The Rights of Children within the European Union

Introduction
Concerning the rights of children in the European Union Euronet, the European Children’s Network, believes that the UN Convention on the Rights of the Child (UNCRC) should be implemented fully by the European Union and taken into account when EU legislation affects children’s rights. At the moment children’s rights are only taken into account in EU policies and legislation in an ad hoc manner and whereas the Member States are bound by the UN Convention on the Rights of the Child, the EU is under no such obligation. In this respect, there is a need for a legal base for children in the EU Treaty, since this is the only way in which children’s rights and interests can be ensured within the European Union.

In this respect it would also be essential to have an EU representative for children’s rights that has extended powers in terms of monitoring, evaluating and suggesting policies and programmes that affect children and their rights.

This paper goes into the different areas of children’s rights that need improvement in the EU. More information on the situation of children’s rights in specific EU member states can be found in the NGO reports submitted to the UN Committee on the Rights of the Child.

Children’s rights in the Draft Constitution for Europe
Euronet therefore welcomes the inclusion of the protection of children’s rights in the internal and external objectives (Article 3) of the draft Constitution for Europe. Euronet urges the Intergovernmental Conference (IGC) currently debating the draft Constitution for Europe to ensure that children’s rights remain in both the internal and external objectives of the EU. At the same time Euronet believes that other articles included in the draft Constitution and referring directly to specific rights of children need to secured. These Articles are:

- Article 24 on Children’s Rights in the Charter of Fundamental Rights, which is included in the draft Constitution as Part II and which will become binding. Euronet believes that the Charter of Fundamental Rights should form an integral and binding part of the Constitution of Europe.
- Article 168 of Part III, concerning immigration policy and family reunion, but also “combating of trafficking in persons, in particular women and children”. Article 35 of the UN Convention on the Rights of the Child obliges States to make every effort to prevent the sale, trafficking and abduction of children.
- Article 172 of Part III, which covers judicial co-operation in criminal matters and which allows the EU to establish minimum rules by European framework laws in different areas of crime with cross-border dimensions including “sexual exploitation of women and children”. Article 19 of the UN Convention on the Rights of the Child is calling on States to adopt protective measures, including legislative measures to protect children from all forms of injury, abuse, neglect, maltreatment or exploitation including sexual exploitation.
Specific areas of children’s rights that need to be improved within the European Union:

1. **The right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27 of the UN CRC).** In the EU still a high percentage of children are living in low income households and face poverty and social exclusion. Research has indicated that children are more likely to live in low income households for a longer time compared to the average risk. For example, research in the UK has indicated that severe forms of child poverty are not reduced and that children remain in poverty for a longer period of time. The study also indicated that children living in severe poverty are more likely to experience social exclusion, such as to be engaged in social activities, exclusion from local services and exclusion during education.  

2. Moreover, some children are more vulnerable, for example, those in particular household types, such as lone parent families. This has a tremendous impact on children: poverty and social exclusion deny children their human rights and because their capacities are still developing there is also concern about the longer-term impact. Examples of this impact are that these children suffer more health problems, benefit less from social and cultural participation and obtain worse school results. To be able to combat children’s poverty and social exclusion effectively it is necessary that the National Action Plans on social exclusion take a child perspective throughout and to start to include children who are poor or excluded themselves to be able to put forward their ideas about tackling it and to include them in decision processes that do affect them.

2. **Children’s right to participation on a EU level and in the EU Member States need to be set up through appropriate mechanisms (based on Article 12 UN CRC).** Positive attempts to involve children as active citizens in policy and planning have already been made at national level and local level. However, this is often done in a formal way, but it should become more an attitude and habit to have children’s participation and also include specific groups of (vulnerable) children. The EU and its member states should also involve children as fully as possible in decision-making processes.

3. **Prevent abuse of and violence against children (Article 19 UN CRC).** Abuse of children in its different forms (sexual, physical, mental abuse and neglect) is still occurring in the EU. The long term objective for Member States should be the banning of physical punishment of children across the EU. Alongside appropriate legal reform, the emphasis should be on developing education strategies to strengthen positive non-violent approaches of discipline. Children should also have the opportunity in their national member states to contact help lines or other bodies specialised in dealing with child abuse. Child victims of abuse should be effectively protected and supported during judicial proceedings by strengthening where necessary the legal, judicial and inquiry instruments.

4. **Combat sexual exploitation and prostitution of children (Article 19 UN CRC).** In this respect the outcomes of the Yokohama World Congress on child sexual exploitation and the Budapest preparatory conference of Europe and the Central Asia Region for this Congress are positive steps towards the protection of children from commercial sexual exploitation. The Budapest Conference expressed a clear

---


2 ‘Opgroeien in de Lage Landen: Kinderrechten in Nederland’ the Dutch Children’s Rights Coalition, May 2002
willingness by Europe to adopt all necessary and appropriate measures to prevent such violations of human rights. We are calling on the European Union and its Member States to implement the outcomes of both the Budapest and the Yokohama Conference.

It is recommended that:

- The Council of the EU should adopt the Framework Decision on combating the sexual exploitation of children and child pornography and the Member States should fully implement the Council Framework Decision on combating trafficking in human beings. It is also recommended that a European framework be developed that provides minimum standards for the rights of the child in criminal proceedings.
- Member States should fully implement the Yokohama Commitments, and in so doing, recognise the problem of sexual exploitation and abuse of under 18s in its totality. In this respect all EU Member States and candidate countries should finalise the drafting of National Action Plans and implement effective monitoring of their implementation. We also call for effective monitoring to MS implementation of its policies relating to the sexual exploitation of children.

More information on this issue is included in Annex I, which is a paper of Euronet's member organisation the Save the Children Alliance.

5. Protect children’s rights in consumers regulations and directives, including regulations on advertising, marketing and media. Two articles of the UN Convention on the Rights are here applicable, Article 17 and 3. Article 17 sets out the role of the media in disseminating information to children that is consistent with their moral well-being. And Article 3 states that the “best interests” of the child shall be a primary consideration. EU legislation and policies in the field of media and consumer affairs are not taking children’s “best interests” into account in a consistent way. Often commercial considerations prevail in these areas. We therefore recommend that children’s “best interests” and rights are taken into account when legislating in these areas.

6. Recognise the rights of separated children in the development of the common asylum and immigration policy. The number of children arriving in Europe, separated from their parents or normal/customary caregiver, has increased in recent years. We welcome the specific reference to this group of children in draft Directives on asylum and immigration policy in the EU. Specifically with regard to the development of these instruments we believe the following points need to be borne in mind:

- That the best interests of separated children should inform all of the new instruments and their implementation.
- That separated children need the support of a guardian or advisor, and of a legal representative.
- That separated children should have the right to family reunification, and that effective systems for collaboration between member states should be established in order to effect reunification of families divided between different member states.
- That systems should be developed in order to recognise the rights of children who do not receive protection through the asylum system
- That no child should be returned to their country of origin without adequate measures being taken to ensure the child’s protection and care.
- That children, whatever their status is, staying in European countries should be able to use the same facilities as national children in that country and no discrimination is allowed here.
7. **Children’s Ombudsmen to promote and safeguard the rights of the child on national levels in the EU and an EU representative for Children’s Rights.**

In several Member States children’s ombudsmen/women or commissioners have been appointed, which cooperate on a European level in a network called ENOC. We recommend the appointment of national children’s ombudsmen or commissioners in Member States that do not yet have them.

Moreover, it is recommended to create a high-level representative for children’s rights in the EU. The European Parliament has called for the creation of a European Commissioner in a written Declaration in March 1999 and for the creation of a high-level representative for children’s rights in a Resolution of 3 July 2003 (B5-0320/2003). Considering the inclusion of children’s rights in the internal and external objectives of the EU in the draft Constitution of the EU (Article 3) it would be appropriate to have a person to co-ordinate the policies and legislations of the EU which affect children’s rights and to ensure that their rights are properly implemented at a European level.

The EU Representative for Children’s Rights should not have the competencies of an ombudsperson. There are a number of reasons for this. First of all, we believe that the national ombudspersons, that come together in the European Network of Ombudspersons for Children (ENOC), are better equipped to play such a role and are far more accessible for children. Secondly, our experience with working with children’s rights issues and the European Union, prompts us to suggest a representative that has extended powers in terms of monitoring, evaluating and suggesting policies and programmes that affect children and their rights. This would not only facilitate a successful implementation of the EU’s commitments to children’s rights, but would ensure child rights proof policies and programs and better inter-service coordination.

8. **Ensure the access of all children to primary and secondary education. (Articles 28 and 29 of the UN CRC).** The European Commission should encourage the Member States to take further steps to tackle truancy, absenteeism, and school dropout through the design and implementation of comprehensive early intervention and support programmes. In this respect also children in hospitals have the right to education and play. An example from Euronet’s member organisation EACH (European Association of Children in Hospital) shows that in order to cut costs, the jobs of hospitals pedagogues are continually reduced in a local children’s university hospital. Two teachers share a 85% job, 5 pre-school teachers share 3.6 jobs and this for about 6’000 children admitted to hospital per year (not counting the day care and ambulant patients).

9. **Children and Work in Europe.** Within Europe there are still children that work. Some of this work is not harmful to children and may even be beneficial to children, much of the work that children do is harmful. Disturbingly, recent evidence suggests that the number of children involved in very harmful forms of work, such as trafficking and sexual exploitation, is increasing. Urgent action must be taken to address children’s work.

There are a number of avenues through which the EU and its member states can and should influence children’s work. In addition to policies and aid allocations which specifically address child work, other related activities in areas such as poverty alleviation, education and corporate social responsibility will also have an effect on children’s work.
10 **Enlargement**
Children’s rights need to placed at the centre of the accession process, in line with the non-economic aspects of the Copenhagen Criteria for accession. In addition, to the issues mentioned above, in the new accession states there are also other issues that are not in the best interests of the child (Article 3 of the UNCRC), such as the conditions of children living in institutions (residential care, children’s homes and disabled children in institutions), but also children of minority groups, such as the Roma experience discrimination and social exclusion.

**Contact Details:**
Mieke Schuurman  
Co-ordinator Euronet  
Euronet, the European Children’s Network  
39 Rue Montoyer  
B-1000 Brussels  
Tel :+31 187 481396 or +32 2 512 4500  
Fax :+31 187 487390 or +32 2 5134903  
Email : mieke.schuurman@tiscali.nl  
Website : [www.europeanchildrensnetwork.org](http://www.europeanchildrensnetwork.org)
ANNEX I

Freeing Children from Sexual Exploitation
— what progress in Europe since Yokohama?

Save the Children is an international children’s rights organisation, working to protect and promote children’s rights across the world, with members in 29 countries and operational programmes in more than 100. Save the Children has experience of working on sexual exploitation of children under the EU Daphne programme and in our work worldwide, and has published several reports on the issue.

Save the Children and the Yokohama Congress

The 2nd World Congress against Commercial Sexual Exploitation of Children held in Yokohama in December 2001 reaffirmed and added to the global commitments, first made in Stockholm in 1996, to step up the fight against the sexual exploitation of children. Save the Children (SC) actively participated in both the regional consultative meeting of Europe and Central Asia in Budapest, and the Congress in Yokohama. Based on our extensive experience of working with children affected by these issues Save the Children made clear recommendations to the Congress on key forms of action required.

Although the Stockholm and Yokohama World Congresses specifically addressed the commercial sexual exploitation of children, Save the Children’s recommendations have addressed all forms of sexual exploitation of children. This is in recognition of the very strong linkages between the different forms of abuse, which include child sexual abuse (organised abuse, abuse in institutions and abuse within the family context), child prostitution, child sex tourism, child pornography on the Internet and child trafficking.

Nearly two years on from Yokohama Save the Children’s concerns are still valid and actions following up on our recommendations still urgently needed. Save the Children therefore vigorously re-states their importance in guiding governments in their fight against the sexual exploitation of children.

Commitments made at Yokohama

The Yokohama Congress recognised the delays worldwide in the adoption of the measures needed to implement the Stockholm Agenda for Action and developed renewed Global Commitments. These included: early ratification of relevant international instruments, addressing root causes, ensuring adequate resource allocation to fighting this exploitation and taking measures to fight the misuse of technologies for exploitation. The Yokohama Congress highlighted the need for establishing improved monitoring mechanisms to assess progress in combating the sexual exploitation of children and indeed this was seen as a priority for most regions and governments. It is clear that these mechanisms have not been put in place in some member states of the EU within their own National Action Plans.

3 Refer to enclosed Position Paper ‘From Acknowledgement to Action: a call for worldwide long-term commitments to free children from sexual exploitation and abuse’, 2001
In addition participants from Europe and Central Asia at a preparatory meeting in Budapest, recognised that the sexual exploitation of children was on the increase in their countries and adopted a Commitment and Plan of Action in November 2001 to address the situation in their region. These commitments included:

- To prioritise and allocate adequate resources to the implementation of the Convention on the Rights of the Child, the Stockholm Agenda for Action;
- The development of national action plans by a date in 2003;
- The designation of national focal points in each country;
- The setting up of national structures to coordinate all actors involved in the protection of children from sexual exploitation;
- the criminalisation of all forms of sexual exploitation of children under 18;
- to promote the adoption of an international warrant for the arrest of traffickers of children;
- to improve laws and procedures concerning cases of sexual exploitation of children;
- to provide opportunities for children to be involved in the development of strategies and measures;
- The promotion of a prevention strategy at European level.

**The EU’s role in supporting the implementation of the Yokohama commitments**

Save the Children believes that international co-operation is of fundamental importance in combating all forms of child sexual abuse and exploitation. The Council of Europe and the European Union and its institutions have a pivotal role to play in transnational child protection issues such as protecting children from sexual abuse and exploitation. They are ideally placed to disseminate knowledge, encourage international co-operation and endorse good child protection practice from individual member states, and indeed the EU has been active in starting initiatives.

The **EU Council Framework Decision on combating the sexual exploitation of children and child pornography**, on which political agreement has been reached by EU member states (MS) but not final adoption, is an important step in the right direction. It aims to help the development of common definitions, incriminations and sanctions in the penal legislation of member states. It includes the requirement to adjust national laws to protect all children up to the age of 18 from abuse through child pornography, applying also to so-called "virtual pornography": lifelike images of children. The Decision should also help ensure there are no safe havens for child sex offenders suspected of having committed an offence in a country other than their own.

Member States adopted the **Council Framework Decision on combating trafficking in human beings** in July 2002, which aims to foster a common approach and fill gaps in existing criminal laws of MS in relation to human trafficking crimes, by proposing measures in relation to penalties, jurisdiction and cooperation between countries. However no provisions have been put forward by the EU for the adoption of an international warrant for the arrest of traffickers of children. The Commission has just set up an **EU Experts Group on Trafficking in Human Beings** as a consultative body (to include NGOs) to help it further develop its anti-trafficking policies, which will need to take into account the specific rights and needs of child victims of trafficking.

Through Community funding programmes such as **DAPHNE**, **STOP** and the **Safer Internet Action Plan**, the European Commission has supported work to prevent and combat the sexual exploitation of children, in terms of both research and direct action through projects. Save the Children welcomes the engagement in protecting children and considers important the continuation of the Safer Internet Action Plan programme from 2003-2004 and the DAPHNE Programme from 2004-2008 which should both continue to build networks across Europe.
EU Member States’ implementation of the Yokohama commitments

Progress on the ratification of key International Instruments:

- ILO Convention 182 on the worst forms of child labour: ratification of this instrument has progressed well and all European countries have now ratified it.

- CRC’s Optional Protocol against the sexual exploitation of children: all EU countries have signed up but far too many have yet to ratify this Protocol. France, Italy and Spain are the only EU MS to have ratified it.

- Council of Europe Convention on Cybercrime: all EU countries have signed this Convention but none of them have yet ratified it.

