EXECUTIVE SUMMARY

Recognition of the Rights of the Child in the Charter of Fundamental Rights

Submission from Euronet – The European Children’s Network, to the drafting group for an EU Charter of Fundamental Rights

Euronet – the European Children’s Network, is a network of children’s rights organisations including transnational networks such as BICE (International Catholic Children’s Bureau) and International Save the Children Alliance, and national members in all 15 EU member states.

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. Euronet recommends that children’s rights must be included in the charter of fundamental rights and that the charter should be legally binding. Children make up 20% of the EU population yet their rights as established in international law are currently almost invisible in EU legislation, programmes and political decisions. Additionally the Charter should not simply codify existing rights but advance human rights.

Reasons to mention children’s rights explicitly in the Charter:

- To ensure that in areas where the EU legislates, children’s interests are taken into account and that legislation is not inadvertently discriminating against children.
- To ensure that the EU itself is also implementing existing international commitments such as the UN Convention on the Rights of the Child.

The 1989 UN Convention on the Rights of the Child is the fullest contemporary international expression of the fundamental rights of all people under the age of 18 –ie children. It has almost universal ratification with only two countries (USA and Somalia) not having ratified. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation and policy (Article 3). The Convention has been ratified by all EU member states. However, whilst member states have a legal obligation to promote the best interests of the child and protect children’s fundamental rights, the EU is under no such obligation although there are many areas in which the EU currently passes legislation which have a direct or indirect bearing on
children’s lives. Examples include labour legislation, consumer legislation, information and media legislation, health and the environment. Integration of the Convention on the Rights of the Child would ensure that the EU would be obliged to use the Convention as a “child proofing” tool when passing legislation.

**Children’s current legal status in the EU Treaty** is unclear as children’s legal status as European citizens is unclear. The EU Treaty primarily focuses on the “citizen as worker”, which excludes children. In EU law children are seen too often as only “victims” or “dependents” or “barriers to work” which is in direct contradiction with their status in the Convention on the Rights of the Child. At the moment the principle of “the best interests of the child” is only included in EU legislation on ad hoc basis. In some cases the EU has legislated to promote the highest standards of safety for children, for example in the Toy Safety Directive 1988. In other cases commercial considerations come before the best interests of the child with the potential to infringe children’s rights, for instance the Distance Selling Directive and toy and TV advertising policies of the EU. Inclusion of a reference to children’s rights in the Charter would help ensure that this process was systematic and no longer ad hoc. At present, many cases on children’s rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly – integration of children’s rights into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children’s rights.

**The current Amsterdam Treaty** contains legal bases which give the Commission a limited competence to promote children’s rights:

- **Article K** - which contains an explicit reference to “offences against children”, creates an intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children. However, this Article is outside the Community application of the Treaty and fails to cover many other areas of concern for children.
- **Article 13 – Non Discrimination**, in particular the non discrimination on the basis of age
- **Article 137 – Social Exclusion**, which can be used to address the problem of children facing social exclusion (20% of EU children are living in poverty, Eurostat figures)
- **Article 141 –** refers to equal treatment for men and women in matters of employment, which can indirectly benefit children
- **Article 143 – Demography**, which could be used to collect age disaggregated statistics, including improved information on the situation of Union citizens under the age of 18.

Children need their own special set of rights in the Charter of fundamental rights because:
• Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights.
• Children have not always been accepted as holders of rights and animals were often given rights before children.
• Children are a special category of people who have specific needs different from adults and who do not have the ability to protect themselves.

Concerning **subsidiarity**, Euronet recognises the fact that the principal competence for policy and legislation on children’s issues is the responsibility of the member states’ governments. However, many issues affecting children are neither uniquely national or transnational, for example, legal consequences for children when their parents separate and choose to live in different countries of the EU and the standardisation of products and services (TV, internet, media).

**Conclusions**

It is recommended that:

• The Charter of Fundamental Rights contains a full reference to the protection and promotion of children’s rights in the EU, best expressed by an explicit reference to the UN Convention on the Rights of the Child.
• The Charter of Fundamental Rights should be legally binding.
• A new Article should be inserted in the EU Treaties so that the Community can contribute to the promotion and protection of the rights and needs of children.
Recognition of the rights of the child in the Charter of Fundamental Rights.

