within that content, expressly to the rights of the child (Article 24). If ratified, the Lisbon Treaty will also provide that protecting the rights of children is an objective of the EU, both internally and in its relations with the wider world.

Whilst the obligation to respect children's rights does not confer competence on the EU to deal with children's rights and child protection specifically in and of themselves as a policy area, it is clear that the EU is obliged to respect and promote children's rights in all of the policy areas in which it has competence to act. Similarly, as a body founded on respect for human rights, the EU as an actor on the world stage has chosen to address and influence the way in which human rights are promoted and

respected in third countries through the host of external actions it takes, including when providing financial support to third countries.

The obligation to respect and promote children's rights has a number of clear implications for EU policy making.

- *It is essential always to determine how EU policy in a particular area may have an impact on children's rights.* In some areas, such as agriculture and transport, the impact of EU policies on child rights is not always obvious, but cannot be ignored. In other areas, including the area of justice, freedom and security, children's rights are clearly of direct and immediate relevance, in particular, as regards measures concerning asylum, immigration, trafficking and sexual exploitation.
- *It is critical to consider what processes will best ensure the development of EU measures which fully respect and promote child rights.* Promoting and respecting child rights is a key and necessary element of EU action. It is not a discretionary task of the EU, nor should it involve tokenistic efforts.
- *Insofar as its actions affect the situation of vulnerable children, the EU must always consider how its actions should secure the protection of children.* EU action cannot solely focus on other obligations which the EU must discharge in that policy area, for example, crime control or migration control.
- *It is important to identify when action concerning internal policies will be more effective at EU level than action at national level.* Where the EU and Member States share powers, the EU should adopt measures where the scale and effect of the action requires EU measures rather than measures at Member State level. Clearly, where a regional response to a situation affecting children brings added value, the EU should act.
- *The EU can and must consider a whole host of means to achieve children's rights.* This may include guidelines, practical measures of support and funding. They may also include legally binding instruments (regulations, directives and decisions). In relation to third countries, they can range from political declarations of support to funding regional or third country action.

² See e.g., Case C-540/03 *European Parliament v. Council of the European Union* [2006] ECR 5769; Case

2. Freedom, Security and Justice 2010-2015: “The Stockholm Programme”

We discuss below:

1. General orientations and priorities for the Stockholm Programme;
2. The EU Strategy on the Rights of the Child in the Stockholm Programme, and
3. Specific EU actions to secure children’s rights, including protection rights, in asylum, migration, trafficking and sexual exploitation policies.

2.1 General Orientations and Priorities

Respect for the individual and human dignity is a core value of the EU.

Fundamental rights under EU law are recognized to include the rights contained in the European Convention of Human Rights, an instrument which applies to “everyone within the jurisdiction” of a State. Consequently fundamental rights under EU law encompass the rights of both citizens and third country nationals.

Like its predecessor, the Hague Programme, the Stockholm Programme should identify and promote general orientations, including respect for the fundamental rights of all persons, which should inform the actions undertaken by the Programme.

Given that many EU actions in the area of freedom, security and justice have a direct and significant impact on children, *children’s rights, including a specific focus on children’s right to protection* should be expressly identified within these general orientations.

Indeed, the Stockholm Programme must aim to ensure that, children’s rights, including the right to protection, are taken by the EU as *the starting point* when considering what actions are necessary to address the situation of children in the area. Unless EU actions *directly affecting the rights of children* (such as asylum and migration measures) are designed with child rights in mind, there is a risk that the situation of children will be addressed in these EU policies only as an afterthought in measures of general application. Equally, unless EU actions *directly addressing offences against children* (including sexual exploitation and trafficking) firmly place child rights and child protection at the centre, there is

a risk that measures fail to fully achieve their very objective of protecting children.

For example, from a child protection perspective, it is clear that an irregular migrant child should receive the comprehensive assistance and protection to which a child has a right and that this must be the first concern of Member States. In contrast, treating an irregular migrant child first as an irregular migrant may mean that their situation is addressed primarily from a migration control perspective, with only some accommodation of their vulnerabilities.

As a further example, measures to combat child sexual abuse and exploitation that focus solely on the perpetrator may mean that the protection and assistance of an abused child – if the child is ever identified and located – in fact becomes secondary to identifying and apprehending the perpetrator. From a children’s rights perspective, it is clear that children who have been subjected to sexual abuse should be identified, removed from the abusive situation and receive protection and comprehensive assistance. Securing this core objective should clearly be an integrated dimension of any EU measures in the field.

Save the Children recommends that the general orientations of the Stockholm Programme recognise that:

All EU measures must respect and promote children’s rights as set out in the UN Convention on the Rights of the Child and recognized in the Charter of Fundamental Rights of the European Union.