National Action Plans

159 countries adopted the Stockholm Agenda for Action in 1996 but only 23% of those countries that committed themselves to the Agenda for Action had developed NAPs by 2001. By December 2002 only 16 European countries had produced NAPs with 3 countries producing general plans of action on children. In addition it is difficult to see how different member states will measure their progress as up to December 2001 only 2 member states, Belgium and Germany, had a review mechanism for evaluation of the actual NAP and only 5 member states had established a Multi-Sectoral Body to implement and assess progress.

Save the Children’s Recommendations to the EU and its Member States:

- The EU should develop a recommendation seeking to establish the principle of a common legal minimum age of consent across Europe and encourage MS to harmonise their laws on the definition of a child. Research on the options and obstacles to this could be commissioned by the EU.

- The Council of the EU should adopt the Framework Decision on combating the sexual exploitation of children and child pornography, but in such a way that encourages MS to move towards a harmonised definition of children as under 18. It should therefore reconsider the inclusion of references to age as an aggravating circumstance.

- Within the Framework Decision on combating the sexual exploitation of children and child pornography the EU should also adopt a universal extra-territorial principle, which abolishes the principle of ‘double criminality’ so that all offences of sexual exploitation against children committed abroad can be prosecuted. 4

- The EU should ensure that funding programmes supporting the fight against the sexual exploitation of children are continued in the long-term and their budgets are adequately increased in view of EU enlargement and participation of the new Member States;

- The EU should undertake effective monitoring to MS implementation of its policies relating to the sexual exploitation of children;

- The EU should accord more attention to other forms of sexual exploitation of children, such as child prostitution, the organised abuse of children and child abuse in institutions.

4 For SC’s full comments on the Framework Decision:
http://www.savethechildren.net/alliance_be/publications/publications.html
Member States should fully implement the Yokohama Commitments, and in so doing, recognise the problem of sexual exploitation and abuse of under 18s in its totality. We call for a move from public acknowledgement and development of plans to concrete interventions against those whom directly as well as indirectly sexually exploit children via the production and distribution of child pornography.

Member States should separate the legal age of consent from the upper age of protection against sexual exploitation. Children have the right to special protection against sexual exploitation up to the age of 18. A child under 18 should not be considered as able to consent to engagement in prostitution, pornography and/or trafficking for sexual purposes. The criminal responsibility should rest solely with the perpetrator.

Member States should fully implement the Council Framework Decision on combating trafficking in human beings;

All EU Member States and candidate countries should finalise the drafting of National Action Plans and implement effective monitoring of their implementation;

All European countries should allow for the meaningful participation of children in the development of solutions to problems related to sexual exploitation and abuse.

In view of Save the Children’s particular experience and expertise in the fields of child pornography on the Internet and the situation of child victims of sexual abuse in European legal systems, it also has recommendations for actions specific to these issues.

Child Pornography and Internet-related sexual exploitation of children

Child pornography is a visual recording of a crime being committed and the children who appear in such pictures are, at the time the picture is being taken, subjected to degrading, abusive and humiliating acts of a criminal nature. In some of the imagery, they are beaten or burnt or are subjected to torturous sexual depravities. When made to pose in offensively sexual situations with others, including other children, they are subjected to psychologically distressing manipulation and abuse. No actual pornographic picture of a child has been produced without the child suffering or being exploited.

A hotline acts as a referral system and gives the general public the opportunity to refer potentially illegal images found on the Internet to a database where the material can be assessed and forwarded to law enforcement agencies, or other hotlines in the host server country. Since the mid 1990s six Save the Children organisations have been engaged in combating the digital distribution of child pornography and raising awareness about sexual abuse and exploitation via the Internet. The work against child pornography is a part of Save the Children's broader strategy in promoting the rights of the child in the context of protection from sexual abuse and exploitation. The International mandate for this work is set out in Articles 19 and 34 on the UN Convention of the Rights of the Child 1989. Save the Children's

---

5 Article 19 of the Convention on the Rights of the Child sets the obligation for all “States Parties [to] take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse

Article 34 obliges “States Parties [to] undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
work also includes the operation of internet hotlines. This is a referral system for the public to report potentially illegal images found on the internet. Five Save the Children hotlines are members of the international hotline network INHOPE (www.inhope.org) which coordinates and facilitates the exchanging of information and expertise amongst members.

