

CHILDREN'S RIGHTS ALLIANCE



A Guide to Children's EU Rights in Ireland

December 2013

Uniting Voices for Children

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The Children's Rights Alliance unites over 100 organisations working together to make Ireland one of the best places in the world to be a child.

Member Organisations

Alcohol Action Ireland
Amnesty International Ireland
Ana Liffey Drug Project
Arc Adoption
The Ark, A Cultural Centre for Children
Association for Criminal Justice Research and Development (ACJRD)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Barnardos
Barretstown Camp
BeLonG To Youth Services
Bessborough Centre
Border Counties Childhood Network
CARI Foundation
Carr's Child and Family Services
Catholic Guides of Ireland
Catholic Youth Care
Childhood Development Initiative
City of Dublin YMCA
COPE Galway
Crosscare
DIT – School of Social Sciences & Legal Studies
Doras Luimni
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dun Laoghaire Refugee Project
Early Childhood Ireland
Educate Together
School of Education UCD
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Forbairt Naionraí Teoranta
Foróige
GLEN - Gay and Lesbian Equality Network
Headstrong - The National Centre for Youth Mental Health
Immigrant Council of Ireland
Inclusion Ireland
Inspire Ireland
Institute of Community Health Nursing
Integration Centre
International Adoption Association
Irish Association of Social Care Workers (IASCW)
Irish Association of Social Workers
Irish Association of Suicidology
Irish Autism Action
Irish Centre for Human Rights, NUI Galway
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Premature Babies
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation (IYF)
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Mounttown Neighbourhood Youth and Family Project
MyMind
National Association for Parent Support
National Organisation for the Treatment of Abusers (NOTA)
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
One Family
One in Four
OPEN
Parentline
Parentstop
Pavee Point
Peter McVerry Trust
Rape Crisis Network Ireland (RCNI)
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SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Society
St. Patrick's Mental Health Services
Start Strong
Step by Step Child & Family Project
Sugradh
The UNESCO Child and Family Research Centre, NUI Galway
Treoir
UNICEF Ireland
Unmarried and Separated Families of Ireland
Yoobyoo
youngballymun
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

About this Booklet

This information booklet aims to raise public awareness about children's rights that flow from Ireland's membership of the European Union (EU). The Children's Rights Alliance has advocated for children's rights at EU level, in particular for the inclusion of a specific article in the EU Charter on Fundamental Rights, and we continue to advocate for reform of EU law and policy for the benefit of children.

This document focuses on three themes:

- The rights of the child in the EU Charter on Fundamental Rights
- The application of substantive EU law to children
- EU policy and children

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Foreword



Children have a special status as individuals with rights in the European Union (EU).

With the assistance of the Communicating Europe Initiative and the European Commission in Ireland, the Children's Rights Alliance wants to highlight the benefits of the EU for children and encourage people living in Ireland to view the EU as an important avenue of social change for children.

Children have certain basic rights under EU law as set out in the EU Charter of Fundamental Rights. They have the right to equal treatment and non-discrimination.

However, children depend on adults or the State to vindicate those rights on their behalf. They have less power in our society and therefore the avenues open to us adults are not so readily available to children.

This short volume aims to explain to children and those who work with children what EU rights they do have and how they would go about vindicating those rights.

The recent referendum in Ireland has shown that the Irish people want to strengthen children's rights in our constitution. We recognise that they need special legal protection due to their particular status.

With this booklet, we aim to popularise for practitioners and young people alike who they should turn to if they feel their rights are being violated and how they can help get their voice heard.

As we near the conclusion of the European Year of the Citizen, we want to make people aware of the many avenues open to young people and those who work on their behalf. We in the Alliance undertake to make use of these avenues to affect law and policy in the European Union for the benefit of children.

Tanya Ward

Chief Executive

Children's Rights Alliance

1

What is the European Union?

The EU unites 28 countries¹ politically, socially and economically. Each Member State remains an independent country but agrees to share some of its law and policy making powers with the other members of the union so that common policies and laws can be created. The key areas that Member States cooperate on include the internal EU market, environment, freedom of movement, security, justice and social policy.²

Ireland became a member of the European Economic Community (EEC) in 1973 after a national referendum to change the Constitution to allow for membership.³ Once Ireland joined, this meant that European law can take priority over Irish law in some of the key areas already mentioned. The EEC became the EU in 1992.

It is important to note that the Council of Europe, a separate body, should not be confused with the European Union.⁴ It was founded in 1949 and comprises 47 countries. All 28 EU Member States are also members of the Council of Europe. The Council of Europe seeks to promote human rights, democracy and the rule of law based on instruments such as the European Convention on Human Rights and the European Social Charter. The European Court of Human Rights is the judicial body of the Council and issues binding decisions to States however, recommendations from the Council of Europe do not automatically have force in domestic law. In a parallel development, the Council of Europe has developed a Strategy on the rights of the child 2012-2015⁵ to mainstream children's rights into its policies, activities and its monitoring bodies and human rights mechanisms. Through this strategy the Council of Europe aims to promote child-friendly services and systems; eliminate all forms of violence against children; guarantee the rights of children in vulnerable situations; and promote child participation.

¹ These are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

² Treaty on the functioning of the European Union article 4(1).

³ Third Amendment of the Constitution Act, 1972.

⁴ For further information see the Council of Europe website <http://hub.coe.int/>. As the focus of this booklet is the development of EU law and policy in Ireland, the work of the Council of Europe in the area of children's rights has not been set out in any great detail. Further information on projects, progress and specific campaigns can be found at: <http://www.coe.int/t/dg3/children/>.

