



## COMMISSION EUROPÉENNE

Olli Rehn  
Membre de la Commission

Bruxelles, le 4.4.2005  
D(2005) 193

Monsieur,

Votre lettre du 27 janvier 2005 adressée au Président Barroso lui est bien parvenue. En tant que membre de la Commission responsable pour l'élargissement il m'a demandé de vous répondre en son nom.

Je suis désolé que les termes de la lettre du 13 janvier 2005 du Président vous aient « navré(s) ». En effet, je ne crois nullement que la Commission soit « déconnectée de la réalité roumaine ». Bien au contraire, la Commission s'efforce d'être continuellement informée de cette réalité. Même si nous restons conscient que cette situation reste perfectible, force est de reconnaître que d'importants progrès ont été accomplis ces derniers temps dans le domaine de la protection de l'enfance. Diverses autres institutions internationales l'ont maintes fois souligné. Pour sa part, la Commission soutient les efforts des autorités roumaines en vue d'améliorer la situation des enfants roumains.

L'approche de la Commission est avant tout imprégnée du respect de l'acquis communautaire, en particulier la Convention du 20 novembre 1989 relative aux droits de l'enfant. L'article 21 litera b) fixe clairement la hiérarchie des solutions envisageables pour le bien de l'enfant, en indiquant que :

*« L'adoption à l'étranger peut être envisagée*

*comme un autre moyen d'assurer les soins nécessaires à l'enfant,*

*si celui-ci ne peut, dans son pays d'origine, être placé*

*dans une famille nourricière ou adoptive ou être convenablement élevé »*

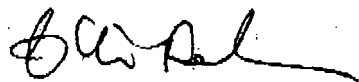
L'adoption internationale, si elle est admise, ne constitue donc que le dernier recours, lorsque aucune autre solution satisfaisante n'existe pour le bien de l'enfant sur le territoire de l'Etat concerné. Dans ces conditions, la Commission se doit de continuer à soutenir les efforts des autorités roumaines et de la communauté internationale afin d'assurer une évolution conforme à ces principes internationaux auxquels tous les Etats membres ont souscrit.

J'ai effectivement été informé de la publication d'un rapport de l'UNICEF auquel vous vous référez, mais je n'ai pu en obtenir le texte intégral. C'est pourquoi vous comprendrez que je me garderai de formuler une quelconque conclusion prématurée au sujet de son contenu.

Au delà, loin de moi de vouloir nier la détresse d'une mère qui veut abandonner son enfant à la naissance et les conséquences que cela peut avoir sur celui-ci. A cet égard, je me dois de relever, que la Commission se prononce pour une application effective de la nouvelle législation roumaine qui contient une obligation d'identification de la mère accompagnée d'actions nécessaires pour munir l'enfant d'une identité. Ceci pour éviter une rupture définitive des liens entre l'enfant et ses parents biologiques, mais aussi pour lui donner droit à une mesure de protection de l'enfance en cas de besoin. C'est ainsi que cette nouvelle loi contribuera à tarir à la source le risque de trafic d'êtres humains, que nous ne pouvons ignorer. En tout état de cause, soyez assuré que je continuerai à accorder à ces questions toute l'importance qu'elles méritent et que je m'engage personnellement à ce que les droits de l'enfant soient dûment respectés tant en Roumanie que dans les autres pays candidats à l'Union européenne.

Vous souhaitant bonne réception de la présente, je vous prie de croire, Monsieur, à l'expression de mes sentiments distingués

Bien à vous,





COMMISSION EUROPÉENNE

Le Président

Bruxelles, le 13 -11- 2005  
BARROSO (2004) A/1227  
BARROSO (2004) D/62

Monsieur François de COMBRET  
Conseiller référendaire honoraire à la  
Cour des Comptes  
Vice-Président de Care France  
SERA  
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Cher Monsieur,

Votre lettre du 22 novembre 2004 ainsi que le compte-rendu de votre voyage en Roumanie me sont bien parvenus et je vous en remercie.

La Commission européenne partage votre opinion sur le fait que les progrès dans la réforme de la protection de l'enfance en Roumanie sont remarquables. En effet, depuis que la Roumanie est devenue pays candidat pour l'adhésion à l'Union européenne, la Commission a renforcé son soutien à la Roumanie dans ses efforts de réforme de l'assistance sociale et du système de protection des enfants. Comme résultat, la plupart des grandes institutions qui hébergeaient des enfants ont été remplacées par des mesures de protection de l'enfant plus appropriées, et la réforme de l'assistance sociale est maintenant en bonne voie. De plus, les allocations familiales pour les enfants ont été mieux ciblées sur les parents qui en ont le plus besoin, comme les mères seules.

Dans votre lettre, vous évoquez également la nécessité de la reprise de l'adoption internationale, en raison du taux d'abandon d'enfants que vous considérez élevé. Permettez-moi de faire un rappel de l'historique de ce dossier : la Commission européenne vous a fait savoir, depuis 1993, que l'adoption internationale ne peut pas être la solution préférée pour la question des enfants institutionnalisés en Roumanie. Il est plus approprié de développer l'assistance sociale pour les familles roumaines ainsi que le système de protection des enfants, comme dans les Etats membres de l'Union européenne.

L'adoption internationale en Roumanie a été fortement critiquée dans le passé par le Parlement européen et la Commission européenne. La Commission a constaté en 2000 que, selon la législation roumaine sur l'adoption, des critères autres que celui de l'intérêt

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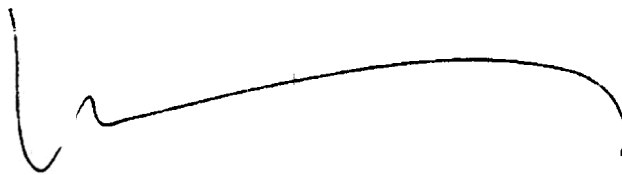
de l'enfant pourraient être pris en compte dans les décisions d'adoption. Cela n'était pas en conformité avec la Convention de l'ONU sur les Droits de l'Enfant, qui fait partie de l'acquis communautaire. De plus, cela risquait d'avoir une incidence négative sur les efforts entrepris pour réformer le système de protection de l'enfance.

Par lettre du 25 mars 2003, M. Eneko Landaburu vous a indiqué qu'une expertise juridique des Etats membres était mise en place pour conseiller la Roumanie sur les droits des enfants. Dans ce contexte, la Roumanie a adopté en juin 2004 une loi qui est considérée, de façon générale, conforme à la Convention de l'ONU sur les Droits de l'Enfant, ainsi qu'à la Convention Européenne sur les Droits de l'Homme. La nouvelle approche du gouvernement roumain en matière d'adoption internationale, à savoir de limiter les adoptions, complète les progrès réalisés dans le domaine de la protection de l'enfance et est conforme aux pratiques des Etats membres, où les adoptions internationales, si c'est le cas, sont l'exception extrême.

Vous indiquez enfin que la Roumanie demeure, en Europe, le pays des abandons d'enfants. Permettez-moi de clarifier cette notion d'abandon. Le placement d'un enfant en protection ne représente pas, en soi, un acte d'abandon. L'abandon juridique, comme vous le mentionnez, était surtout le résultat de la loi sur l'abandon de 1993, loi qui a été abrogée au moment où les nouvelles lois sur les droits des enfants ont été publiées au Journal Officiel de la Roumanie le 23 juin 2004.

Je peux vous assurer que la Commission européenne continuera à soutenir la Roumanie dans ses efforts de réforme du système de protection de l'enfance et suivra cette affaire de très près.

Je vous prie d'agréer, cher Monsieur, l'assurance de ma considération distinguée.



José Manuel BARROSO

# **CHILDREN'S RIGHTS AND THE ENLARGEMENT PROCESS**

## **CONTRIBUTION OF DG ENLARGEMENT**

### **GROUP OF COMMISSIONERS ON FUNDAMENTAL RIGHTS, ANTI-DISCRIMINATION AND EQUAL OPPORTUNITIES**

**BRUSSELS, APRIL 2005**

#### **Introduction**

Membership in the European Union requires among other criteria that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. These so-called political criteria have been developed by the European Council in Copenhagen in 1993. The European Commission and in particular DG Enlargement have throughout the accession process closely monitored the progress of all the candidate countries in that respect and published the results in the Opinions and annual reports. Monitoring continues also with regard to the potential candidate countries in South-East Europe.

Children's rights form part of the human right issues which have to be respected by candidate countries as integral element of the common European values referred to in Article 6 of the EU Treaty. There are various human rights instruments on European and UN level which either include protection of children or address specific children's rights under economic, social or cultural aspects and in the context of protection of minorities, such as the European Charter of Fundamental Rights signed in December 2000 and meanwhile integrated into the future Treaty establishing a Constitution for Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and also the United Nations Convention on the Rights of the Child adopted on 20 November 1989. These instruments are considered inseparable of the realisation of the objectives of the Union and, therefore, they are crucial references and benchmarks for the Commission to assess the progress made by candidate countries.

Furthermore, as regards financial assistance, the Commission has always given high importance to projects that aim at improving the situation and rights of children in candidate countries, particularly in the area of childcare, education or specific assistance to disadvantaged groups such as Roma.

## **Monitoring children's rights**

The Commission's "Regular Reports on Candidate countries progress towards accession", drawing on all available sources of information including reports by UN and other international organisations as well as NGOs, have, over the years, underlined concern on the situation in one or more candidate countries about the following issues:

### Roma children

The Roma population is significantly younger than the majority populations in their home countries. Currently between 25 and 30 percent of Roma are under 15 years of age, in contrast with 10 percent for the majority population.

This matches with the momentous fact that children and adolescents in Roma communities are particularly exposed to poverty, exclusion, social stigma and discrimination. In many countries in EU25, acceding States as well as current and potential candidate countries, they are often excluded from mainstream educational institutions and frequently placed in "special schools" or in segregated classes where they receive substandard education on the ground that they are considered as socially and culturally handicapped.

The Commission has consistently emphasised the need to combat discrimination of Roma children and urged governments to address the problem of their excessive presence in special schools through appropriate policies and adequate resources. During the last few years more than one third of a total amount of almost € 100 million PHARE funds for Roma communities were targeted at improvement of education. Although the situation has started to improve, there remains still a lot to be done at all relevant levels.

Other international organisations, international financing institutions and the civil society consider the education of Roma children as one of several key priorities. In the framework of the recently launched "Decade of Roma Inclusion 2005–2015", the World Bank together with other actors has established the "Roma Education Fund" which aims at systemic policy change in the area of education, by improving access to and quality of appropriate education and implementing integration and desegregation. A Donors' conference in December 2004 in Paris collected almost € 50 million for that purpose.

Apart from those efforts, the European Union remains the largest donor for Roma, taking into account not only continuous PHARE support but also the even more substantial structural funds for EU25, as from 2007 including Bulgaria and Romania, which despite mainstreaming of programmes and actions will provide considerable support for Roma in the field of education.

### Children in childcare institutions (residential care)

Children who cannot live with their parents, whether due to abandonment, orphaned, neglect or simple poverty, are an especially vulnerable group. Whereas most Western European states were replacing institutional care by substitute care, such as foster care, day care and other forms of assistance to families in the first half of the 20<sup>th</sup> century, in Eastern European states there was until 1989 a strong focus on institutional care. Demographic policies led to a high number of children in large residential institutions. Efforts to change this situation started immediately after 1989, although with different speed and success. DG Enlargement has played a key role in encouraging reform and funding the childcare sector in Romania and also supported the reform of childcare in Bulgaria.

For example, in Romania, since the end of 2000, a multi-annual Phare programme, with a total value of € 59.5 million has started to support the efforts of the Romanian government to reform child protection and finance the closure of large old-style childcare institutions by replacing them with alternative child protection services. Significant progress has been made: some 90 large institutions were closed and replaced by over 300 alternative child protection services. This programme was accompanied by a large public awareness campaign to inform the public at large of existing alternatives to institutionalisation.

### Trafficking of children

Several candidate countries are faced with a dramatic situation of child prostitution, sexual abuse and trafficking of children, which is closely linked with the opening of the borders. The EU and candidate countries have started addressing these problems. It is, however, increasingly important to stop the demand and to attack the problem at the roots.

### Abuse of international adoption system

Concerning intercountry adoptions the Commission's policy is univocally in the interest of the child.

In Romania, for example, in the end of 90s, the abuse of the adoption system, which had become close to a market for children, became apparent. After criticism of the European Parliament and the European Commission in 2000–2001, the Romanian government temporarily suspended intercountry adoptions. Serious efforts were undertaken to modernise the Romanian child protection, also with EU financial assistance. An Independent Panel of EU Experts on Family Law was set up by the Commission in December 2002 in order to examine if the new Romanian draft legislation on children's rights and adoption was in compliance with the UN Convention on the Rights of the Child and the European Convention on Human Rights, and with practices in the EU Member States. Currently, the new laws no longer foresee intercountry adoption as a general child protection measure.

The fact that Romania halted intercountry adoptions has led to increased pressure on the other countries for adoptable children. Therefore, there is an urgent need for a consistent approach of the Commission among the different countries of the region in line with international instruments such as the UN Convention on the Rights of the Child.

### Child labour

Among the candidate countries, Turkey still needs to address the problem of child labour, although the number of working children in the 12–17 age bracket has declined significantly from about 1 million in mid-2002 to 770 000 in mid-2003. Although the age limit for child labour has increased from 12 to 15 years since 1971, a significant number of children under 15 are still employed, in particular in small enterprises and in agriculture. They are thus denied the right to education.