Where an EU policy specifically addresses or has an impact on the situation of vulnerable children, the EU must ensure that its actions secure children’s rights to protection, by placing child protection concerns at the very centre of policy development.

Save the Children also recommends recognising as a **political priority** the need for EU action on child protection to be enhanced throughout the area of freedom, justice and security, building on the recent increase in EU initiatives in the field, such as the development of the EU Strategy on the Rights of the Child, the proposed revisions on the framework decisions relating to trafficking and sexual abuse and exploitation of children, regional work in the field of child abductions and protection of children in the internet.

2.2 EU Strategy on the Rights of the Child

In 2006, the European Commission committed to drawing up “a comprehensive EU strategy to effectively promote and safeguard the rights of the child in the European Union's internal and external policies and to support Member States' efforts in this field” by 2009.³

As an initiative which emanates from the area of justice, freedom and security, the EU Strategy on the Rights of the Child itself should feature as a prominent element in the Stockholm Programme. Indeed, the Commission's Communication proposes that “an ambitious EU strategy on the rights of the child must be developed.”

Save the Children recommends that the Stockholm Programme recognises that:

The EU Strategy on the Rights of the Child will serve as a key instrument to securing an integrated and balanced approach to children's rights in EU actions in both internal and external relations. The Strategy should be rooted in the recognition of the UN CRC and its key principles. It should establish simple and effective mechanisms to help the implementing actors (1) to determine whether and how a particular EU policy affects children's rights and (2) to establish an effective process whereby issues and actions are coherently identified and prioritised. It must be equipped with adequate financial and human resources for its implementation.

2.3 EU Actions to Secure Child Rights, including Protection Rights, in Asylum, Migration, Trafficking and Sexual Exploitation Policies

The Commission Communication recognises that “EU action for the protection of the vulnerable, women victims of violence and dependent persons has to be strengthened.”

Save the Children defines child protection as measures and structures to prevent and respond to abuse, neglect, exploitation and violence affecting children. As such we see child protection as a core element of EU action in the field of freedom, security and justice.

Here we examine two specific child protection issues addressed in Save the Children Brussels office work in the field of justice, freedom and security: the situation of children concerned by EU asylum, migration, trafficking and; child sexual abuse and exploitation.

Asylum, Migration and Trafficking

EU policy is addressing some of the key issues concerning migrant children in Europe, whether they be asylum seekers, trafficked children or economic migrants, and whether they be travelling in families or unaccompanied or separated from their families. These issues include: What access to education and health services for migrant children must be provided in the EU? Is detention of these children lawful? What mechanisms are necessary to identify and address situations of trafficking? How should proper access to EU asylum procedures be provided where a child or its family has an asylum claim? What procedural guarantees are required when deciding on procedures of repatriation? In what ways should family reunification be achieved?

Save the Children recommends that the EU take an integrated approach to the situation of children across all its policies concerning asylum, immigration and combating irregular migration, recognizing that:

- Regardless of their immigration status, EU measures must treat migrant children as children first and foremost, and take account of the fact that they benefit from all of their rights under the UN CRC, including, for example, access to health and education services;
- A horizontal approach to the situation of all unaccompanied and separated children of third country origin may be merited to ensure that their common rights to protection and assistance, which often arise before the appropriate protection route for such children is known, are addressed in a coherent and meaningful way.

We welcome the Commission's recognition that “priority will be given to the needs of international protection and reception of unaccompanied minors”. The Commission more generally notes that “Unaccompanied minors entering the EU territory illegally present another challenge that needs to be studied in depth. This will be followed by an action plan to underpin and supplement the relevant legislative and financial instruments and strengthen forms of cooperation with the countries of origin, including cooperation to facilitate minors' return to their countries of origin.”

Indeed, regional solutions across the EU to the situation of migrant children (in families or separated from their families) are often more effective than national measures, given the frequently transnational characteristics of the

³ COM(2006) 367 final, 04.07.06, SEC(2006) 888, SEC(2006) 889.

situation of these children. Potential regional solutions can take a number of forms, including, for example, boosting the level of protection in legislation under revision as well as monitoring implementation at national level of the Returns Directive. We share the Commission's view that the EU should also gather more information, including better statistics, on the situation of unaccompanied and separated children within the EU. We believe the EU could immediately begin playing an effective role in the exchange of good practices regarding (a) their reception, protection and family tracing and (b) the processes for finding secure, concrete and durable solutions for their situation. Such good practices should recognise best interest of the child as a core element. Ultimately, the EU should consider the need for horizontal measures concerning the reception and assistance provided to all unaccompanied and separated children within the EU. More generally, the EU could put in place practical measures of cooperation for ensuring effective child protection systems for migrant children both within the EU and in countries of origin (in cases where return is in the best interests of the child).