⁵ Available online at: http://www.coe.int/t/dg3/children/StrategySept2012_en.pdf.

How does the EU work?⁶

European Commission

- Proposes new law, enforces existing laws, manages the budget of the European Union and represents the EU at an international level.

European Parliament

- Also has the power to make law alongside the Commission.
- Members of the European Parliament are directly elected in each Member State to represent that State at EU level.

European Council

- Responsible for guiding the policy and priorities of the EU.
- It is made up of the heads of each Member State or government.

Court of Justice of the European Union

- Ensures that EU law is interpreted and applied in each Member State.
- One Judge is appointed from each member state.

You can learn more about the European Union by visiting its website:
<http://europa.eu>

⁶ For further information on the European Union institutions see:
http://europa.eu/about-eu/institutions-bodies/index_en.htm.

2

What are children's rights under the EU Charter for Fundamental Rights?

Rights are laws and legal rules which set out a person's entitlements in different aspects of his or her life and a State is required to respect, promote and protect these entitlements. Children's rights recognise that children have separate and additional needs from those of adults.

Traditionally human rights were not the concern of the EU as they were not included in the original treaties which establish the Union. However, Article 3(3) of the Treaty of the European Union has since been amended to explicitly require the EU to promote and protect the rights of the child.

In 2000 the Charter of Fundamental Rights of the EU was created bringing together all of the fundamental rights protected under EU law in a single document. The Charter has become legally binding on the EU with the entry into force of the Lisbon Treaty in December 2009. While all Articles of the Charter apply to children in a general sense, Article 24 of the Charter provides solely for the rights of children and requires that conditions be created in which children can effectively enjoy their rights.⁷ It contains four key human rights principles drawn from the UN Convention on the Rights of the Child: the best interests' principle, the voice of the child principle, the right to protection for the child and the right to maintain a personal relationship with his or her parents.

Article 24 of the Charter

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have 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.

⁷ EU Network of Independent Experts on Fundamental Rights, Commentary of the Charter of Fundamental Rights of the European Union, June 2006, available at: http://ec.europa.eu/justice/fundamentalrights/files/networkcommentaryfinal_en.pdf, p.209.

How is the EU Charter enforced?

These principles must be taken into account when Member States and national bodies are applying both EU law and EU policy in a domestic context. The Charter has direct effect in law. This means that if a person believes that when implementing EU law and policy, their rights under the Charter have been violated, they can seek a remedy from the national courts. For example, if an EU citizen from another Member State is exercising his or her freedom of movement by living in Ireland and feels that the State has violated the best interest principle under Article 24 of the Charter when applying EU law, he or she can take a case to the High Court in Ireland.

The voice of the child

Article 24(1) of the EU Charter of Fundamental Rights states that children should have the opportunity to have their views heard in relation to situations which concern them depending on their age and maturity.⁸ This requires that the voice of the child is heard and considered, not only in legal and administrative actions, but also when policies are shaped, actions undertaken and results assessed.

The right of the child to have her or his voice heard does not mean that the child's views are the only views to be considered. However, it does require that as the child's capacity increases, his or her views are given due weight. The right to participate and have views taken into account does not mean a child has the right to make decisions. Depending on the context, the child may be heard either directly, through a representative or through an appropriate body, such as the Ombudsman for Children.

The right to protection and care as necessary for his or her wellbeing

Article 24(1) also contains the right of a child to be provided with the care and protection necessary for his or her well-being. This reflects Article 3(2) of the United Nations Convention on the Rights of the Child.⁹ This right of the child must be respected and protected by the EU bodies and by Member States when implementing EU law and policy.

⁸ Charter of Fundamental Rights in the European Union, article 24(1).

⁹ Article 3(2) of the UN Convention on the Rights of the child: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures".

The best interests of the child

Article 24(2) outlines that the best interests of the child should be a primary consideration in all actions concerning a child in both the public and private sphere. This can include but is not limited to:

- education
- health
- the administration of juvenile justice
- asylum-seeking and refugee procedures as well as immigration
- housing
- budgetary allocations
- policy-making
- family life

Article 24(2) requires that the best interests of the child should be given priority. What constitutes the best interests of the child will depend on the particular circumstances of a child's situation and must address both shorter-term as well as longer-term considerations for the child.

The Charter applies to both the EU institutions and to Member States when they are implementing EU law. Thus the best interests of the child must be a primary consideration when the State is implementing EU law and policy, be it public or private. As shall be seen overleaf, EU law has a substantial impact on children in many areas such as immigration and data protection.

The right to maintain a relationship with his or her parents

Article 24(3) sets out the right of the child to have a personal relationship with his or her parents through regular and direct contact. However, this must be in the best interests of the child. In certain circumstances there may be reasons why it would not be in his or her best interests.

3

What substantive rights do children have in EU law?

Children's EU rights have been strengthened through the introduction of laws that are aimed at the wider EU population. The principles contained in the EU Charter of Fundamental Rights serve to inform and guide the implementation of EU law in this regard. Therefore while EU law may not be specifically directed at children, Member States must take the principles contained in Article 24 into account when applying substantive EU law to children. Substantive law defines rights, duties and obligations in written or statutory law.

Non-discrimination and equal treatment

Article 21 of the EU Charter of Fundamental Rights, prohibits discrimination against anyone including a child, on any ground including: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. This right is further strengthened by the adoption of the EU Racial Equality Directive (see Glossary for definition of Directive), which prohibits discrimination on the grounds of racial or ethnic origin.¹⁰ The Directive, while not directed solely at children, sets out several different areas in which racial discrimination is prohibited. These include education, healthcare and social security, which may all play an important role in the life of a child.¹¹

Article 3 Directive 2000/43/EC

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to...
 - (b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; ...
 - (e) Social protection, including social security and healthcare;
 - (f) Social advantages;
 - (g) Education;
 - (h) Access to and supply of goods and services which are available to the public, including housing.