Submission from Euronet – The European Children’s Network, to the drafting group for an EU Charter of Fundamental Rights.

Introduction

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. In this submission Euronet demonstrates why it is necessary to have a comprehensive reference to children’s rights in the charter. Euronet recommends that in order to promote and protect children’s rights and interests and to foster their development and protect them from unforeseen negative effects of growing European integration, a reference in the Charter of Rights would need to be accompanied by a comprehensive legal basis in the Treaty on European Union.

Euronet also recommends that the Charter of Fundamental Rights is legally binding and that it goes beyond already existing international and European legal instruments.

What is Euronet?

Euronet – the European Children’s Network, is a network of children’s rights agencies including BICE (International Catholic Children’s Bureau), International Save the Children Alliance, and national members in all 15 EU member states. Together these agencies shared a concern about the general invisibility of children in EU policy, legislation and programmes. Euronet began as a network to press for recognition of children’s rights in the EU Treaty in 1995. Euronet members worked together to strengthen the rights of the child by, amongst other things, trying to include a reference in the Amsterdam Treaty to the norms of the UN Convention on the Rights of the Child, ratified by all member states of the EU. Following this, Euronet has gone on to develop a comprehensive EU Children’s policy in “A Children’s policy for 21st Century Europe: First Steps”. ¹

Euronet believes that children have a right to live without experiencing prejudice, exclusion and discrimination and have a right to be heard within the European institutions, including the European Parliament, Commission, Council of Ministers and Council of Europe.

¹ “A children’s policy for 21st century Europe: First steps,” Ruxton S, Euronet, Brussels, 1999
Children in the EU

Children in the EU make up 20% of the population but their rights as established in international law are currently almost invisible. This leads to children’s invisibility in the legislation, policies, programmes and political decision making of the Union. Yet the future economic, social, political and cultural development of Europe is dependent on these 90 million children. As the ageing of Europe continues, children will become an even more precious and important resource. Neglecting their proper care and protection will have increasingly serious consequences. Furthermore, the EU institutions have frequently stated that it is important to “get closer to citizens” yet the interests of children are rarely included in EU legislation and Europe is still a long way from a “Citizens Europe” which includes children.

“We are children and young people of the European Union meeting in Belfast at the end of May 1998. We demand that the European Union listen carefully to the voices of its 90 million children and young people under the age of 18 years of age. We as Europe’s young citizens are eager to contribute actively to the development and progress of Europe...In our Europe every child will be respected and listened to and every child will have the right to participate in the democratic process.”

At the beginning of the 21st Century, Europe is at a crossroads, as it enters monetary union, enlarges eastwards and faces demographic challenges. Children will be more affected by decisions with long term implications being taken now than any other population group.

Why do children’s rights need to be included in the Charter?

“Our efforts to discover children’s needs in Europe are met with difficulties for two reasons. Firstly because in the EU citizens are seen as employers, employees and consumers only and secondly because children are seen as children of working parents only.”

The fundamental human rights of children, as expressed in the UN Convention on the Rights of the Child (1989) are not yet integrated into any of the core legal texts of the EU and therefore are not integrated into EU policy and legislation. As a result children’s needs are currently largely ignored. Indeed, at present, legislation is inadvertently affecting children in a negative way. Other groups such as consumers, women, animals, disabled people are at least mentioned in the existing EU Treaty. This means that EU legislation, policy and programming

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2 Active voices – children’s choices – Belfast Euronet symposium, 28/29 May 1998
3 Children as Citizens of Europe – From Rhetoric to Reality, speech at Euronet Conference Belfast – 28/5/98.
4 Up to now the European Commission has preferred to use the term ‘fundamental rights’ in preference to human rights in discussing its work in this area.
is to a certain extent sensitive to their fundamental rights and interests. However
in the area of children’s policy this is currently not the case. EU member states,
by comparison have made greater progress to integrate the principles of the
Convention into their national laws since ratification and although Euronet
believes that many member states still need to make improvements before their
legislation fully reflects the principles of the best interests of the child, substantial
progress has been made in this area (see for example “A children’s policy for 21st
Century Europe: First steps” p20 – 21).

