



Brussels, 18 November 2014
(OR. en)

15559/14

FREMP 206
COHOM 155
JAI 877
DROIPEN 133
SOC 784
JUSTCIV 293
COPEN 285

"I/A" ITEM NOTE

From: Presidency

To: Permanent Representatives Committee (Part 2)/Council

No. prev. doc.: 15558/14 FREMP 205 COHOM 154 JAI 876 DROIPEN 132 SOC 783
JUSTCIV 292 COPEN 284
14416/14 FREMP 174 JAI 783 DROIPEN 121 SOC 701 JUSTCIV 246
COHOM 143 COPEN 253

Subject: Draft Council conclusions on the promotion and protection of the rights of
the child

I. INTRODUCTION

1. FREMP working party discussed the draft conclusions on "Promotion and protection of the rights of the child" at its meeting on 3 November 2014. After further written consultation with delegations, a compromise text is set out in the Annex.

II. CONCLUSION

2. Coreper is invited to agree that the draft conclusions, as set out in the Annex to this note, are submitted to the JHA Council on 4-5 December 2014 and the Council is invited to adopt the draft conclusions.

**Draft Council conclusions
on the promotion and protection of the rights of the child**

THE COUNCIL OF THE EUROPEAN UNION

HAVING REGARD to the promotion of the protection of the rights of the child as one of the general objectives of the European Union, as stated in Article 3(3) of the Treaty on European Union (TEU) according to which the EU shall promote the protection of the rights of the child, and in Article 3(5) TEU which stipulates that in its relations with the wider world, the EU shall contribute to the protection of human rights, in particular the rights of the child;

RECALLING that the rights of the child are guaranteed in the Charter of Fundamental Rights of the European Union.¹ Article 24 of the EU Charter of Fundamental Rights enshrines the principle of the child's best interests as a primary consideration in all actions relating to children, that children have a right to such protection and care as is necessary for their well-being, and that views of children shall be taken into consideration on matters which concern them in accordance with their age and maturity. It also guarantees children the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests. Additionally, Article 32 of the Charter forbids child labour and guarantees protection of young people at work;

TAKING the opportunity to celebrate the 25th Anniversary since the adoption of the United Nations Convention on the Rights of the Child (UNCRC)². The principles and standards of the UNCRC must continue to guide the EU policies and actions which have an impact on the rights of the child;

¹ Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010.

² Available at: <http://www.unicef.org/crc/>. The first Optional Protocol to the UNCRC is on the involvement of children in armed conflict; the second Optional Protocol deals with the sale of children, child prostitution and child pornography; the third Optional Protocol is on a communications procedure.

HAVING REGARD to the UN Convention on the Rights of Persons with Disabilities³, whereby Article 7 of the Convention requires States Parties to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children;

REAFFIRMING that Member States have the primary responsibility to promote and protect human rights, including the rights of the child;

WELCOMING the progress that has been achieved through the successful implementation of the "EU Agenda for the Rights of the Child" (2011-2014)⁴, which defined the principles and objectives of the EU in this field, aimed at ensuring that all EU policies having an impact on children respect their rights, and set out eleven concrete actions for implementation by the Commission;

TAKING INTO ACCOUNT existing Union legislation in the field of child protection, in particular Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography⁵; Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁶; Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime⁷ and the Regulation 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters⁸;

³ Available at:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

⁴ Commission Communication "An EU Agenda for the Rights of the Child", doc. 7226/11.

⁵ OJ L 335, 17.12.2011. Corrigenda at OJ L 18, 21.1.2012.

⁶ OJ L 101, 15.4.2011.

⁷ OJ L 315, 14.11.2012.

⁸ OJ L 181, 29.6.2013.