¹⁰ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22.

¹¹ Ibid Article 3G.

The Directive sets out minimum standards with which Member States must comply. The Directive prohibits both direct and indirect discrimination, as well as harassment, and states that procedures must be made available to all persons who feel that their right to equality has been breached. Further it states that all organisations who have an interest in the matter of racial equality may involve themselves in any of these procedures on behalf of, or to support, the person who feels that his or her right has been breached.¹²

The Racial Equality Directive is incorporated into Irish law through the Equal Status Acts 2000-2012. That law prohibits various forms of discrimination against children, including harassment, and specifies that the needs of children with disabilities should be reasonably accommodated when accessing goods and services, education and accommodation. There are nine grounds under which discrimination is unlawful including the grounds of 'race' and membership of the Traveller community.¹³ However, the age ground does not apply to children under the age of 18.

Individuals who feel that they have been discriminated against can seek information and advice from the Equality Authority, an independent statutory agency which provides information and support in relation to the Equal Status Acts. It can also in certain circumstances provide legal representation to a person who is making a claim of discrimination.

For more information see:

<http://www.equality.ie/en/About-Us/Services>

You can make a claim of discrimination under the Equal Status Acts to the Equality Tribunal. The Tribunal is an independent tribunal which investigates and mediates complaints of discrimination and issues legally binding decisions.

For more information and contact details see:

<http://www.equalitytribunal.ie/About-Us/>

¹² Chapter II Article 7 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹³ Equal Status Act 2000, Section 3(2)(h) and (i). The nine grounds are: Gender, Civil Status, Family Status, Age, Race, Religion, Disability, Sexual Orientation, and Membership of the Traveller community.

Citizenship and freedom of movement

Article 20 of the Treaty on the Functioning of the European Union (as amended) established the concept of EU citizenship and provides for certain rights of EU citizens, including freedom of movement and residence.

In 2004 the EU issued a Directive to consolidate the legal provisions concerning freedom of movement and citizenship.¹⁴ This Directive sets out the conditions governing the right of an EU citizen to move freely around and reside in the Member States of the EU. The right of free movement and residence is also given to their family members regardless of their nationality.

Article 20 TFEU

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties.
They shall have, inter alia:
 - (a) the right to move and reside freely within the territory of the Member States...

As an EU citizen a child has the right to:

- Move and reside freely in another Member State if they are accompanying or joining a parent, for study purposes or for work purposes, subject to conditions.¹⁵
- Equal treatment when accessing education. For example in Ireland a child would have the right to access free primary education, the right to attend secondary school and the right to avail of the same access to third level education as an Irish citizen would.¹⁶
- Equal treatment when accessing all social and tax advantages.¹⁷
- Have their non-EU parent to remain with him or her in the host Member State to enable him or her as a citizen to continue to exercise his or her rights under EU law.¹⁸

As the Charter applies to States when applying EU law, they have an obligation to adhere to the four core principles enshrined in Article 24.

¹⁴ Directive 2004/38/EC of The European Parliament and of The Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJ L158/77 30.4.2004.

¹⁵ Article 12 of Regulation 1612/68.

¹⁶ Directive 2004/38/EC Article 24.

¹⁷ Ibid.

¹⁸ In Case C-34/09 - Gerardo Ruiz Zambrano v Office National de l'Emploi the ECJ held that Article 20 TFEU precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen. See also Case C 310/08, London Borough of Harrow v Nimco Hassan Ibrahim, Secretary of State for the Home Department, where the ECJ held that a parent who is the primary carer of a child who is in education has a right of residence in the host Member State, in this case the UK, even if they cannot support themselves without social assistance.

If a child does not have EU citizenship, but is living with a family member who does, then he or she can still enjoy the same rights as the citizen and they also have rights under the 2004 Directive:

- The right to move and reside in the EU with a parent who is an EU citizen.
- The right to education in the host country on the same terms as national of that country.
- The right to receive equal treatment.
- The right to apply for permanent residence when he or she has spent five years in a row living with a family member who is an EU citizen in an EU state.
- The right to remain in an EU country to complete education if the EU citizen parent has departed or died.
- The right to retain residence if on the death of the EU citizen parent, a child has been residing in the EU Member State for at least one year before his or her parent's death.
- The right to remain in the EU country even if the parents of the child seek a divorce or an annulment.
- The right to remain in the EU country if the parents of the child separate or divorce on the basis of domestic violence while the marriage or registered partnership was subsisting.

- Generally the country where the parent(s) of a child is working and making social insurance contributions is responsible for the payment of family benefits even if the child is resident in another EU country.
- The country where the child lives is usually responsible for family benefits if one of the parents works there. Otherwise if the benefits are higher in the country where the other parent works then that State will top-up the rate of benefit.

As noted above the Directive provides for equal treatment when accessing social and tax advantages. Family benefits vary from one country to another. The country responsible for providing your benefits depends on your family's situation.

For more information see: <http://ec.europa.eu/social/>

¹⁹ Directive 2004/38/EC Article 7(d).

²⁰ Ibid Article 24.

²¹ Ibid.

²² Ibid Article 16.

²³ Ibid Article 12(3).

²⁴ Ibid Article 12(2).

²⁵ Ibid Article 12(1). This applies where the marriage has lasted three years and one of these years has been in the EU Member State.

