

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

19 August 2010

INTRODUCTION

Save the Children welcomed the European Commission Communication **Towards an EU Strategy on the Rights of the Child (2006)** as an important initial step towards a comprehensive and coherent EU strategy to promote, protect and work towards the fulfilment of children's rights.¹ Since its adoption, the Communication has indeed contributed to more focus on children's rights as well as some concrete action to promote and protect children's rights.

The Communication served as a significant step in the process embarked on by the EU to ensure that child rights are properly considered and addressed in EU policies and actions. It provided recognition of the fundamental principles concerned and their relevance to EU activities in general. It described ongoing EU activities at the time and acknowledged the need for improving processes to ensure full consideration of child rights, when determining EU action.

The Communication provided welcome impetus to dedicating resources and expanding Commission expertise on the issue. It prompted certain process improvements, including impact assessments from a child right perspective for many key EU instruments. It ensured general visibility of the EU's interest in the situation and rights of children across its activities.

However, although the Communication aspired to the development of an overall EU Strategy on Children, the Communication has regretfully not delivered the strategic framework needed to determine and resource all the "appropriate legislative, administrative and other measures for the implementation" of the UNCRC, that the EU has the competence and means to take. Only with that framework in place the EU will succeed in fully capitalizing on its role as a donor, promoter of human rights, legislator and policy-maker. Without a framework, despite increasing visibility of child rights in EU policy, the EU will risk dealing with children in a fragmented way, rather than properly considering the situation and rights of children whenever it is initiating or designing policy.

¹ The Communication commits the Commission 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. COM(2006) 367 final, 04.07.06, SEC(2006) 888, SEC(2006) 889.

TOWARDS ADOPTION OF COMMUNICATION ON THE RIGHTS OF THE CHILD (2011-2014)

Save the Children strongly recommends that the forthcoming Communication will contribute towards a holistic and consistent approach by clearly establishing the strategic direction, guiding principles and processes which will support each policy area in:

- Determining how EU policy in each 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 abuse and exploitation.
- Defining which 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 the EU's actions affect the situation of vulnerable children, considering 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.
- Identifying when EU action 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.
- Considering 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.
- Establishing clear responsibilities and structures to ensure implementation and monitor progress. This may include giving the children's rights unit a mandate to promote and oversee progress; establishing focal points for children's rights in each DG; to strengthen inter-service coordination and to adequately resource unit(s) on children's rights.
- Supporting the development of long-term and sustainable structures and mechanisms for child participation at local, national and regional levels that can feed into EU policy-making processes and action which impact on children's rights. Such structures must be clearly defined, ensure meaningful,

inclusive participation and fair representation of participants from within and where relevant from outside the EU.

Save the Children believes that the Commissioner responsible for children's rights can play an important role in supporting this process and inspire all DGs to take seriously their part of the EU's role in promoting, protecting and fulfilling children's rights.

The Commissioner should be supported by the children's rights unit, which would facilitate implementation of the strategic direction and general principles across policy areas. This would include elements such as:

1. Responsibility for general understanding and promotion of child rights and child protection systems;
2. Systematic contact with key stakeholders and actors on the situation of children within Europe, focusing on issues of transnational interest or issues of common interest to Member States;
3. Awareness raising on the situation of children within Europe;
4. Establishing internal processes within the Commission to stimulate policy where necessary and to ensure coherent policy development;
5. Engaging in impact assessments on EC policies;
6. Establishing appropriate inter-institutional processes between the Commission, the Council, the European Parliament and all other EU bodies and agencies;
7. Fostering OMC measures on key issues, including training initiatives and guidelines on horizontal issues;
8. Fostering the creation of child friendly information and child participation;
9. Reporting on the situation and ensuring transparency with all key actors;
10. Supplying vision and leadership through EU policy.

LEGAL FRAMEWORK AND POLICY COHERENCE FOR THE EU STRATEGY ON THE RIGHTS OF THE CHILD

Save the Children has welcomed the growing recognition in recent years that the EU must respect and promote human rights, including children's rights. The European Court of Justice has expressly recognized the need to respect children's rights and requires EU law to take due account of the UN Convention on the Rights of the Child. The entry into force of the Lisbon Treaty on the 1st of December 2009 explicitly provides for the protection of children rights as an objective of the EU, both internally and in its relations with the wider world. Moreover, the EU Charter of Fundamental Rights, binding under the Lisbon Treaty, clearly reaffirms the EU's commitment to the rights of the child (Article 24).

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.