RECALLING that in November 2013 the Commission presented a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings⁹ and that in July 2008 the Commission presented a proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation for a horizontal non-discrimination directive¹⁰;

HAVING REGARD to the Conclusions of the European Council of 26-27 June 2014¹¹ which stressed the need to continue efforts to strengthen the rights of accused and suspected persons in criminal proceedings; to reinforce the protection of victims and to examine the reinforcement of the rights of persons, notably children, in proceedings to facilitate enforcement of judgments in family law and in civil and commercial matters with cross-border implications;

HAVING REGARD to the impact that child poverty and social exclusion have on children and young people, and to EUROSTAT¹² data showing that children were at a greater risk of poverty or social exclusion than adults or the elderly in many Member States in 2012 and NOTING that early intervention and prevention are essential to develop more effective and efficient as well as cost saving policies¹³;

HAVING REGARD to the Council Conclusions of 5-6 June 2014 on preventing and combating all forms of violence against women and girls, including female genital mutilation¹⁴;

⁹ Doc. 17633/13.

¹⁰ Doc. 11531/08.

¹¹ Conclusions of the European Council of 26/27 June 2014, EUCO 79/14, para 11.

¹² http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/People_at_risk_of_poverty_or_social_exclusion

¹³ See Commission Recommendation 2013/112/EU of 20 February 2013 Investing in children: breaking the cycle of disadvantage, OJ L 59, 2.3.2013.

¹⁴ Doc. 9543/14.

RECALLING the project under development by the Commission on children involved in criminal, civil and administrative judicial proceedings and which will provides for a comprehensive overview of national laws and practices on access to justice and procedural safeguards covering all 28 EU Member States¹⁵;

APPRECIATING the research of the EU Agency for Fundamental Rights (FRA) on unaccompanied and separated asylum-seeking children, child victims of trafficking, guardianship, access to health and education for children with irregular migration status and Roma origin¹⁶, and LOOKING FORWARD to the upcoming FRA publications on national child protection systems-children with disabilities, and children and justice based on data collection and practitioners' interviews on the situation of children in civil and criminal judicial proceedings¹⁷;

RECOGNISING and BEARING IN MIND the importance of the work done by other international organisations, in particular the United Nations (UN) and the Council of Europe and their central role in the promotion and protection of the rights of children¹⁸;

BEARING IN MIND the case law relating to the rights of the child developed by both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR);

COMMITTS ITSELF TO:

1. hold thematic debates on the promotion and protection of the rights of the child in Council preparatory bodies such as the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP), the Working Party on Human Rights (COHOM), or other relevant working groups, if necessary.

¹⁵ More information at http://ec.europa.eu/justice/fundamental-rights/rights-child/friendly-justice/index_en.htm.

¹⁶ More information at <http://fra.europa.eu/en/theme/rights-child?page=projects>.

¹⁷ More information at <http://fra.europa.eu/en/project/2012/children-and-justice>.

¹⁸ See, for instance, the Council of Europe Strategy for the Rights of the Child (2012-2015).

2. consistently apply the 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies'¹⁹, to ensure that a fundamental rights approach is effectively applied, including as regards proposals related to children's rights;

3. increase political visibility of the respect for the rights of the child by engaging in a regular dialogue with the European Parliament and the Commission on EU policies affecting children;

INVITES MEMBER STATES TO:

4. ensure that existing Union legislation in the field of child protection, in particular Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography²⁰, Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims²¹ and Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime²², is fully and swiftly transposed into national legislation and implemented in practice;

5. ensure in practice that all children, are protected from discrimination and enjoy equal opportunities in order to allow them to develop their full potential;

¹⁹ "Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies", doc. 10140/11. [when approved, update the reference to mention the 2014 version].

²⁰ OJ L 335, 17.12.2011, OJ L 335, 17.12.2011. Corrigenda at OJ L L 18, 21.1.2012. Denmark did not participate in the adoption of this Directive and is not bound by it.

²¹ OJ L 101, 15.4.2011, Denmark did not participate in the adoption of this Directive and is not bound by it.

²² OJ L 315, 14.11.2012, Denmark did not participate in the adoption of this Directive and is not bound by it.