²⁶ Ibid Article 12(2).

Family reunification

In 2003 a Council Directive was adopted on the right to family reunification.²⁷ Ireland did not opt into this Directive and so it is not applicable in Ireland.

The Directive aims to establish common rules of law relating to family reunification and to enable family members of third-country nationals residing lawfully in the EU to join them in the Member State in which they are residing. The objective is to protect the family unit and to facilitate the integration of nationals of non-member countries.

Third-country nationals who hold a residence permit valid for at least one year in one of the Member States and who have the genuine option of long-term residence can apply for family reunification.

This Directive does not apply to family members of a Union citizen, or to third-country nationals applying for recognition of refugee status whose application is still pending (asylum seekers), people who have been granted a temporary form of protection or persons who have permission to remain in the state for a specified period of time. Spouses and children are covered under the Directive, while it is at the discretion of each Member State whether or not to extend family reunification to other family members such as parents, unmarried partners and adult children.

A family member may be refused entry or residence on grounds of public policy, internal security or public health. These same grounds may justify the withdrawal or non-renewal of a permit that has already been granted. Persons whose permit is refused, withdrawn or not renewed do not currently have a right to appeal the refusal.

Family members are entitled to a residence permit of the same duration as that of the person they have joined and can access education, employment and vocational training on the same terms as that person.

After five years of residence (not later), the spouse or unmarried partner and any children who have turned 18 are entitled to a residence permit in their own right, the conditions of which are prescribed by national law.

Article 24(3) of the Charter

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents, unless that is contrary to his or her interests.

²⁷ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification L 251, 03/10/2003 P. 0012 – 0018.

Under Article 24(1) a child has the right to such protection and care as is necessary for their well-being. Article 24(3) states that every child has the right to maintain a close personal relationship with his or her parents. Family reunification is essential for the vindication of these rights where a child may be separated from one or both of his or her parents due to immigration laws. Unfortunately children in Ireland cannot benefit from this Directive.

Access, family life, guardianship and abduction

The right to respect for family life is protected under Article 7 of the Charter. This is also reflected in Article 24(3) of the charter which gives the right to every child to maintain a personal relationship and direct contact with his or her parents.

Under EU law, it is important that decisions made in one country can be implemented in another. It also has a role in trying to establish which country has jurisdiction to hear a particular case. In effect, the EU does not have rules which govern, for example, who is entitled to have custody or access to a child but it does have rules which try to ensure that custody and access orders made in one country can be put into effect in another.

Article 7 of the Charter
Respect for private and family life
Everyone has the right to respect for his or her private and family life, home and communications.

The Brussels IIBis Regulation, (EC) No 2201/2003 came into force in 2003 (see Glossary for a definition of Regulation). It set out the rules on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. In particular it is concerned with matters related to divorce, child custody and international child abduction.²⁸ It also deals with cases relating to the placement of a child with a foster family or in institutional care in another Member State.

The Regulation also applies in public law proceedings where a court considers it necessary to place a child in institutional care or under the care of a foster family in another Member State. Under Article 56 of the Regulation, the court should consult with the authority or body

²⁸ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, Article 1.

responsible for such placements if this is required in the domestic law of the Member State and gain its consent before a child can be transferred. This applies to cases of parental access to their children and the return of children in cases where one parent removes the child to another member state without the permission of the other parent. However, the Member State can vindicate the right of the child to be heard in whatever way it sees fit.

Article 11 Brussels IIBis Regulation - return of the child

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

The Brussels IIBis Regulation expressly states that the hearing of a child's views is central to its provisions.²⁹ Under the Regulation, the obligation to hear the views of the child in cases relating to parental access and child abduction is automatically binding. This means that it can be directly relied upon in the Irish courts. In addition, in response to the Regulation, the Irish Government produced the European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005.³⁰ These regulations amended Ireland's Child Abduction and Enforcement of Custody Orders Act 1991 to make specific reference to the Brussels IIBis Regulation so rules relating to The Hague Convention 1980 will also relate to the Brussels IIBis Regulation. The Brussels IIBis Regulation enhances the provisions of the Hague Convention and strengthens the Government's ability to process and resolve such cases.

Data protection

Privacy is an integral part of human dignity and personal freedom and the Charter recognises both the right to private life (Article 7) and the right to the protection of personal data (Article 8). Common EU rules have been established to ensure that your personal data enjoys a high standard of protection everywhere in the EU.³¹ Under data protection law, a person has rights regarding the use of their personal details and data controllers have certain responsibilities in how they handle this information. These rights apply where details are held on a computer, on paper, in the form of videos, digital recordings and photographs.

²⁹ Reg 2201/2003, recital 19.

³⁰ S.I. No. 112/2005 — European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations, 2005.

³¹ Directive 95/46/EC Of The European Parliament And Of The Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data Official Journal L 281 , 23/11/1995 P. 0031 - 0050

You have the right to complain and to a remedy if your data is misused. The Data Protection Directive does not directly refer to children but it does apply to any individual. Therefore, children still have the right to privacy and the right to protection of their personal data.

In Ireland, the Data Protection Commissioner is responsible for upholding the rights of individuals and enforcing the obligations of data controllers. For example, this means that the Irish Data Protection Commissioner has a key role in relation to how the Data Protection Directive is implemented by both social networks.

Example of the practical effect of this Directive on the day to day lives of children - school life

Schools are required to ensure that any information regarding exam results or disciplinary proceedings are stored securely and access is restricted to authorised persons.

Individuals who feel their rights are being infringed can complain to the Commissioner, who will investigate the matter and take whatever steps may be necessary to resolve it.