The briefing argues why children should be explicitly mentioned in the Charter in
order to:-

a) Ensure that the EU itself is also implementing existing international
   commitments such as the UN Convention on the Rights of the Child which all
   EU member states have ratified.

b) Ensure that in areas where the EU legislates, children’s interests are taken
   into account and that legislation is not inadvertently discriminating against
   children

The UN Convention on the Rights of the Child

“The increasing importance attached to the concept of children’s rights and the
major role attributed by the international Community to the Convention on the
Rights of the Child of 1989, serve to underline the desirability of a greater EU
sensibility in this area….The Commission (should) ensure that all legislation it
drafts is fully compatible with the requirements of the Convention.”

The 1989 UN Convention on the Rights of the Child is the fullest contemporary
international expression of the fundamental rights of all people under the age of
18 – ie children. More than any other human rights instrument it incorporates the
whole spectrum of human rights, civil, political, economic, social and cultural
rights. The Convention states clearly that the best interests of the child should be
a primary consideration in all legislation, and policy.

“In all actions concerning children, whether undertaken by public or private social
welfare institutions, courts of law, administrative authorities or legal bodies, the
best interests of the child shall be a primary consideration,”

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5 Op cit
6 Leading by Example – A Human Rights Agenda for the European Union for the Year 2000 –
Cassese, Lalumière, Leuprecht, Robinson. Published by Academy of European Law, European
University Institute, p 102.
The UN Convention on the Rights of the Child is the most widely ratified human rights instrument ever, having been ratified by all states in the world (except the USA and Somalia). All EU member states, EEA states and states about to accede to the EU have ratified the Convention. However, at the moment the EU itself is under no obligation to respect the principles of the UN Convention on the Rights of the Child.\(^8\)

This means that whilst the member states have a legal obligation to promote the best interests of the child and protect children’s fundamental rights, the EU and is under no such obligation. This is inconsistent and means for example that member states are regularly assessing and reviewing how their actions and legislation affects the human rights of children, whilst the EU does not do so. Without systematic reference to the Convention on the Rights of the Child as a yardstick by which to judge the extent to which actions and policies promote children’s rights, there is no means by which to be sure that children’s rights are being upheld and promoted.

As the EU moves towards further integration, more and more issues concerning children are becoming transnational ones. It is important that the EU should be bound by international standards that member states have already signed up to.

There are many areas in which the EU currently passes legislation which have a direct or indirect bearing on children’s lives, these include, labour legislation (Young People at Work Directive, Parental Leave Directive), consumer legislation (see above), information and media legislation and policy, health and the environment. Integration of the principles of the Convention on the Rights of the Child would act as a “child proofing” tool and ensure that the EU was under the same obligations as its member states.

The Convention on the Rights of the Child enshrines children’s right to participate in decisions which affect them.\(^9\) It is important that children are also given the possibility to participate actively in the development of the European ideal and concept.

**Are Children’s Rights dealt with by existing provisions in the Treaty covering human rights ?**

Many commentators argue that the EU’s overall legislative competence and approach to human rights is weak and that there is a human rights deficit.

“The Treaty did not and still does not even after the measures introduced by Amsterdam, list human rights among its objectives….the Community lacks any

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\(^8\) For a further discussion see “Towards an EU Human Rights Agenda for Children” – International Save the Children Alliance Europe Group, 1998, Brussels, Rädda Barnen.

\(^9\) Article 12, Convention on the Rights of the Child.
significant constitutional competence to deal with all but a very circumscribed range of human rights matters.”

Similarly the report by the Comité de Sages concluded “As regards the Treaties of the European Union, what we have at present is not a genuine framework of social and civil rights but rather a set of ad hoc, piecemeal measures to accompany economic integration and to allow minimum social policies to be pursued.”

Euronet agrees with these assessments. Not only are existing human rights provisions in the EU Treaty weak, but those that are in the Treaty do not specifically mention children’s human rights. This has very practical consequences, meaning that where human rights clauses are inserted into trade agreements or cooperation agreements, no specific attention is paid to children’s rights.

Why do we need a separate expression of children’s rights?

If human rights cover all human beings, why do children need their own special set of rights?

- Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights, reflecting their particular needs and status.

- Children have not always been accepted as holders of rights and animals were often given rights before children.

- Children are a special category of people who have specific needs and who do not have the ability to protect themselves. Adults rights are often different from children’s rights and vice versa. Talking about human rights in general but not identifying specific rights for children renders children invisible and vulnerable.

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What about subsidiarity – Surely the protection of children’s rights rests at the member state level?

The principal competence for policy and legislation on children’s issues is the responsibility of member state’s Governments. However there is also a clear European dimension to the question of children’s policy. Many issues affecting children are neither uniquely national nor transnational. For example, the legal consequences for children when their parents choose to live in different parts of the EU following family breakdown, the greater cross border dissemination of child pornography, and child trafficking. Similarly as standardisation and harmonisation of products and regulation of TV, internet and media takes place at EU level, in many cases the best interests of the child are overlooked.

Euronet is not arguing for the competence for children’s policy to move to the European level but rather, where the EU passes legislation, policy and programmes, children’s rights must be taken into account. The Charter should provide a clear, simple legal basis which enables European legislators to ensure that the best interests of the child is taken into account in all European policy, law and programming. Children are affected differently from adults by European legislation and it is important that all EU policy and legislative proposals takes their needs into consideration.

Would incorporation of the ECHR into the EU Treaty help children?

Legal opinion varies as to whether incorporation of the ECHR into the EU Treaty is possible and desirable. Leaving this wider debate aside, incorporation would bring limited value for children.

Children are not specifically mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), although it has been frequently used to protect children’s rights in such areas as respect for family life, the right to education, protection against discrimination and the protection of physical integrity. However there are significant limitations on the ECHR as an instrument for the promotion and protection of children’s rights including its focus on relations between the state and individuals, its silence on many important areas of children’s lives. 13

The ECHR “is....in many ways blind to children. It does make limited reference to children for example – in respect of the public nature of court proceedings in respect of juveniles and liberty and security of the person. But it fails entirely to address the concept of human rights for children within a framework appropriate

to childhood in the way developed by the UN Convention on the Rights of the Child.” 14

Children’s rights as EU Citizens – a promise unfulfilled

“The advice I have received…is that the reference to all persons who have citizenship of a member state covers everybody, including children” 15

Despite this positive statement, the rights of children as EU citizens are unclear. The focus in the Treaty on the “citizen as worker” has meant that children’s legal status as European citizens is unclear. This has led for example to the failure to incorporate the best interests of the child into EU legislation. It also means that only a limited number of action programmes, and temporary budgetlines have children as a principal target group.

Article 17 (2) of the Treaty of Amsterdam states “Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.” However, citizenship of the Union only confers the rights which are covered by the Treaty, most of which exclude children. This is because the Treaty primarily regulates issues of an economic nature, therefore focusing on groups such as workers or people providing services. As a result rights are currently related to the fact that you are an economic entity. In EU law children are seen too often as only “victims” or “dependents” or “barriers to work” in direct contradiction with their status in the Convention on the Rights of the Child and in member states’ laws.

The consequences of a lack of specific recognition for children’s rights

One of the strongest illustrations of why it is necessary to have a reference to children in the Charter is the current ad hoc nature of inclusion of the principle of “the best interests of the child” (fundamental to the protection of children’s rights in international law) in EU legislation. This is evident for example in the field of harmonisation and standardisation legislation as illustrated below.

a) Negative effects on children from EU Directives

The protection of children’s human rights should be a priority for all policies. Because of children’s particular vulnerability and needs, adults have a particular responsibility to safeguard them.

