Progressing the mainstreaming of children’s policies and the rights of the child in all policies of the Union

Submission by the European Children’s Network, EURONET, Dublin, April 22, 2004

Summary

This paper, submitted by EURONET - the European Children’s Network – seeks to examine some of the reasons why mainstreaming children’s policy at European level has been so difficult to achieve, how we can tackle these problems, and what options exist for mainstreaming in an effective and efficient way.

Background

The mainstreaming of children’s rights into EU policy remains a challenge for the European Union’s (EU) institutions and its member states. As the EU has grown in size and importance, so too have the areas in which it can legislate. The Amsterdam Treaty gave the Union new competencies in the area of justice and home affairs and expanded the policy areas that have an impact on children. EU policies which affect children range from trafficking, commercial sexual exploitation and internet crime to EU development aid policy and work on poverty and social exclusion.

The importance of mainstreaming

The draft EU Constitutional Treaty, currently under discussion, contains references to children’s rights. It is the first time children’s rights have been formally incorporated into an EU Treaty and, if ratified, will transform EU policy-making affecting children by rendering children more visible in EU policy.

Prior to the Constitutional Treaty, children’s policy has been handled in an ad-hoc and uncoordinated way. The reason for this was the EU Treaties primarily focused on the “citizen as worker” and saw children only as “victims”, “dependents” or “barriers to work”. This is in contradiction to their status in the UN Convention on the Rights of the Child (UNCRC), adopted in 1989, which recognises children as individuals with rights. All EU and accession member states have ratified the UN CRC and are bound to it but the EU, as a body, is under no such obligation.
In the current Treaty of the EU, children are only mentioned in Article 29 which refers to ‘offences against children’ and since it is an intergovernmental Article it cannot be used as a legal base. Children have also been included in Article 24 of the European Charter for Fundamental Rights (adopted on 7 December 2000) and although this article was welcomed by EURONET, it remains insufficient, since this Charter is not legally binding on member states.

The lack of any legal base has led to an uncoordinated approach to children’s policy which has resulted in;

- a limited policy, spread confusing across several DGs, (Development, Justice and Home Affairs, Employment and Social Affairs, Humanitarian Aid, Consumer Affairs and others)
- ad-hoc policy coordination between institutions including the European Parliament and the Council
- no directorate or unit within the EU institutions with responsibility for coordinating children’s policy
- no European Commissioner or EU Representative with responsibility for children’s rights

**EU commitments to children**

In recent years, the EU has made some wide-ranging commitments to promoting and integrating children’s rights in all EU policy areas and the Union has also taken a lead in speaking out for children’s rights and supporting international initiatives. Several EU institutions have called for the inclusion of children’s rights in the policies and legislation of the EU. The European meeting of Children’s Ministers on 9 November 2001 stated in its conclusions; “The European Meeting of Ministers in charge of Childhood wishes the introduction of mainstreaming for Childhood and the rights of the child in all policies of the Union”.

Similarly, the European Parliament in a resolution on the Special Session on Children of the UN General Assembly (10 April 2002; RC/466168EN.doc) called for “… the inclusion of a legal base in the EU Treaties to promote and protect the best interests of the child in all EU policies, programmes and legislation”.

Without a legal base, it is difficult for the EU to live up to its rhetoric and these commitments have not always been reflected in policy and practice. For example, the European Commission’s policy of mainstreaming children’s rights into EU development policy has not been successful due to the lack of supporting mechanisms – children are not visible in Country Strategy Papers, Plans of Action, Regulations and programmes.

The EU’s failure to mainstream children’s rights and the uncoordinated approach across the institutions has meant that legislation and policy can still affect children in a negative way as:
• There is no legal obligation on the EU to assess the impact of policies, legislation and programmes on children
• No obligation to monitor or to follow up on legislation and policies from a children’s rights perspective
• A lack of clear accountability at institutional level, and
• Children are not given the possibility to participate and have their opinions expressed in matters that affect them

The following are EURONET’s recommendations for progressing the mainstreaming of children’s policies at EU level:

1. A legal base for children in the EU Constitutional Treaty

The inclusion of children’s rights in the internal and external objectives of the Union means that children’s rights can be mainstreamed into EU legislation, policy and programmes for which the Union has a competence under the future Constitutional Treaty. A legal base will ensure that in the areas where the EU can legislate, the rights of the child will be considered. The reference in the Constitutional Treaty to the “strict observance and development of international law” in the external relations of the EU also means that the UN Convention on the Rights of the Child needs to be taken into account.

With the inclusion of the Charter of Fundamental Rights in the Constitutional Treaty, the rights included in this Charter will also become binding. However, these fundamental rights only have effect determined by the powers given to the Union by the Constitution. It also means that member states are bound by these rights when implementing Community rules (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37).

References to children also appear in the Parts II and III of the draft Treaty dealing with justice and home affairs, education, youth and sport. Next to the direct references laid out below, there are also several articles which will have an indirect effect on children.