The Government of Turkey has ratified the ILO Convention No. 182 on the Worst Forms of Child Labour which calls for immediate and effective measures to secure the prohibition and elimination of these forms of labour for all children under the age of 18 as a matter of urgency. In 2002, the Turkish government initiated the development of an explicit policy on child labour with the aim of eradicating the worst forms of child labour within a defined period of time. Moreover, in ratifying the European Convention on the Exercise of Children's Rights in June 2002, Turkey demonstrated its commitment

towards the protection of children. However, legislation concerning child labour should be fully aligned with the *acquis* and also include provisions to protect children working in sectors currently not covered, such as agriculture.



## **Western Balkans**

Under the CARDS Regional programme 2003 on Democratic Stabilisation / Support to Civil Society Organisation, the Commission funds a project “Juvenile Commitment to Democracy – Schools of Democracy and Youth Parliaments” in **Bosnia and Herzegovina** (€ 138 383). The project has the purpose to put an end to passiveness, non-involvement and isolation of young people in school settings, as well as in the local communities especially in the countries of South Eastern Europe; to intensify the co-operation among pupils from elementary and secondary schools, and generally young people with non-governmental organizations, municipal authorities and corresponding bodies; ensure involvement of youth in the activities of the community; and their influence in the decision making process.

Moreover, a “Youth Voice Project” in **Serbia and Kosovo** funded under the EU CARDS Regional programme 2003 (€ 146 801) and starting shortly has the objective to provide means for youth to become active in civil society. Through education, participation in local government and expression of ideas, 15–19 year old young people from Serbia, Kosovo/Albanian and Kosovo/Serbian will get support to begin to be active members of society, improve their ability to critically analyse their local situations and their role in the society, be more tolerant of persons of other ethnicities, and, therefore, promote tolerance and democracy.

## **SUPPORT TO REFORM OF CHILD PROTECTION POLICY IN ROMANIA AND BULGARIA**

### **Romania**

The European Union has played a key role in encouraging reform and funding the childcare sector in Romania. The progress achieved has been widely acknowledged and Romania's child protection is considered nowadays a model for the region.

Some € 100 million were spent initially on improving conditions in institutions and subsequently on preparing and funding reform policy and projects. In 2001, the EU started a multi-annual support for the reform of the sector, through grants under the PHARE programme. A budget of € 59.5 million has been allocated to the Government to fund local projects creating childcare services leading to closure of large residential institutions and a nationwide public awareness campaign with the message "A Children's Home Is not a Real Home" to inform people of alternatives to institutionalisation. Implementation has begun in 2001 and will continue until 2006. Special attention is given to closure of large institutions for very young children and for children with special needs, by replacing them by alternative child care.

The 2004 Regular Report on Romania's progress towards Accession acknowledges that Romania made significant progress with the reform of child protection through the closure of large old-style institutions and the creation of alternative care. The total number of children in residential care is 37 000. Some 85 large institutions remain, most of which are providers of residential special education. In general living conditions are appropriate. Due attention should be given to the exercise of parental rights and to facilitating contact between children in public care and their parents where this is in the interest of the child.

### **Bulgaria**

Bulgaria is confronted with the same issue of over-institutionalisation of children. The Commission has provided financial aid to alleviate the humanitarian situation of children in institutions during the economic crisis in 1997 and 1998.

In 2000 the National Assembly adopted the Child Protection Act, which creates a National Agency for Child Protection responsible for organising and co-ordinating the implementation of child protection state policies, including the preparation and implementation of national and regional programmes to ensure child protection. Under the law, children may be placed in the care of special institutions only when all possibilities of remaining in a family environment are exhausted. Various strategies and action plans aiming at ensuring conditions conducive for the observance of children's rights are in place.

The European Commission has supported Bulgaria's efforts to reform the childcare system so as to systematically reduce the number of children in institutional care in particular through developing alternative social services aimed at children and families. Assistance has been provided to improve policies and the provision of care for socially marginalised children – including a significant number of Roma children. Support and training has been provided to the national State Agency for Child Protection, the Bulgarian body charged with overseeing child welfare reform, and local Child Protection Departments. The Commission also aimed to support the Bulgarian Government in the

design of alternative forms of child care and in the reform of the management and care of children in a number of selected homes. Other projects are being implemented to improve social services for disabled, to increase school attendance by Roma children and social integration of vulnerable groups.

The 2004 Regular Report on Bulgaria's progress towards Accession registered significant progress in adoption of the legislative framework related to child welfare. However, despite a number of efforts, the living conditions of children placed in institutions in some cases continue to be inadequate. There is no comprehensive approach to the closure of institutions on the basis of agreed criteria and to develop and promote alternative forms of care.