Under Directive 95/46/EC a person has the right to:

- Have personal details kept for clearly stated lawful purposes.
- Have his or her personal information kept safe.
- The information stored to be factually correct, complete and up-to-date.
- Change and remove personal details if they are not factually correct.
- Request a copy of any personal information from a data holder.
- Information about the personal details held and a right to access to these details.
- Know if personal details are being held.

For more information see: <http://www.dataprotection.ie>

4 What can I do if I feel my rights under EU law have been breached?

If you feel your EU rights have been breached you have a number of options.

Administrative remedies

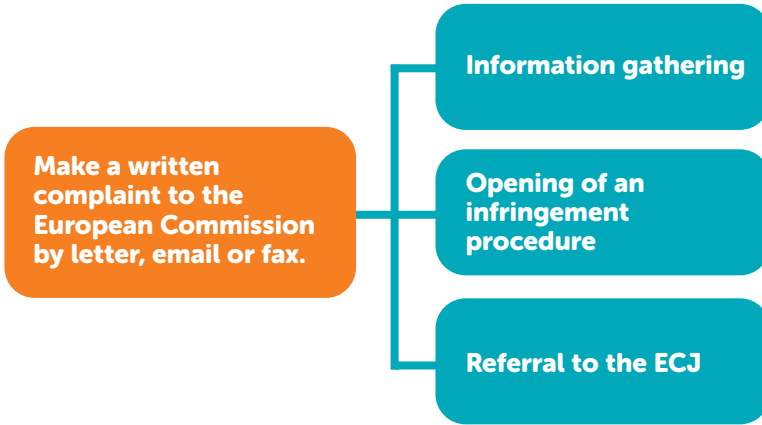
There are a number of alternative remedies available to a person who feels that their EU rights have been infringed depending on the right in question. For example:

- A person who feels that their right to equality and non-discrimination under Article 21 of the EU Charter of Fundamental Rights can seek advice from the Equality Authority and make a complaint to the Equality Tribunal.
- A person who feels that their data protection rights under EU law have been breached can make a complaint to the Data Protection Commissioner.

Direct complaint to the European Commission

Any person who feels that their rights under EU law have been breached can make a direct complaint to the European Commission. Making a complaint can lead to a number of actions being taken by the Commission, information gathering, opening of an infringement procedure and referral to the European Court of Justice (ECJ). Making a complaint will not always lead to the opening of infringement procedures but where the Commission agrees that there is cause for complaint, it can start infringement proceedings against the Member State concerned. Infringement proceedings involve the Commission giving a reasoned opinion on the actions of the state and requesting that it alters its behaviour.

If the State does not comply with the reasoned opinion the Commission can then refer the case to the Court of Justice and may also request a lump sum or penalty payment to be imposed upon the Member State in question.



Take a case to the national or domestic courts

If a person feels their rights under EU law have been infringed they can take a case to the national or domestic courts. In Ireland, a parent or legal guardian must make the complaint to the national court on behalf of a child. National courts have two options:

1. If the national court feels that there has been a breach of rights, it can award redress (see below).
2. If the judge is unclear on a particular point of EU law or is unsure how it should be interpreted and implemented, then he or she can refer the case to the ECJ for an opinion. The ECJ will send the opinion on the point of law back to the national courts who will then decide the case in light of this.

Redress can take many different forms. The courts can:

- Reverse a decision taken by a national authority against you.
- They can grant an injunction to ensure that the offending action stops immediately.
- If you have suffered a loss through the failure of the national authority to implement EU law correctly, then the court can award compensation.

If you are not satisfied with the decision of the national court you can then make a complaint to the European Commission.

5

What is EU policy on children's rights?

EU agenda on the rights of the child

In 2006, the European Commission published *Towards an EU Strategy on the Rights of the Child*,³² a communication which established the basis for promoting and protecting the rights of the child in the internal and external policies of the EU. The Commission then set up a European Forum on the Rights of the Child, a Commission Inter-service Group and a Commission Coordinator for the Rights of the Child. The purpose of these three bodies is to strengthen the capacity of EU institutions to address children's rights issues.

In 2011, the Commission issued another communication - the *EU Agenda on the Rights of the Child*³³ which aims to promote and protect the rights of children in EU law and policies as they are set out by the EU Charter of Fundamental Rights and the Treaty of Lisbon. The Agenda sets out four areas in which the EU intends to take action to better protect the rights of children. These include child-friendly justice; action to protect children when they are vulnerable; protecting children in the EU's external action and child participation and awareness-raising. The Commission intends to pursue these goals through eleven key actions outlined below.

Child Friendly Justice

- Introduce a directive on victims' rights which would raise the level of protection for child victims.
- Propose a directive on special safeguards for suspected or accused persons who are vulnerable, including children.
- Change legislation to facilitate the recognition and enforcement of decisions on parental responsibility to ensure swift decisions and minimum standards in the best interests of the child.
- Promote the use of Council of Europe guidelines on child friendly justice.
- Develop judicial training on child participation in the justice system.

Protection and Empowerment of Vulnerable Children

- Create a single entry point on EUROPA for children, parents and teachers to access information on the EU and the rights of the child.

³² Communication From The Commission, Towards an EU Strategy on the Rights of the Child, Brussels, 4.7.2006, COM(2006) 367 final

³³ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions :An EU Agenda for the Rights of the Child Brussels, 15.2.2011 COM(2011) 60 final

EU External Action

- Continue the implementation of the 2007 EU Guidelines on the Protection and Promotion of the Rights of the Child that focus on combating all forms of violence against children as well as EU Guidelines on Children and Armed Conflicts based on the 2010 Revised Implementation Strategy.

Child Participation and Awareness Raising

- Create a single entry point on EUROPA for children, parents and teachers to access information on the EU and the rights of the child.

EU guidelines on the rights of the child

In 2007, the EU published its *Guidelines for the Promotion and Protection of the Rights of the Child*.³⁴ This document guides the EU's activities in relation to its promotion of the rights of the child within the EU itself as well as guiding its external policy with non-EU countries. It also informs its interactions with international mechanisms including the United Nations and the Council of Europe. In particular, the guidance emphasises the importance of the UN Convention on the Rights of the Child and its Optional Protocols.

Through these guidelines the EU has committed to monitor the progress made on children's rights, including progress on child protection in candidate or prospective candidate countries. It also promises to interact with non-EU countries to encourage them to ratify and adhere to international human rights treaties as well as to encourage cooperation with international monitoring bodies.

Methods of implementing these guidelines include providing further funding for children's rights as well as supporting the review of national laws to ensure compliance with international standards for children's rights. The guidelines also promote the principle of non-discrimination as well as the participation of children in decisions and policies that have an impact on their lives. The EU also pledges to support parents and caregivers to ensure that they can better comply with their obligations under international human rights treaties. While the guidance is mostly concerned with general actions for promoting and protecting children's rights, it does set out key priorities including the elimination of all forms of violence against children.

³⁴ The EU Guidelines for the Promotion and Protection of the Rights of the Child along with a summary are available at: http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33604_en.htm.

European youth strategy

In 2009, the EU Council endorsed a renewed framework for European cooperation in the youth field (2010-2018), based on the Communication *EU Youth Strategy: Investing and empowering*.³⁵ There are two overall objectives of the youth strategy: to provide more and equal opportunities for young people in education and in the labour market and to encourage young people to be active citizens and participate in society.³⁶

The strategy proposes initiatives in eight fields of action: ³⁷



³⁵ Communication from the Commission: An EU Strategy for Youth – Investing and Empowering
A renewed open method of coordination to address youth challenges and opportunities, COM(2009) 200 final,
available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0200:FIN:EN:PDF>.

³⁶ Ibid p.4.

³⁷ Ibid.

The implementation of the Youth Strategy is to be achieved by:³⁸

- Facilitating increased cooperation between Member States in setting common agendas, engaging in mutual learning and dissemination of results.
- Engaging in a structured dialogue with young people and involving young people in continuous joint reflection on priorities, implementation and follow-up.
- The use of an evidence-base for youth policy.
- Promoting opportunities for young people to develop autonomy and key competences such as a sense of initiative and entrepreneurship and to actively participate in all fields of public life (social, political, educational, sports, service).
- The continuation of the Youth in Action Programme.

EU Commission recommendation: breaking the cycle of disadvantage for children

The EU aims to reduce the number of people affected by poverty and social exclusion by 20 million by 2020. This is part of an overarching initiative by the EU called Europe 2020, which aims to develop sustainable growth across the EU. Europe 2020 is the EU's growth strategy for the coming decade.

The European Commission has also taken steps to directly combat child poverty through the publication of a Commission Recommendation - *Investing in Children: Breaking the Cycle of Disadvantage*.³⁹ This recommendation aims to encourage and guide Member States in organising and implementing policies to address child poverty and social exclusion, and promote children's well-being through multi-dimensional strategies. This guidance includes a recommendation to 'address child poverty and social exclusion from a children's rights approach, in particular by referring to the relevant provisions of the Treaty of the European Union, the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child, making sure that these rights are respected, protected and fulfilled'.⁴⁰

³⁸ http://ec.europa.eu/youth/policy/eu-youth-strategy_en.htm.

³⁹ Commission Recommendation: Investing in Children: Breaking the Cycle of Disadvantage, C(2013) 778 final, available at : <http://ec.europa.eu/social/main.jsp?catId=961&langId=en>.

⁴⁰ Ibid

The recommendation calls for the development of integrated policies to tackle child poverty at an early stage, including investment in early childhood care and education.⁴¹ It also requires the Commission to adopt an advisory role in assisting Member States as to how best to make such investment and develop such policies.

The recommendation also sets out suggested criteria in which the reduction of child poverty can be monitored and measured by the Commission and Member States. These are called indicators and include factors such as infant mortality and the level of early childhood education.⁴²

Overall, the EU aims to create a viable change to the levels of child poverty across Member States through setting national targets under the Europe 2020 program and through progress made under the Commission's Recommendation on Investing in Children. However this can only be done by Member States choosing to adopt and comply with the targets that are set for them. Ireland has committed to creating a sub-target for the reduction of child poverty.⁴³ This target has yet to be set.

The key areas in which the recommendation calls for development are:

- Supporting parental access to the labour market.
- Improving access to childhood education and care services.
- Supporting children's participation in extra-curricular activities and in services and decisions affecting children such as social services, education, and alternative care.

⁴¹ Ibid

⁴² Ibid Article 2(2).

⁴³ Department of An Taoiseach, National Reform Programme for Ireland under the EU 2020 Strategy, p.31.

6 How can I influence EU law and policy as a young person?

There are many ways in which you can influence what happens in the EU.

Contact your MEP

Members of the European Parliament (MEPs) are directly elected by the citizens of the EU. They are responsible for making law and policy. Ireland currently has 12 MEPs representing four regional constituencies. In 2014, this will be reduced to 11 MEPs representing three constituencies.