• Article 168 concerning immigration policy and covers family reunion and the “combating of trafficking in persons, in particular women and children”
• Article 172 covers judicial cooperation in criminal matters
• Article 182 covers education, youth and sport

It is anticipated that the new legal base in the Constitutional Treaty will help to ensure children’s polices are mainstreamed in all the policies of the Union. The Constitutional Treaty will clearly define the remit of the EU on children’s issues, as decided upon by member states governments. This clear remit should in turn help the European Commission undertake a more coordinated approach to children’s policy at Community level.
2. European Commissioner with responsibility for children/Representative for children

During the Italian Presidency, EURONET submitted a paper entitled ‘The case for a Representative for children’s rights in the Commission and Council’. The case for this still stands. However, EURONET also recognises that the current restructuring of the European Commission, to incorporate 25 EU Commissioners, creates an opportunity to reassess whether a European Commissioner should have crosscutting responsibility for children’s rights and policy.

A Commissioner with responsibility for children would:

- help to ensure the Commission can fulfil its commitments to children
- co-ordinate EU policy on issues that affect children in all policies areas
- encourage accountability at Commission and member state level for policy development and implementation
- monitor results and give greater visibility for Commission policy on children and their rights both within the EU and on an international stage

Responsibilities would include:

- ensuring children’s rights are taken into account in all EU policy areas,
- encourage participation of children and young people
- carry out child impact assessments on EU policy
- monitor the impact of EU policy and legislation on children
- co-ordinate children’s rights initiatives
- encourage inter-service co-operation
- promote cross-sectoral approaches
- increase the visibility and profile of the EU as a children’s rights champion on the world stage
- Working with ChildONEurope, the European Network of Observatories on Childhood, to ensure European policy is based on good practice and research.

3. A directorate or unit to coordinate EU policy on children and children’s rights

Children’s policy is cross-cutting between many European Commission DGs. Without a directorate or unit tasked with coordinating this policy, it is extremely difficult for DGs to keep track of issues affecting children and for member states and the NGO and voluntary sector to assess the progress of this work.
**L’Europe de l’Enfance**

EURONET welcomes the ‘l’Europe de l’enfance’ initiative and in particular the commitments by member states to hold these meetings on a regularly basis (twice a year). However, EURONET has a number of concerns regarding the future development of the group and what its role will be in encouraging mainstreaming.

As both the Ministerial and Experts meetings are informal in nature there is no obligation on member states to attend. This can result in disjointed discussions on some issues and the group is not representative of the Union. Member states also have very different expectations on the outcomes of the meetings, making them difficult to measure. Some member states view the group as a mechanism to exchange information on national policies, while others see it as an informal discussion group. The agenda lacks consistency and coordination from one meeting to the next which can result in certain topics being ‘lost’ once discussed and leaving no opportunity for effective follow-up.

If the EU Constitutional Treaty is adopted in its current form, the l’Europe de l’enfance group is in an ideal position to champion cooperation on European children’s issues. For this to happen, the meetings must be planned on a more formal basis and clarity is needed on what both the Ministerial and Experts meetings hope to achieve and how expectations can be efficiently measured. ChildONEurope should also be more formally involved in the planning process if continuity and consistency is to be achieved and should be supporting the work of the L’Europe del’Enfance group by collecting and sharing information on children in the different members.

**European Network of Observatories - ChildONEurope**

There are currently eight member states that are full members and seven member states that have observer status of the ChildONEurope network. EURONET recommends that cooperation between all 25 EU member states must be encouraged at the highest level for the network to achieve its aims of encouraging the exchange of knowledge and best practice on laws, policies and research on children and young people.

**4. Children’s participation**

Mainstreaming of children’s policies cannot be achieved without the views of children and young people being taken into account. Consulting children and young people is a vital component of the democratic process. EURONET members not only favour this approach, but fully-implement child participation and consultation in their work in the field.

Most data on children is collected without including the child’s perspective and the experiences of children themselves. It must be noted that children often experience for example poverty, lack of housing, etc, in a different way from adults. EURONET welcomes the European Commission’s White Paper on a new impetus for European Youth (COM(2001) 681) and supports the lowering of the age range to children below the age of 13.
Conclusion

The options outlined in this paper are not exhaustive and should be viewed as some examples of how mainstreaming can be achieved effectively.

The EU is entering an exciting period of expansion and reform. This gives us the opportunity to assess how children’s rights and the best interest of the child can be better promoted at European level. Without effectively mainstreaming children’s rights into EU policy this cannot be achieved.

For further information:

Tara Hopkins
EURONET President
NSPCC
42 Curtain Rd
London EC2A 3NH
United Kingdom
Tel: +44 207 8252500
mieke.schuurman@tiscali.nl
E-mail: THOPKINS@NSPCC.org.uk

Mieke Schuurman
EURONET Secretary General
Rue Montoyer 39
B-1000 Brussels
Belgium
Tel: +32 2 5124500
E-mail: