

## *Introduction: Children and the European Union*

CHILDREN ACCOUNT FOR over one-fifth (over 107 million) of the EU population and an estimated 5.4 million children are born every year across the 27 Member States.<sup>1</sup> The aim of this book is to explore the extent to which EU law and policy acknowledges, accommodates and regulates their lives. It represents the first attempt to present a comprehensive and critical analysis of the constitutional, cultural, social, ideological and political issues underpinning children's rights at EU level. In doing so, it is inspired by and builds upon previous efforts to map out EU activities in relation to children,<sup>2</sup> but does so in the light of the significant changes to have taken place over the past 20 years, not only in relation to the institutional and constitutional architecture of the EU, but also against the readiness of EU legal and policy actors to engage more boldly with children's rights issues. These developments are symptomatic of the extended 'reach' of the EU more generally: physically, through the expansion of the EU territory, as well as legally and politically through its growing social and fundamental rights agenda and through the gradual erosion of internal borders. Such factors have enhanced the legitimacy and value of EU action insofar as it offers not only a supra-national response to a range of children's rights concerns that transcend national boundaries, but also insofar as it offers a platform for political dialogue, best practice exchange and resource-pooling between the Member States in relation to children's rights issues of common concern.

The reference to 'Rights' and 'Welfare' in the title of this book acknowledges that children's interests and needs are multi-faceted and interlinked, and that they interact with the rights and interests of others (notably those of their parents and other children). The reference to 'Accountability' suggests that children's rights are upheld not simply as a result of being articulated in law or policy, but by virtue of coherent mechanisms for implementation, enforcement and evaluation.

<sup>1</sup> M Marcu, 'Population and Social Conditions' in, *Statistics in Focus*, 38/2011 (Brussels, Eurostat, 2011).

<sup>2</sup> Notably S Ruxton, *Children and the EU* (London, NCH Action for Children, 1996); S Ruxton, *What About Us? Children's Rights in the European Union: Next Steps* (Brussels, The European Children's Network, 2005) and C McGlynn, *Families and the European Union: Law, Politics and Pluralism* (Cambridge, Cambridge University Press, 2006).

## 2 Introduction

Essentially, children's 'rights'—including measures to protect them—mean very little unless individuals, bodies and public institutions can be held to account for upholding them and unless there are mechanisms in place to enable children to enforce them.

This perspective raises a number of questions. Most crucially, what is the added value of children's rights at EU level? What mechanisms are at the EU's disposal to advance children's rights? And how can we ensure that any children's rights measures developed by the EU do not unnecessarily duplicate or, worse still, undermine the activities of international bodies such as the Council of Europe and the United Nations, or indeed, of domestic authorities? Such issues are interrogated from an explicitly children's rights perspective insofar as it makes a concerted effort to locate the analysis within a children's rights ideological and normative framework and, where possible, to draw upon research and campaigns that actively and directly engage with children's life experiences. This approach also provides some insight into the EU's interpretation of children's rights. For instance, to what extent is the EU children's rights agenda dominated by a paternalistic preoccupation with protecting children as opposed to empowering them? Are children's rights at EU level addressed in a manner that is synonymous or coterminous with those of their parents or other adults? In short, is there sufficient and meaningful EU provision that endorses and supports children as independent actors rather than as merely passive objects of control and care?

The substantive focus of the chapters reflects prevalent EU legislative, judicial, policy and campaign activities and covers issues such as child custody and maintenance, immigration and asylum, education and social exclusion, child protection and EU enlargement. This is by no means presented as an exhaustive list. Indeed, at the time of writing, further programmes and provisions are being developed on a range of issues that are excluded from the scope of this book and that have, in the past, appeared somewhat incongruous to EU law and policy, including youth justice, international adoption, missing children and international development.

Adopting a children's rights approach is not simply a question of determining the scope and content of EU provision though; it demands some interrogation of the methods by which those rights are expressed and transposed into law and policy. As such, the following analysis will scrutinise the extent to which procedures, as they are currently framed, can realistically respond to the children's rights deficit at EU level; the decision-making process, the use and value of other methods of governance beyond the law, and the institutional mechanisms in place to enable children and young people to engage with the institutions or seek redress for alleged violations of their rights.

With this in mind, the chapters in this book are organised to allow for a comprehensive and critical analysis of the nature, scope and value of EU measures in relation to children. The first two chapters set the scene by establishing the historical, constitutional and ideological context in which children's rights are pursued at EU level. **Chapter one** charts how EU children's rights has developed from a relatively marginal aspect of EU free movement and consumer law, largely

detached from international children's rights discourse, into a distinct and far-reaching discipline in its own right. In the process, it explores the motivations for and added value of EU action in the field of children's rights and ponders whether the EU is possessed of the necessary capacity, expertise and resources to deliver on its children's rights commitments. The discussion then considers how the balance between action at EU and the national level is negotiated before establishing the definitional parameters of the EU's concept of 'child'. **Chapter two** explores the ideological and conceptual contexts in which children's rights have been pursued at EU level. While recent formulations of the EU 'children agenda' are dominated by a normative 'rights'-based model, the analysis explores what this really means in substance and, indeed, in practice. It then moves on to question the robustness of a purely rights-based approach and suggests other normative and conceptual frameworks within which children's interests might be more effectively pursued.

Subsequent chapters illustrate how the normative and methodological tools identified in the first two chapters have been used by the EU to enact measures in relation to substantive children's rights issues. Chapters three, four and five explore various aspects of children's rights in the context of transnational family life, an area which has seen the most explicit and far-reaching EU legal intervention. Specifically, **chapter three** focuses on the extent to which children's right to family life is protected under EU free movement and immigration law. This involves a critical analysis of the EU's persistently narrow legal conceptualisation of 'family', the conditions placed on those seeking family reunification, and of the extent to which EU migration law reinforces or, indeed, challenges the construction of children as inexorably dependent on adults. **Chapters four and five** consider the extent to which the (now well-established) legal and jurisprudential framework regulating cross-national divorce and separation sustain and protect the rights and welfare of children implicated in such processes.

**Chapter six** moves on to examine how the educational rights and welfare of children are perceived and protected at EU level. In doing so, the analysis considers the role of children as valuable economic and social capital: not only as guarantors for the future stability of the European economy but as active, everyday protagonists in the cultural, political and social life of the EU. **Chapter seven** examines the various measures put in place to protect the welfare of some of the most socio-economically, physically, emotionally and politically vulnerable children in the EU. It considers the effectiveness and limitations of legislative measures in areas that fall within EU competence (such as immigration and asylum), and the range of alternative tools at the EU's disposal to address issues that fall outside its legislative remit. The analysis also points to some of the structural obstacles that impede effective EU protection of children, particularly in relation to inter-departmental incoherence within the Commission, the quality, consistency and subsequent use of research data, and the efforts made to co-ordinate EU activities with the labours of parallel international human rights bodies. **Chapter eight** considers the extent to which children's rights feature in the EU enlargement process. In particular, it highlights how the accession process presents the EU

#### 4 *Introduction*

with an exceptional mandate for scrutinising national human rights (including children's rights) systems. In the same token, EU membership can act as a potent incentive for effecting important changes to such systems. The discussion considers the nature and scope of accession states' children's rights obligations during the accession process, as well as the political and legal challenges of enforcing and sustaining these commitments once membership is achieved. The final chapter brings all of the preceding analysis together with an examination of the various mechanisms that can be used by children to actively represent and enforce their rights at EU level. It also makes some suggestions as to the future direction and effects of EU action relating to children.