

**7TH EUROPEAN FORUM ON THE RIGHTS OF THE CHILD
(BRUSSELS, 13 AND 14 NOVEMBER)**

**BACKGROUND PAPER FOR WORKSHOP NO 5:
THE ROLE OF CHILD PROTECTION SYSTEMS IN PROTECTING CHILDREN WITH DISABILITIES**

1. OBJECTIVE OF THE WORKSHOP

The [EU Agenda for the Rights of the Child](#) recognises that children with disabilities are more vulnerable to the violation of their rights and require and deserve adequate protection adapted to their needs. Child protection systems (CPS)¹ can play an important role in meeting some of the needs and rights of children with disabilities.

Children with disabilities have the same rights as all other children. The workshop will explore how the CPS can respond to and meet the needs of these children and will reflect on common issues and challenges. Participants will be asked to consider an approach that puts the child at the centre and facilitates the cooperation of the necessary actors and systems – education, health, welfare, justice, civil society, community, family etc. – to ensure children with singular or multiple disabilities are protected. Such a system is better positioned to adapt to the variety of situations a child with disabilities can encounter.

This workshop intends to provide a platform for discussion and to facilitate the exchange of good practice among Forum participants. Taking due account of the role of the EU and its competences, some of the envisaged workshop objectives are:

- Exchange of experience and information among experts and stakeholders on the role and functioning of child protection systems and how they can contribute to strengthening the implementation of the rights of children with disabilities
- Identification of the challenges in providing protection to children with disabilities
- Identification of the links between and complementary aspects of the UN Convention on the Rights of the Child (UNCRC) and the UN Convention on the Rights of Persons with Disabilities (UNCRPD)
- Exchange of good practice and views on practical steps that can be taken by all Forum participants to better protect children with disabilities, including consideration of the development of guidelines on child protection systems by 2014 as per the [EU Strategy towards the eradication of trafficking in human beings](#)²

A number of cross-cutting principles and themes identified in the EU Agenda, such as the best interests of the child, child poverty, child participation and the need for better data will be addressed in each of the Forum workshops. Each workshop will also consider the role of the EU, with due regard to its competences.

2. STRUCTURE

The three-hour workshop will be chaired by the Commission and co-chaired by an expert on the issue. The workshop will be opened by a panel of 2-4 speakers introducing the topic and highlighting key issues and specific challenges in respect to the role of CPS in protecting children with disabilities. A

¹ Please read the Forum general background paper on child protection systems:
http://ec.europa.eu/justice/fundamental-rights/files/general_background_paper_en.pdf

² See p. 7.

maximum of 30 participants from all EU Member States and Croatia will be invited to take part in the workshop.

3. CONTEXT

The EU concluded the [UN Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#)³ which entered into force in 2011. The Convention aims to ensure that all people with disabilities enjoy their rights on an equal basis with others and devotes specific attention to the rights of children with disabilities.

In this regard, the UNCRPD sets out obligations for state parties to take all necessary measures to ensure the full enjoyment of all human rights and fundamental freedoms by children with disabilities on an equal basis with other children (Art. 7 UNCRPD⁴), including the right to education, to care within the community, to health and to leisure activities.

In addition to Article 7, which is specifically devoted to children with disabilities, Article 16⁵ should be highlighted given that it makes a crucial reference to the measures that Member States must undertake in order to protect children with disabilities. Other articles referring to children explicitly include Article 3⁶, Article 18⁷, Article 23⁸, Article 24⁹, and Article 30¹⁰.

To ensure effective implementation of the UNCRPD across the EU, in November 2010 the Commission adopted the [European Disability Strategy 2010-2020](#). While actions contained in this Strategy are designed to benefit all persons with disabilities, some measures more specifically address the situation of children with disabilities.¹¹

³ All EU Member States have signed the UNCRPD. As of October 2012 the Convention has been ratified by 23 Member States, while 18 have ratified its Optional Protocol. The table for Convention signatures and ratifications is available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

The table for Optional Protocol signatures and ratifications is available at:

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en

In August 2008, the Commission adopted a proposal for a Council Decision on the EU accession to the Optional Protocol) (COM(2008) 530 final/2).