6. step up efforts to prevent child poverty in the context of the Europe 2020 Strategy and the transmission of disadvantage across generation by focusing in particular on the implementation of the Commission recommendation 2013/112/EU "Investing in children: Breaking the cycle of disadvantage"(2013)²³, notably through measures that: support parents' access to adequate resources in the form of paid employment and child and family support benefits, support access to affordable quality services (such as early childhood education and care) and support mechanisms that promote children's participation in decision-making that affects their lives;

7. sign, ratify and implement the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)²⁴, which recognizes that children can be victims of domestic violence and addresses forms of violence against women that particularly affect girls, including female genital mutilation and forced marriage, and which encourages all members of society, especially men and boys, to contribute actively to preventing all forms of violence;

8. ratify and implement the Council of Europe Convention on the protection of children against sexual exploitation and sexual Abuse (Lanzarote Convention)²⁵, which stipulates inter alia that Parties to the Convention shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children;

9. consider signing and ratifying the three Optional Protocols to the UN Convention on the Rights of the Child: on the involvement of children in armed conflict; on the sale of children, child prostitution and child pornography and on a communications procedure²⁶;

²³ OJ L 59, 2.3.2013.

²⁴ http://www.coe.int/t/dghl/standardsetting/convention-violence/default_en.asp.

²⁵ http://www.coe.int/t/dghl/standardsetting/children/default_en.asp.

²⁶ Available at: <http://www.unicef.org/crc/>.

10. strengthen child rights monitoring, reporting and complaint mechanisms, where appropriate through independent institutions for the promotion and the protection of human rights in accordance with the UN Paris Principles and make use, whenever appropriate, of relevant analysis and indicators developed by the European Commission and the FRA²⁷;

11. develop and strengthen the collection, analysis and dissemination of comprehensive and comparable data on the respect for the rights of the child;

INVITES THE MEMBER STATES AND THE COMMISSION TO:

12. give full recognition to children as rights holders and to ensure respect for the principle of the best interests of the child in all policies affecting children;

13. effectively implement the right of the child to be heard, consulted and to participate in all matters which concern them, notably by giving all children the opportunity to express themselves and by ensuring that those views are given due weight in accordance with their age and maturity;

14. take effective measures to ensure equal access of all children, including those in vulnerable situations who may also be at risk of multiple discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, to quality education, housing, health and protection services;

15. pay particular attention to unaccompanied minors who emigrate and/or are in need of protection;

²⁷ Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, available at: http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf; Indicators from the children in justice study are available in the Masterlist at www.childreninjudicialproceedings.eu.

16. increase efforts to create child-friendly justice systems and child-sensitive procedures in order to enhance coordination between national bodies and facilitate children's access to justice;

17. provide or strengthen appropriate training, support and guidance for relevant professionals in their respective field of expertise when dealing with children, focusing in particular on strengthening skills to communicate with children at their level of understanding with respect of their needs, as well as offer children themselves access to human rights information, including through education and training, in line with the UN Declaration on Human Rights Education and Training and the World Programme for Human Rights Education;

18. strengthen transnational cooperation and exchange best practices in data collection, analysis and dissemination in order to address more effectively cases of child abduction, missing children, family reunification, and victims of trafficking, sexual exploitation and the worst forms of child labour, and prevent and combat child sex tourism among others;

19. step up efforts to ensure that children, including disadvantaged children and children with disabilities, can fully benefit from new technologies and the internet whilst their safety and protection is enhanced;

INVITES THE COMMISSION TO:

20. develop a renewed EU Agenda for the Rights of the Child in line with Better Regulation principles;

21. prioritise policy measures that prevent and combat child poverty and social exclusion and that help the Member States tap into the European Structural and Investment Fund Programmes designed for this purpose;

22. promote and support Member States in the development of an integrated approach to child protection systems by identifying existing instruments and opportunities for interaction at EU level that may serve this purpose;

23. strengthen the coordination with Member States, inter alia by assisting them with the exchange and development of best practices;

24. improve strategic cooperation with external stakeholders (international organisations, scholars and civil society as well as partner countries where relevant);

INVITES RELEVANT UNION BODIES, OFFICES AND AGENCIES TO:

25. FRA, the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the European Police College (CEPOL), FRONTEX, Eurojust and Europol to continue their efforts in the protection of the rights of the child in accordance with their respective mandates and areas of expertise;

26. to pool their expertise, in accordance with their respective mandates;

