

The new EU Reform Treaty – What is the impact on children's rights?

The European Children's Network Briefing

Introduction

The European Children's Network (EURONET) representing children's rights NGOs across Europe, has campaigned for the inclusion of children's rights in the European Treaties since 1995 and have contributed extensively to the inclusion of a reference to children's rights in the European Constitutional Treaty and the new EU Reform Treaty as agreed by the EU leaders in Lisbon on 19 October 2007 and to officially signed on 13 December 2007.

EURONET welcomes the adoption of the new EU Reform Treaty (Lisbon Treaty) and sees it as a significant step forward for children's rights in EU policy making. Once the Treaty is ratified, children's rights will for the first time be recognised in the fundamental legal texts of the EU, on which everything the EU does is based.

The Treaty must now be ratified by all 27 Member States in order to come into force on the planned date of 1st January 2009.

This briefing compares the Reform Treaty to the existing Treaties currently in force, not the rejected Constitutional Treaty. Many of these changes were also included in the Constitutional Treaty on which EURONET published an analysis of the impact of the Constitutional Treaty on children (please find the briefing from 2005 here: <http://www.europeanchildrensnetwork.org/docs/AnalysisTreaty.pdf>). This briefing does not intend to give a detailed analysis of all articles with an effect on children, but includes the key changes for children's rights in the Lisbon Treaty. (Note that there are two Treaties, one Treaty on European Union and the Treaty on the functioning of the European Union, replacing the Treaty on the European Communities. Both Treaties start their numbering with one again).

- **Promoting children's rights is included in the EU's internal and external objectives (Article 3)**

"The Union ... shall promote ... protection of the rights of the child."

"In its relations with the wider world, the Union shall contribute to ... eradication of poverty and the protection of human rights, in particular the rights of the child ... as well as the strict observance and the development of international law..."

Promoting children's rights is included among the Union's objectives. This is arguably the most significant change for children's rights introduced by the Reform Treaty.

This article will provide a sound basis for the EU to implement concrete measures to ensure that children's rights are considered in all relevant policy areas. These include for example asylum rules, consumer protection legislation and trade policies. All these policies should include consideration of the "best interests of the child" (Article 3 of the UNCRC).

All the EU's member states have ratified the UN Convention on the Rights of Child. Given the impacts of EU actions on children in the member states and in the wider world, it is right that the EU should take children's rights into account across its policy making which affects children. The specific reference to children's rights in the external objectives of the EU and the statement on the 'strict observance and development of international law' in the external relation of the EU, means that children's rights must be taken into account when developing external policies. Since the UNCRC are part of international law it is implicit that this should also be taken into account.

This article does not create new powers for the EU. In policy areas where the EU already has powers, it will enable actions to be taken specifically targeting children as a group.

The article allows the EU to provide sufficient resources to integrating a children's rights approach in its work, for example to ensure that children themselves are given a chance to have their voices heard and reflected in policy-making that affects them and it will allow the provision and commitment of budgetary funds for children in existing budgetary lines and the inclusion of children within action programmes based on other articles of the EU Treaty.

- **Fundamental Rights (Article 6):
The Charter of Fundamental Rights will become binding**

"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted [at..., on... 2007], which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties..."

The Reform Treaty strengthens the status of fundamental rights within EU policy making. In particular, it makes the Charter of Fundamental Rights binding in the same way as the Treaties. This confers a stronger duty on the EU institutions to ensure that all EU policies respect and help promote fundamental rights, including children's rights which are covered in article 24 of the Charter. A number of other articles in the Charter are also particularly relevant for children's rights. The full text of the Charter and the explanatory note have been included in a Declaration to the Treaty.

The UK and Poland have qualified the status of the Charter of Fundamental Rights in relation to its domestic laws and policies. They have added a protocol to the Treaty which declares that no UK or Polish law can be found by any national or European court to be inconsistent with the Charter. Although this opt-out to the Charter of Fundamental Rights by the UK and Poland is politically significant,

it should not impact on the EU's ability to take children's rights into account across *European*-level policy making. The UK and Poland are in any case bound by the UN Convention on the Rights of the Child in relation to their domestic laws.

- **The EU will accede to the European Convention on Human Rights (ECHR) (Article 6.2)**

The EU will accede to the **European Convention on Human Rights**, which again strengthens the footing of fundamental rights in EU policy making, as does a sentence which notes that fundamental rights shall constitute general principles of EU law.

- **The EU will have legal personality (Article 32)**

The EU will be able to accede to international Treaties and Conventions, which means that the Union will be in a position to accede to the United Nations Convention on the Rights of the Child and its two Protocols.

- **With a million signatures children can ask the Commission to initiate a legal act (Article 8b)**

Article 8b lays down a formal obligation on the EU institutions to ensure that '*citizens and representative associations*' are given the opportunity to make their views known in all areas of EU action, and to '*maintain an open, transparent and regular dialogue with representative associations and civil society*'. This will help to ensure that children's rights NGOs, and children themselves, are involved and listened to in decision making.

This article also creates a new possibility for citizens (including children) who are nationals of a significant number of Member States to invite the European Commission to initiate a legal act by collecting a million signatures.

- **Stronger and more democratic legislation can be adopted in the area of freedom, security and justice.**

The Reform Treaty changes the decision making process in the area of freedom, security and justice, including crimes in relation to trafficking in persons, in particular women and children, (Article 69b) and sexual exploitation of women and children (Article 69f). It will allow for the adoption of stronger legislation and the agreement of all 27 Member States will not be necessary, but laws can be adopted with a 'qualified majority'. The European Parliament will have an equal say with the European Council (Heads of State), rather than only being consulted.

However, the new articles on child sexual exploitation and trafficking are still focusing on the context of combating crimes, instead of protecting children's rights. The EU has to ensure that actions undertaken in these areas will protect the rights of children who are at risk or are victims of these crimes.

- **Other articles of relevance to children...**

There are more articles with a direct or indirect impact on children, such as the already existing articles on combating discrimination (Article 9), including the discrimination of age and all other forms of discrimination, and the article on fighting social exclusion (Article 10), the article on education, vocational training, youth and sport (Article 149) which acknowledges the important role of sport in the lives of millions of children throughout the Union, which can be beneficial to the health and well-being of children, and which encourages ... *the participation of young people in democratic life in Europe*.

- **Declaration to promote the fight against domestic violence (Declaration on Article III-116).**

A declaration has been added to the Reform Treaty stating that '*in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.*' While this is not legally binding, and not directly aimed at protecting children's rights, this commitment is positive for the rights of children, who can be seriously affected by domestic violence.

Background documents:

- EURONET Briefing, Analysis of the Treaty establishing a Constitution for Europe: The impact on Children, 2005:
<http://www.europeanchildrensnetwork.org/docs/AnalysisTreaty.pdf>.