Significant actions in this area have been taken at EU level. The EU Council of Ministers decision Combating child pornography on the Internet (2000/375/JHA) on 29th May 2000 was an important development in combating the distribution and production of sexually abusive images on the Internet. The Council’s decision prescribes that member states should take the necessary steps to encourage Internet users to report suspicions of the distribution of child pornography via the Internet to law enforcement agencies. The aim is to "prevent the production, treatment, possession and distribution of material containing child pornography and to promote the effective investigations and prosecutions of criminal offences in this area."²⁶ The EU Council Framework Decision on combating the sexual exploitation of children and child pornography is also positive in the way it provides for the complex problem of morphed images to be classified as child pornography. And the Safer Internet Action Plan supports projects that hopefully teach children the positive benefits of the Internet whilst also focusing on child protection.

Save the Children recommends the following in combating child pornography on the Internet:

- The improvement of international law and national child protection systems in respect of the complex multi-jurisdictional nature of Internet crime and abuse against children;
- The facilitation of international multi-agency co-operation to combat the problem of child sexual exploitation n the Internet at the international, European, national and local level;
- Continued co-operation between law enforcement agencies in particular to facilitate cross-border co-operation fighting child pornography on the Internet;
- Greater prominence be given to issues of child protection and child pornography on the Internet in Central and Eastern European countries and that Europol increases its co-operation with these countries;⁷
- The EU should encourage the expansion of hotlines in countries where they do not exist;
- European governments should implement legislation where the self-regulation of Internet Service Providers has failed;
- Societal denial, minimisation and myths about the child sexual abuse and exploitation of children must continually be challenged.

Child Abuse and Legal Systems in Europe

The Yokohama Congress renewed participants' commitment to developing 'effective implementation for measures including child-rights based laws and law enforcement'. Yet it is still extremely difficult for children in Europe today to get justice as victims of sexual abuse and very often participation in legal investigations and proceedings implies extraordinary

---

²⁶ EU 2000/375/JHA
stress for the child. The legal systems into which children are drawn are designed for adults and modelled on adults needs and abilities. The communicative capacity of adults sets the standard of presumed reliability against which statements are assessed, the high evidential requirements render the child’s statement insufficient as evidence against an accused who denies the allegation and supporting evidence can be difficult to obtain. In most countries, the majority of investigations concerning child sexual abuse never lead to judicial consideration mainly due to evidential difficulties, which combined with other factors, such as reluctance to tell due to feelings of guilt and shame, bonds of dependence upon the perpetrator, inability to understand the sexual meaning of the abuse, disadvantages the child considerably.

There are great differences between European legal systems both with respect to the design of the proceedings generally and the regard that is given to the child in them. Throughout Europe a common child-focused view is required regarding the sexual abuse of children which is reflected in the practice and ethics of the legal actors. In order to ensure that all victims of crime in Europe have access to justice, irrespective of their age, it is therefore necessary to initiate long term, structural reforms of the European legal systems towards complete adaptation to the needs, conditions and abilities of the child. Save the Children believes that it is possible to enhance the prospects of the child to get justice while seriously reducing the risk of re-victimisation without infringing the right of the accused to a fair trial.

Save the Children therefore recommends that:

- a European framework be developed that provides minimum standards for the rights of the child in criminal proceedings;
- the protection of the legal interests and of the psycho-social well-being of the child be strengthened;
- high overall priority should be given to legal investigations and assessment of child sexual abuse;
- laws, policies and programmes to protect children from commercial sexual exploitation be fully enforced;
- the skills of all legal actors and the co-ordination between all agencies involved in the investigations and proceedings should be enhanced;
- communication and cooperation between law enforcement authorities in Europe be strengthened. European governments should promote and support comprehensive legal and scientific collaboration for integrated capacity-building in the areas of investigation, protection and treatment.\(^8\)

---

\(^8\) For further information on Annex I please contact Patricia Coelho, Save the Children Brussels Office, Rue Montoyer 39, B-1000 Bruxelles, Tel: 00 32 2 512 7851, Fax: 00 32 2 503 4903 E-mail: patricia-savechildbru@skynet.be

---