Save the Children welcomes the many important children's rights initiatives that have been taken in recent years and recognise the important process that the EU has embarked on, including to bring EU policy and legislation in conformity with the UNCRC, to promote children's rights with partners and international fora, and ensure financial support for research, data collection and programme interventions in Europe and in third countries. We have aimed to contribute to the work of EU actors through a wide range of channels. We recommend that the EU now equip itself with the strategic framework needed to build and expand on its existing activities and ensure the following:

- Universal ratification of the UNCRC and its two Optional Protocols (OPs), as well as other key international treaties pertaining to children's rights, should be a priority to the EU. The EU should encourage this as widely as possible, as well as the withdrawal of reservations of States Parties to the UNCRC, to ensure the full and unqualified respect for children's rights everywhere. The EU should further encourage the implementation of the above treaties in the national contexts, both within the EU and externally.
- Legislative Review – the EU has embarked on a process to ensure that all its legislation is compatible with the UNCRC. A full-scale review of all legislation with a direct or indirect impact on children should be envisaged in all relevant policy areas. Any initiatives in this domain should complement work already undertaken in the context of the COM (2006) and in the future all legislation or amendments to legislation should be verified against the UNCRC using a rights-based approach.
- Development of EU action plans and assistance to partners in drawing up national action plans to promote and protect the rights of the child are an important means to work towards fulfilling children's rights. The Concluding Observations of the UN Committee on the Rights of the Child, and NGO Alternative Reports should systematically be taken into account.

Save the Children also strongly recommends that each DG, based on a strategic framework and guiding principles develops Action Plans with concrete action in conformity with their respective competence and resources and in respect of subsidiarity and proportionality. Mainstreaming of children's rights throughout EU policy and programming will be crucial to ensure that all action and measures protect, promote and respect the UNCRC. EU institutions should therefore

continue and strengthen the ongoing process and ensure that all mainstreaming efforts are complementary and good practices shared.

Consideration could be given to the role of other agencies, for example, the Fundamental Rights Agency (“FRA”).

- Policy coherence, coordination and complementarity are essential to ensure the maximum impact for children and are closely linked to the issue of mainstreaming. In order to enhance policy coherence the EU should apply a “do no harm” philosophy to ensure that EU policy in one area does not contradict or undermine EU work in furthering children’s rights in another area. Coordination between Commission DGs, between the various EU institutions, and between ministries in Member State governments, will be critical to ensure effective implementation. The inter-service group on children’s rights can play an important role in ensuring dialogue and exchange of good practice and information. It may be necessary to set up coordinating mechanisms to ensure links with missions and delegations in third countries as well as structures within the EU. Coordination and complementarity between the goals and implementation of the EU’s human rights tools and instruments and its programming and funding mechanisms must be guaranteed.
- Membership negotiations - Respect of human rights and fundamental freedoms (Article 6 TEU) is one of the conditions for any State wishing to join the EU. As children’s rights form an integral part of Article 6 TEU, the Union is obliged to pay attention to the respect of child rights in any third countries that are considered for EU membership. Specific references to child rights in membership negotiations underline the Union’s commitment to the UNCRC, and may also contribute to improving the situation of children in candidate countries.
- International cooperation – one important aspect of Article 4 of the UN CRC is the recourse to international cooperation should a State party not have sufficient own resources to implement the economic, social and cultural rights in the Convention. In this context the EU should, for example, increase its work on addressing the root causes of poverty, and putting in place poverty reduction measures both internally and externally. This will be a crucial element in the Stabilisation and Association Agreement, as well as the European Neighbourhood Policy Action Plans. The EU should continue to cooperate with partners in international fora such as the UN, the Council of Europe (and in particular with its programme ‘Building a Europe for and with Children’) and with institutions such as the African Union. The EU should remain committed to achieving the Millennium Development Goals.

The need for such policy coherence and coordination is highlighted by the interrelatedness of children's rights and their violations. In a self-perpetuating cycle, one sees that children who are most at risk of extreme poverty and hunger are also the most vulnerable to experiencing violence, exploitation, abuse and discrimination. Similarly, while child labour and trafficking are a cause and outcome of extreme poverty, these in turn damage a child's health, threaten their education and lead to further exploitation and abuse.

Furthermore, an increasing number of risks to children transcend national boundaries, making cross-border cooperation essential, be that with other Member States or with non-EU countries.

While respecting the interrelatedness of rights and their indivisibility, the EU nonetheless recognizes that it will need to put in place a mechanism by which it determines an order of action under each policy area. Such prioritisation should be established in line with agreed criteria, and should include the severity and frequency of violations. It should be guided by UNCRC Country reports and Concluding Observations, the best interests of the child and take into account the views of children. These criteria should be drawn up as a matter of urgency.

THE NEED FOR CONTINUOUS MONITORING, IMPACT ASSESSMENT AND REVISION

Regular child impact assessments of EU policies and programming are essential to be able to ensure that the EU stays on track in doing its utmost to ensure its policies contribute to promoting and protecting the rights of the child. Such assessments will also serve to remind the EU of its goals in other areas such as policy coherence and coordination above.

Child rights impact assessments on laws, policies, budgetary allocations and programming will occur during their elaboration in order to determine whether they could have any negative repercussions for children's rights. This will also determine whether the proposed action is indeed the best way to achieve the fulfilment of the right(s) in question.

Child rights impact evaluations will ascertain the effects of laws, policies and budgetary allocations on the fulfilment of children's rights. They will focus on the lasting benefits and significant changes that a programme or policy may have brought about it in the promotion, protection and fulfilment of children's rights – both positive and negative, intended or not.

Data collection and the development of indicators specific to children is an essential part of implementation. Within the EU, disaggregated data is crucial to enable identification of areas of discrimination against certain children or groups of children. Work has been undertaken by the Fundamental Rights Agency, similarly many organisations have conducted work on the elaboration of indicators, including the UNCRC. Further initiatives should build on these.

NEEDED RESOURCES AND CAPACITIES

It is essential that the EU dedicate sufficient financial and human resources to the implementation of the EU Child Rights Strategy. Furthermore, the EU must be able to calculate the proportion of its budget that is dedicated directly or indirectly to children both internally and externally. To this end, it would be valuable to develop a dedicated budget line for children so that monies spent on and for children can be tracked in a transparent manner.

EU action inevitably has a substantial impact on the lives of children in Europe and elsewhere in the world - children may be negatively affected by EU action, but they may also benefit from consistent consideration of children's rights, both through mainstreaming and by specific targeted action. The EU should continue its work on good governance and transparent budget procedures in its relations with third countries, and encourage them to commit more of their budget to children and with regard to economic, social and cultural rights, to the maximum extent of their available resources. Child budgeting should be considered as a priority. The following should be given a high priority:

- The EU must dedicate sufficient human resources to ensure that its obligations and commitments towards children's rights can be implemented effectively. The issue of human resources clearly has an impact on such aspects as coordination, for example.
- Training and capacity-building on children's rights is of paramount importance in the implementation process, and particularly for the successful mainstreaming of children's rights. Training should be systematic and ongoing for all those implicated in implementing the EU Strategy and in mainstreaming children's rights. Save the Children has successfully provided training on children's rights and child protection for staff in the external affairs domain, however, such training must be made mandatory and provided systematically across all relevant policy areas in order to have real impact. This effort should therefore both be deepened and widened to cover everyone working on children's rights.
- Involvement of civil society, including children, in policy development and implementation – the EU should work with civil society organisations in the implementation of its children's rights work, to benefit from their support and expertise. Children should be regularly consulted, not just because it is their right, but also because they can very often provide information that does not show up in statistics. They are also able to inform policy-makers about issues that concern them most and whether their rights more generally are being fulfilled.
- Monitoring and reporting are crucial in order to ascertain the EU's contribution to the fulfillment of children's rights according to the UNCRC.

A mechanism should be established to follow the implementation of the EU's work on children's rights. This should take account of both the human and financial resources as well as the results of the child impact evaluations.

Monitoring and reporting are also crucial for the purpose of accountability. Mandates for responsibility for the implementation of the EU's children's rights obligations and commitments should therefore be made very clear. Civil society should be actively supported in its role to hold the EU to account for the promotion and protection of the rights of the child. Therefore Save the Children recommends that

- Independent child rights institutions, such as dedicated ombudspersons or commissioners, are important monitoring and advisory mechanisms. The EU should support their work, and their establishment, as far as it can.
- Awareness-raising with regards to the UNCRC and its provisions targets adults and children. The EU should continue the process of exploring the best ways to improve access to information, such as for example investing in local structures such as EU information centres. The EU should undertake to increase and improve the information available and operationalise its child-friendly website. In order for children to voice their opinion the EU should continue its important work to that materials on EU processes and policy-making are available in child-friendly form in at least all EU languages and other major languages such as Arabic and, where programming work is concerned, also in local languages. For disabled children, such as blind children, information should also be developed in Braille.