To find your local MEP and how to contact them visit
<http://www.europarl.europa.eu/meps>

Europe Direct Information Centres

The European Commission supports a wide network of Information providers in Ireland including the Europe Direct Information Centres (EDICs).

There are 10 EDICs in Ireland providing the following services:

- Answers to questions on your EU rights, funding, etc.
- Invitations to local EU information/networking events.
- EU documents and publications.
- References to other information sources.
- Contact details for relevant organisations.
- The opportunity to send feedback to the EU institutions.

Find your local EDIC by logging onto to <http://www.europedirect.ie/>

European youth event 2014 (9 - 11 May 2014)

The European youth event is taking place in Strasbourg from the 9-11 May 2014. It provides young people with the opportunity to have their views and voices heard by the European Parliament. You have to be aged between 16 and 30 and come from one of the EU Member States or a candidate country to attend. Due to the specific nature of the activities, only group reservations can be accepted. The minimum group size is 10 and every group must have a leader who is over the age of 18. There is no fee for the event but groups must cover their own transport and accommodation costs.

For more information see:

<http://www.europarl.europa.eu/eye2014/en/news/news.html>

EU consultations

The EU runs a consultation process with young people called a "Structured Dialogue" in each of the 28 member countries of the European Union. Each Structured Dialogue cycle spans 18 months and the current cycle takes place during the EU presidency terms of Ireland, Lithuania and Greece from January 2013 to June 2014. Each country shares the three phases of the Structured Dialogue during their term and Ireland held the Presidency from January to June 2013. The current thematic focus is on Social Inclusion, and as part of its Presidency, Ireland also presided over the Presidency of the EU Youth Council.⁴⁴

During the Irish Presidency, the EU Youth Conference took place in Dublin from 11 to 13 March 2013,⁴⁵ which represented the first phase of consultation. This identified what social inclusion means for young people, how it impacts on their lives as well as looking at both the specific groups of young people susceptible to social exclusion and at what stage of their lives it is most likely to occur. Ireland particularly focused on the importance of quality youth work and how it could improve the lives of young people.⁴⁶ Both the Lithuanian and Greek Presidencies will examine possible solutions for promoting and ensuring better social inclusion of young people.

⁴⁴ For further information on activities during Ireland's EU Presidency see:
<http://www.dcy.gov.ie/viewdoc.asp?fn=/eu-presidency-2013/Young-Voices-Have-Your-Say.html>.

⁴⁵ For further information including presentations from the conference see:
<http://www.dcy.gov.ie/viewdoc.asp?fn=/eu-presidency-2013/EU-Youth-Presidency-Events.html>.

⁴⁶ The Summary Report of Young Voices Have Your Say - Ireland's EU Presidency is available at:
<http://www.dcy.gov.ie/documents/publications/YoungVoices.pdf>.

The National Working Groups arrange the consultations in ways that are relevant to their own country and the youth structures that present in it. They also decide when to carry out the consultations within the overall European timetable.⁴⁷

To get involved in the Irish Working Group, contact: Ms Jean-Marie Cullen on International@nyci.ie

In Ireland, the National Youth Council of Ireland (NYCI) runs the national working group. NYCI advocates on a number of international issues by developing the influence of young people and member organisations on European youth policy and issues that affect young people at a European and international level. NYCI organised a consultation with young people "For Youth by Youth" on the draft Strategy for Youth in Europe and inputted into the consultation at a European level conference in Sweden.

Your voice in Europe

Your voice in Europe is the European Commission's "single access point" to a wide variety of consultations, discussions and other tools, which enable you to play an active role in the European policy-making process. There are three aspects to the website: consultations, discussions and other tools.

For more information see:
http://ec.europa.eu/yourvoice/index_en.htm

⁴⁷ For details of the European timetable see: http://europa.eu/youth/content/want-get-involved_en. The upcoming Irish consultations will take place in Dublin on 25 January 2014 and Cork on 2 February 2014 and further details of future consultations will be published on the DCYA website: <http://www.dcy.gov.ie/viewdoc.asp?fn=/eu-presidency-2013/Young-Voices-Have-Your-Say.html>.

Further sources of information

There are many places and organisations where you can get more information about children's rights under the European Union. This section provides contact details and an explanation of what each organisation does.

Data Protection Commissioner

The Data Protection Commissioner is responsible for upholding the rights of individuals and enforcing the obligations of data controllers. The Commissioner is appointed by Government and is independent in the exercise of his or her functions. Individuals who feel their rights are being infringed can complain to the Commissioner, who will investigate the matter, and take whatever steps may be necessary to resolve it.

For more information see: <http://www.dataprotection.ie>

Equality Authority

The Equality Authority is an independent statutory agency that was set up in 1998. It provides information under the Equal Status Acts and the Employment Equality Acts. It can also, in certain circumstances, provide legal representation to a person who is making a claim of discrimination.

For more information see: <http://www.equality.ie/en/About-Us/Services>

Equality Tribunal

The Equality Tribunal is an independent tribunal that investigates and mediates complaints of discrimination. Any decisions made by the Tribunal are legally binding. Complaints made under the Equal Status Acts are brought before the Equality Tribunal.

For more information and contact details see: <http://www.equalitytribunal.ie/About-Us/>

European Anti-Poverty Network (EAPN)

EAPN is a network of non-governmental organisations and groups that fight poverty and social exclusion in EU Member States. It aims to raise awareness around the issues of poverty and social exclusion and enhance the effectiveness of efforts to combat poverty. It also has an Irish branch.

For more information see:

<http://www.eapn.eu/en/what-we-do/our-campaigns/blog> or www.eapn.ie

Eurochild

Eurochild is a non-governmental organisation that promotes the welfare and rights of children and young people in Europe. This is done through the formation of a network of member organisations that work together to promote and secure the rights of children.