⁴ Article 7 sets out the responsibilities of States Parties to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children, to ensure that actions concerning children with disabilities are taken with their best interests as a primary consideration, and to ensure their right to express their views and have them given due weight.

⁵ Article 16 UNCRPD requires all State Parties to "Take appropriate legislative, administrative, social, educational and other measures to **protect** [highlight added] persons with disability, within and outside home from all forms of exploitation, abuse..."

⁶ Respect for the evolving capacities of children with disabilities, as well as for their right to preserve their identities.

⁷ Liberty of movement and nationality.

⁸ Respect for home and family.

⁹ Education.

¹⁰ Participation in cultural life, recreation, leisure and sport.

¹¹ The Commission, inter alia, aims to promote the transition from institutional to community-based care notably by using Structural Funds to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people. The Strategy also recognises the importance of integrating children with disabilities into the general education system and that effective individualized support measures are provided in environments that maximize academic and social development.

The rights of children with disabilities are explicitly recognised in the [UN Convention on the Rights of the Child \(UNCRC\)](#). In interpreting the rights of children with disabilities, it is important that the links between CRPD and the CRC be recognized so that the two Conventions are applied in a holistic manner. For example, Article 2 UNCRC specifies that the Convention applies to all children, including those with disabilities and thus prohibits discrimination on the grounds of disability. All other articles of the UNCRC therefore also apply to children with disabilities. Article 23 UNCRC is specifically dedicated to the rights of children with disabilities, recognising their particular needs in areas such as education and health.

[General Comment No 9 of the UN Committee on the Rights of the Child \(2006\)](#) recognises that children with disabilities continue to experience serious difficulties and face barriers in attaining full enjoyment of the rights enshrined in the CRC; **the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles that children with disabilities encounter in their daily lives**. The General Comment sets out strong recommendations for action in a number of areas pertaining to the rights of children with disabilities.

3.1. Issues at stake

Children with disabilities are often particularly vulnerable to violence, discrimination, social exclusion and stigmatisation. Every area of their lives is potentially affected, including their financial situation, health, education, access to services, living environment and leisure time.

Realisation of their legal right to protection requires a twofold approach: on the one hand, children with disabilities must have equal access to universal child protection services; on the other, they may need to be provided with additional support and customised measures to enable them to benefit maximally from the protection services. Such an approach requires **a protection system made up of inter-agency and multi-stakeholder partnerships**.

A number of areas have been identified where the children with disabilities may need additional support from the child protection services:

- **Violence, exploitation and abuse**¹²

Children with disabilities may be particularly vulnerable to exploitation, violence, abuse and bullying. A particular type of abuse that requires a special approach and attention is sexual abuse as children with disabilities are more likely than others to become victims of these crimes.¹³ Prevention policies and implementation of legislation aimed to identify, investigate and prosecute the instances of abuse are essential.

A set of coordinated actions is required to identify, refer, and manage cases of violence or abuse, according to the specific and individual needs of children with disabilities. Disability-specific measures should be developed to address the following:

- ➔ **Lack of disability awareness.** People with disabilities, especially children with intellectual disabilities, are often seen as unreliable witnesses when they do not express themselves through conventional methods accepted by their non-disabled peers. Training on disability awareness is key to accepting and understanding children with disabilities.
- ➔ **Communication barriers.** A lack of expertise in communicating with children with a disability hinders communication with a child who may have been a victim of violence, exploitation and abuse. Not being able to understand the full extent of the trauma can result in failure to adequately protect the child and address his/her needs.

¹² Article 16 UNCRPD; Articles 19, 34 UNCRC et al.

¹³ CRC General comment No 9.

- **Family separation and institutional care**¹⁴

Every child, including a child with disabilities, has the right, to the greatest extent possible, to know and be cared for by his or her parents, which includes the right to live with his or her parents and not to be separated from them on the basis of disability. When this is not possible, alternative care within the wider family or within the community in a family setting should be provided.