15 Statement from the then Irish Foreign Minister Gay Mitchell, representing the Irish Presidency of the EU, during revision of Amsterdam Treaty.
On the positive side there have been a number of cases where the EU has legislated to promote the highest standards of safety for children. These have included the Toy Safety Directive 1988, and other directives aimed at establishing standards for producers so that children cannot undo fastenings on potentially dangerous products, such as bottles of medicines. Beyond these specific cases, children have to some extent been covered by more general consumer protection initiatives.

However despite this, many problems remain. Too often commercial considerations come before the best interests of the child with the potential to infringe children’s rights. Examples of this:-

- **Distance Selling**: There is no reference to the protection of children in EU Directives on misleading advertising and on distance selling, despite evidence from consumer groups that children are often unable to distinguish between covert advertising and information and are therefore at specific risk.

- **Toy Advertising**: In a recent case toy manufacturers called on the European Commission to take action against the Greek Government. The Greek Government had banned TV advertising of toys because of a concern to promote the best interests of the child and ensure that no advertising was transmitted between certain hours. However the Commission claims that the Greek Government’s action breaches single market rules, placing commercial interests above those of Europe’s youngest citizens.

- **TV Advertising**: In a similar case in 1995 a UK TV station transmitted advertisements to children in Sweden, although these are prohibited for children under 12 in Sweden. Because the single Market creates a free market for movement of goods and services, this action is perfectly lawful, even though it may not be in the best interests of children.

- **Chemicals and Toys**: Although many member states took action to ban the use of PVC (polyvinylchlorides) in babies’ toys, the European Commission took many months to introduce an EU wide ban on the use of PVC in toys. This was despite evidence from consumer and environmental groups that such toys contain harmful levels of chemicals and may damage children’s rights to the highest attainable health standards.

All these examples demonstrate that the need for better protection of children’s rights within the policy and decision making processes of the EU. Inclusion of a reference to children’s rights in the Charter would help ensure that this process was systematic and no longer ad hoc.

**b) Unnecessary Court of Justice Cases**
The lack of recognition of the human rights of children in the EU Treaties, and in particular the principle of promoting the best interests of the child has meant that children’s rights in the EU have developed in a piecemeal way. In some cases children’s rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly - it would be far more efficient to ensure that the principles of the Convention on the Rights of the Child were incorporated into the Treaty on European Union. Whilst both the judgements below did in fact rule in favour of the rights of the child, a further demonstration of the problems resulting from the lack of systematic protection of those rights, this was only achieved by taking the case to the European Court of Justice.

Integration of the fundamental rights of the child into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children’s rights.

In the first case, the Commission v Belgium (42/87) established that children in one member state but living in another continue to be entitled to all forms of state education in the host country even if the working parent has retired or died in that state. The second case of Moritz v the Netherlands Ministry of Education (390/87) established that this was the case even if the child moves back to the state of origin.

c) Economic, Trade and Poverty issues

Children are also affected by EU economic and trade policies, EU Trade agreements, Economic and Monetary Union, and the single market all can impact on children, it is important that children’s interests (which can be different from adults’ interests) are not overlooked in these debates.  

EU economic policy for example which requires specific regions within Europe to undertake adjustment to a new economic environment can damage the development of entire generations of children in those regions. Children in such regions make up significant numbers of the 20% of EU’s children suffering from social exclusion.

d) Asylum and Immigration policy

The EU is now legislating in a number of crucial areas of asylum and immigration policy as it moves from the third pillar to the first pillar. Children have very particular needs, especially child asylum seekers who are separated from their parents.

Do existing legal bases offer sufficient protection for children’s rights?

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The action taken by the EU in relation to the protection of children is still very limited, because of a lack of explicit legal bases and a failure to recognise that this action is of prime importance to the very future of the Union.” 17

The current legal bases in the Amsterdam Treaty gives the Commission only a very limited competence to protect children’s rights. In particular it creates a limited intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children’s rights. 18

On the positive side, for the first time in the history of the EU, children are explicitly mentioned in the Amsterdam Treaty in Article K which contains an explicit reference to “offences against children”. Article K allows for increased cooperation between member states’ police and judicial authorities in tackling crimes against children which cross national borders. Increasingly as borders disappear, children are at risk from organised crime and member states have had limited powers to deal with this in a coordinated fashion. However, Article K is outside the Community application of the Treaty, and any action has to be agreed on a case by case basis and has limited European dimension. Furthermore Article K is limited to offences against children and fails to cover many other areas of concern for children and does not provide for children’s interests to be taken into account systematically in the drafting of EU legislation.