27. FRA, to develop further research in the area of rights of the child through EU-wide surveys on child non-discrimination and well-being, and on the situation of particular groups in the EU; in this context, FRA should continue its practice based on Article 24 of the Charter of Fundamental Rights of the European Union to involve children in its research, bearing in mind the best interests of the child and in accordance with the provisions of national legislation;

28. FRA, to continue its research on children in judicial proceedings;

CALLS ON THE MEMBER STATES, THE HIGH REPRESENTATIVE AND THE COMMISSION,

29. to ensure that the rights-based approach endorsed by the Council in its Conclusion of May 2014²⁸ pays due regard to the rights of the child and to their mainstreaming in all EU policies and actions, as also requested in the European Consensus on Development (2005) and the EU Guidelines for the Promotion and Protection of the Rights of the Child (2008), enhancing the capacity of all relevant EU actors on the rights of the child is also a priority;

30. to remain determined and continue to promote and protect children's rights in line with the EU Strategic Framework and Action Plan for Human Rights and Democracy²⁹;

31. in accordance with their respective competences, to strengthen support to partner countries in combating all forms of violence against children, inter alia by promoting law reform and reinforcing capacity for the promotion and protection of children's rights at the national level, in accordance with the EU Guidelines on the Rights of the Child and the EU guidelines on children and armed conflict³⁰;

32. to support the civil society initiative 'Call for a Global Study on Children Deprived of Liberty'³¹ in order to comprehensively collect data and statistics from across regions on the number and situation of children in detention; share good practices; and formulate recommendations for effective measures;

²⁸ Doc. 9987/14.

²⁹ Doc. 11855/12.

³⁰ Available at <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf>

³¹ Available at: <https://www.defenceforchildren.org/newsletter/special-newsletter/423-special-newsletter-call-for-a-global-study-on-children-deprived-of-liberty-april-2014.html>

33. to remain fully committed to the promotion and protection of the rights of the child, including through political dialogue with third states and to intensify the promotion of the ratification and effective implementation of the UN Convention on the Rights of the Child and its Optional Protocols;

34. To address the short, medium, long term impact of the armed conflict on children in an effective and comprehensive manner and, in this regard, to further support and cooperate with relevant actors, including supporting the campaign “Children, Not Soldiers”³² initiated by the Special Representative of the UN Secretary-General for Children and Armed Conflict and UNICEF, in collaboration with other UN partners, aimed at ending and preventing the recruitment and use of children by national security forces in conflict by 2016;

35. to remain fully committed to eradicate the worst forms of child labour by 2016; to fully implement the outcome document of the Third Global Conference on Child Labour, held in Brasilia from 8 to 10 October 2013³³, and the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour³⁴ by 2016, adopted at the Hague Global Child Labour Conference in 2010;

36. to eliminate all forms of discrimination against girls and women and take measures to address stereotyped gender roles and other prejudices based on the idea of the inferiority or the superiority of either of the sexes, and to mainstream in this context a gender perspective in all development and human rights policies and programmes, including those relating to children and those specific to the girl child³⁵;

³² <https://childrenandarmedconflict.un.org/children-not-soldiers/>

³³ Available at: <http://www.ilo.org/ipecc/Campaignandadvocacy/BrasiliaConference/lang--en/index.htm>

³⁴ <http://www.ilo.org/ipeccinfo/product/viewProduct.do?productId=13453>

³⁵ As called for by the UN Human Rights Council on 2012, Resolution A/HRC/RES/19/37, 17a.

37. to further develop and strengthen strategies for the prevention and elimination of all forms of violence against girls, including sexual abuse and harmful traditional or customary practices, including female genital mutilation, child, early and forced marriage, by enacting and enforcing legislation and, where appropriate, by formulating comprehensive, multidisciplinary and coordinated national plans, programmes or strategies to protect girls, as well as by promoting awareness-raising and social mobilization initiatives for the protection of their rights³⁶ and human rights education;

38. in accordance with Article 7 of the UN Convention on the Rights of the Child, to continuously raise awareness of the importance of birth registration at the national, regional and local levels.

³⁶ As called for by the UN Human Rights Council on 2008, Resolution A/HRC/7/L.34.Rev.1, 23b.