However, many children with disabilities still live in care institutions which separate them from the community. Children are particularly vulnerable to institutional treatment as it can hinder their moral, physical, psychological and emotional development.

Child care services (early intervention) and support services for families (respite care, personal assistance) are necessary tools to prevent and minimise family separation and institutionalisation. Proper regulations, quality standards and evaluation procedures for alternative family care are necessary in cases when children with disabilities are placed outside their families. This requires mechanisms to coordinate the work of child protection agencies and ministries responsible.

- **Education**¹⁵

Children with disabilities have the same right to education as all other children and should enjoy this right without discrimination and on the basis of equal opportunities, as set out in the UNCRC. The UNCRPD states that children with disabilities should not be excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

Nonetheless, research has shown that the obligations under the UNCRPD have not yet been fulfilled, and are unlikely to be complied with in the near future¹⁶. Many countries have made progress in favour of inclusive education but significant shortcomings (inaccessible infrastructures and teaching materials, inadequacy of staff support, lack of teacher training...) are slowing down access to mainstream education for all. Possibilities for accessing mainstream education tend to be unavailable for children with severe disabilities or those living in rural areas. Inclusive settings are still an exception and segregation remains widespread in Europe, especially for children with severe disabilities in secondary education.

- **Participation and right to be heard**¹⁷

[Article 24 of the Charter of Fundamental Rights](#) and Article 12 UNCRC set out the principle of child participation. All children have the right to express their views on all matters of concern to them, including in any judicial or administrative proceedings, and to have these views given due weight in accordance with the child's age and maturity. At the same time, UNCRPD sets out an explicit obligation to provide children with disabilities age-appropriate assistance to enable them to exercise their right to be heard. Furthermore, the UNCRPD obliges governments to consult with and actively involve children with disabilities, through their representative organisations in the development and implementation of legislation and policies to implement the Convention.

The right to be heard, which is a central obligation of the UNCRC, has been particularly difficult to fulfill for children with disabilities. Their participation may be hindered by prejudices and

¹⁴ Article 19 UNCRPD; Articles 9, 18, 20 UNCRC. See also [Guidelines for the Alternative Care for Children \(GA Res A/64/142\)](#).

¹⁵ Article 24 UNCRPD, Article 28 UNCRC.

¹⁶ Schädler, Johannes et. al.: '[The specific risks of discrimination against persons in situation of major dependence or with complex needs](#)', and Ebersold, Serge: "[Inclusive education for young disabled people in Europe: Trends, Issues, and challenges, a synthesis of evidence from ANED country reports and additional sources](#)", April 2011.

¹⁷ Article 7 UNCRPD, Article 12 UNCRC.

preconceived ideas deeply rooted in the society and further aggravated by lack of accessible solutions to enable effective participation.

- **The right to play, recreation and leisure**¹⁸

Children with disabilities should have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system. They also have the right to take part on an equal basis with others in cultural life. These rights are often infringed upon by discriminatory attitudes against children with disabilities and inaccessible infrastructures and environments which reduce opportunities for participation and informal learning through interaction with their peers.

- **Poverty**

Families with disabled children are disproportionately likely to experience poverty. Parents of children with disabilities do not always have the opportunity to work because of the lack of family-friendly policies or may find it difficult to return to work when having a child with a disability. Families may be exposed to discrimination by association and social exclusion. Financial compensation and aids are often limited and may not cover the costs related to care-giving and to disability.

4. THE WAY AHEAD

The Commission seeks to address the issues outlined in this paper in cooperation with the relevant organisations and institutions. Forum participants are invited to exchange views on practical measures that can be taken to promote interagency cooperation and a multidisciplinary approach to ensure the best possible outcomes for children with disabilities. Participants should also explore how the EU and other actors can support Member States in this field. They are also invited to reflect on how to achieve the maximum benefit from EU funding opportunities and platforms for exchange of experience.

¹⁸ Article 30 UNCPRD, Article 31 UNCRC.