Save the Children recommends that the Stockholm Programme recognises that:

EU action should be anchored in the recognition that migrant children are to be treated as children first and foremost. They must benefit from their rights as children without discrimination.

The EU should reflect on horizontal measures to ensure that all unaccompanied and separated children receive protection and assistance within the EU. The EU should identify actions which will support Member States in finding secure, concrete and durable solutions that are in the best interests of each child.

Child Sexual Abuse and Exploitation and Child Abuse images ("child pornography")

The EU has addressed some key aspects of child sexual exploitation and child abuse images ("child pornography") through specific measures including attempts to harmonize national legislation and financing action with the aim of preventing and combating violence against children.

We believe that the EU can bring added value to tackling crimes of child sexual abuse and exploitation and ensure efficient outcomes for children who are at risk or who have been

subjected to such crimes by adopting a comprehensive response, covering prevention, prosecution of offenders and victim identification and protection.

The area of freedom, security and justice potentially offers a wide range of EU measures that could substantially contribute to fulfilling children's right to protection from sexual abuse and exploitation. Save the Children recommends that the EU develops a coherent and broad approach to fighting child sexual abuse, exploitation and child abuse images, recognizing children's right to protection as the core objective, and identification and protection of children as the foundation of all measures. We believe that such an approach would bring the EU closer to the provisions of the UNCRC, its Optional Protocol 'on the sale of children, child prostitution and child pornography' (2000), and reflect and build on the progress made by the Council of Europe (CoE) Convention on Protecting Children against Sexual Abuse and Sexual Exploitation (2007).

Save the Children welcomes the Commission's recognition of the need for coordinated EU action to prevent and fight child sexual abuse and exploitation. One of the difficulties in preventing and fighting child sexual abuse, exploitation and child abuse images is indeed the cross-border dimension of these crimes, which cannot be effectively addressed by Member States alone.

We share the Commission's view that the EU must promote exchange of information to minimise the risks of re-offending, and coordinate efforts to track and block websites which contain child abuse images, and believe that the EU also can play an important role in ensuring victim identification through improved regional inter-agency collaboration and a higher level of protection of victims in EU legislation under revision.

Save the Children recommends that the Stockholm Programme recognises that:

The EU should develop a coherent and broad approach to fighting child sexual abuse, exploitation and child abuse images, including concrete prevention and protection measures.

Identifying and protecting children who are at risk or have been subjected to child sexual abuse and exploitation, should be the core objective of all action to fight child sexual abuse, exploitation and child abuse images and a foundation for all measures.

3. Children's Rights, including Children's Right to Protection, Must Form a Core Element of the External Dimension of Freedom, Security and Justice.

The Commission Communication notes that the "area of freedom, security and justice cannot be built without a strong external dimension, which is consistent with the Union's general external policy and helps to promote our values in compliance with international human rights obligations. None of the objectives being pursued here can be achieved without effective use of the appropriate tools of external policy."

Save the Children consistently urges the EU to ensure that children's rights, and in particular the right to protection, forms a core element of its external policy. We believe that the EU should take a holistic perspective, starting with addressing root causes for migration and taking into account not only the situation of children in migration but also the situation of children left behind by migrating parents.

Save the Children recommends that:

The EU should be vigilant in ensuring that all actions with an external dimension focus on securing children's rights, including protection, rather than taking crime and migration control as their primary goals.

SUMMARY OF RECOMMENDATIONS

All EU measures must respect and promote children's rights as set out in the UN Convention on the Rights of the Child and recognized in the Charter of Fundamental Rights of the European Union.

Where an EU policy specifically addresses or has an impact on the situation of vulnerable children, the EU must ensure that its actions secure children's rights to protection, by placing child protection concerns at the very centre of policy development.

Enhancing EU action on child protection throughout the area of freedom, justice and security should be a political priority.

The EU Strategy on the Rights of the Child will serve as a key instrument to securing an integrated and balanced approach to children's rights in EU actions in both internal and external relations.

In its asylum, migration and trafficking policies, EU action should be anchored in the recognition that migrant children are to be treated as children first and foremost. They must benefit from their rights as children without discrimination.

The EU should reflect on horizontal measures to ensure that all unaccompanied and separated children receive protection and assistance within the EU. The EU should identify actions which will support Member States in finding secure, concrete and durable solutions that are in the best interests of each child.

The EU should develop a coherent and broad approach to fighting child sexual abuse, exploitation and child abuse images, including concrete prevention and protection measures.

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