For more information see:

<http://www.eurochild.org/en/who-we-are/what-we-do/index.html>

European Citizens' Initiative

The European Citizens' Initiative allows one million EU citizens to participate directly in the development of EU policies, by calling on the European Commission to make a legislative proposal.

For more information see: <http://ec.europa.eu/citizens-initiative/public/welcome?lg=en>

European Commission Representation Ireland

The European Commission Office in Ireland is part of a network of Commission representations around the EU. It provides information on EU policy and the functioning of the European Union. The Commission Office is located at European House, 18 Dawson Street, Dublin 2.

For more information see: http://ec.europa.eu/ireland/about_us/index_en.htm

Europe Direct

Europe Direct is a telephone information service that can offer answers to general questions about the European Union and can provide contact details for the service that might be most relevant for a specific problem. This service is free but some mobile phone operators may charge. You can call them on 00800 67891011.

For more information see: <http://www.europedirect.ie/info-centres/>

Europa Kids Corner

This EU website on children's rights is aimed at children and teenagers. You can play games, watch cartoons and videos and learn about your rights. You can also find out who to contact in your country if you feel you are not being treated fairly.

For more information see: http://europa.eu/kids-corner/index_en.htm

European Movement Ireland

European Movement Ireland is an independent, not-for-profit, membership-based organisation working to develop the connection between Ireland and Europe.

For more information see: <http://www.europeanmovement.ie/erInformation>

European Network against Racism (ENAR)

ENAR is a cross-Europe network of non-governmental organisations that work together to combat racism and discrimination. It campaigns for equality and social inclusion across Europe for EU citizens and third country nationals. It also has an Irish branch.

For more information see:

http://www.enar-eu.org/Page_Generale.asp?DocID=15278&langue=EN
or www.enarireland.org

European Parliament Office Ireland

The European Parliament Office provides information on the Parliament and the role of Irish MEPs, information on issues being considered by the parliament and EU Parliament elections in Ireland. The office also provides assistance in accessing EU documents and advice on EU Citizens' Rights.

For more information see: http://www.europarl.ie/en/At_your_service.html

European Union Agency for Fundamental Rights

The Fundamental Rights Agency (FRA) aims to provide EU institutions and EU countries, when they implement EU law, with assistance and expertise relating to fundamental rights. The main task of the Agency is to collect and disseminate objective, reliable and comparable data on the situation of fundamental rights in all EU countries within the scope of EU law. The FRA is also tasked with raising awareness about fundamental rights. Children are part of the Agency's remit.

For more information see: <http://fra.europa.eu/en/contact>

European Youth Forum

The European Youth Forum is the platform of youth organisations in Europe. Representing 99 youth organisations, both National Youth Councils and International Non-Governmental Youth Organisations believe youth organisations are the tool through which they can empower, encourage, involve, represent, reach out and support young people. The Youth Forum brings together tens of millions of young people from all over Europe, organised in order to represent their common interests.

For more information see: <http://www.youthforum.org/about/european-youth-form/>

European Youth Portal

The European Youth Portal offers European and national information and opportunities that are of interest to young people who are living, learning and working in Europe. It gives information around eight main themes, covers 33 countries and is available in 27 languages.

For more information see: <http://europa.eu/youth/en>

Your Europe Legal Advisor

The Your Europe Legal Advisor is a lawyer who can provide advice and information about rights under the EU. The Legal Advisor can explain how a person can go about accessing their rights under the European Union. The Irish Your Europe Legal Advisor is based in European Union House on Dawson Street in Dublin.

For more information see:

http://ec.europa.eu/ireland/eu_services_in_ireland/your_europe_legal_adviser/index_en.htm

Glossary of terms

Charter of Fundamental Rights

Charter that contains certain political, social, and economic rights that apply in the context of EU law.

Council of Europe

An international organisation promoting co-operation between 47 European countries in relation to legal standards and human rights. This is not a part of the EU.

Data Controller

An individual or company that has access to and controls the contents and use of personal data.

Data Protection Commissioner

The person responsible for upholding the rights of individuals under Irish data protection law.

Directive

A Directive is a type of EU law that sets out certain end results that must be achieved by Member States by a particular date. It is up to the Member States how they implement Directives.

European Commission

The executive body of the European Union responsible for proposing legislation, implementing decisions, upholding the Union's treaties and day-to-day running of the EU.

European Council

An institution of the European Union comprising the heads of each state.

European Court of Justice (ECJ)

The highest court in the European Union in matters of European law.

European Parliament

Directly elected parliamentary institution of the European Union.

European Union (EU)

Economic and political union of 28 countries in Europe.

Family Reunification

Family reunification refers to the process by which family members separated by forced or voluntary migration reunite in a country other than their country of origin.

MEP

Member of the European Parliament elected by the citizens of each Member State of the EU.

Recommendation

Non-binding guidance issued by the EU institutions, which makes their views known without having any legal consequences.

Regulation

Regulations are the most direct form of EU law and have binding legal force throughout every Member State as soon as they are passed.

The Hague Convention 1980

International agreement relating to international child abduction.

Treaty of Lisbon

Treaty to amend the founding treaties of the EU, which became effective in December 2009.

Treaty of the European Union (TEU)

One of the founding treaties of the EU.

UN Convention on the Rights of the Child (UNCRC)

International Treaty setting out the civil, political, economic, social, health and cultural rights of children.

CHILDREN'S RIGHTS --- ALLIANCE

Uniting Voices for Children

www.childrensrights.ie