Therefore a major failing of the Treaty of Amsterdam is that it does not incorporate the respect for the fundamental principles of children’s rights. It gives only a very limited competence to work at European level on a whole range of cross border and transnational problems affecting the fulfillment of children’s rights. Below we analyse the limitations of other legal bases in promoting children’s rights.

EU Treaty Articles relevant to children:

Article 13 - Non Discrimination:

In theory the inclusion of a non-discrimination clause on grounds of age should offer protection to children’s rights, especially the right not to be discriminated against (Article 3 of the Convention on the Rights of the Child). However the

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reference to non discrimination on grounds of age in Article 13 has the following limitations:-

- Although age discrimination can occur at the lower end of the age range, the Commission has not yet interpreted “non discrimination on grounds of age” to include children.
- Secondly this clause does not have “direct effect”, this means that it cannot be used by an individual in a court of law and cannot be used in the European Court of Justice.
- Thirdly, all measures proposed under this clause require the unanimous agreement of all EU member states’ Governments.
- Fourthly, Article 13 has limited value for children because it only deals with measures aimed at combating discrimination and as we have seen children are affected by numerous other issues at a European level, and no measures can be taken under this clause to address these wider issues.
- Finally there is no spending power attached by Member States to this clause and therefore the impact of any measures taken under it will be very limited. It could not therefore be used as a legal basis for a European programme in the area of children’s rights and children’s policy.

**Article 137 - Social Exclusion**

The inclusion of Article 137 gives the Community a legal basis to combat social exclusion. This is welcome given that recent Eurostat figures demonstrate that 20% of the European Union's children are living in poverty. This new legal basis will be used for the adoption of an action programme on social exclusion, which can be used to address the problem of children facing social exclusion. It is recommended that Member States work with a broad definition of social exclusion. This clause can be agreed by qualified majority voting, thus eliminating potential problems with one or two member states blocking progress.

**Article 141:**

Although not directly relevant to children’s rights issues this clause could be beneficial to children, since it makes reference to equal treatment for men and women in matters of employment and occupation, which could for example have a bearing on issues such as parental leave and child care.

**Article 143 - Demography**

This clause could be used to ensure that the European Union collects age disaggregated statistics, including improved information at the lower end of the age range, ie on the situation of Union citizens under the age of 18. Such an approach would enable the Union to have an accurate statistical assessment of the different ages of all its citizens and would assist the Union and Member States’ in planning
policy and services. It is important that information about the situation of children is included in such a report for a number of reasons. First children’s needs are different from adults, second children will have to be responsible for supporting both financially and otherwise the Union’s ageing population and finally children’s services and interests must not be prejudiced as the Union and Member States focus their attention on the needs of Europe’s ageing population.

The need for a legally binding charter of fundamental rights

Euronet recommends that the charter of fundamental rights is legally binding. Although a specific reference to children’s rights in a non legally binding Bill of Rights would have the advantage of giving children and children’s rights political visibility and as such may assist focusing the Commission and Member states attention more on the issue of European Children’s policy, it would not have any legal significance and will therefore not assist in child proofing of legislation, its significance would therefore be only symbolic.

Moreover, Euronet recommends that the charter is not simply a declaration of existing rights but rather advances the promotion of children’s rights and human rights. Euronet believes that a charter that is not legally binding would not address the problems of EU legislation inadvertently affecting children in a negative way which are raised in this submission.

Conclusions

It is recommended that the drafting of a Charter of Fundamental Rights should contain a full reference to the need for protection and promotion of children’s rights in the EU. This is best expressed through a clear and explicit reference to the UN Convention on the Rights of the Child. Such a reference should be used to ensure that the child dimension is taken into account in all relevant EU policy, programmes and budgets. Member states should also ensure that existing legal bases are used to the greatest extent possible to promote children’s rights.

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