CHILDREN’S RIGHTS ARE HUMAN RIGHTS

Would incorporation of the Charter of Fundamental Rights and accession to the ECHR by the EU help promote Children’s Rights?

DOCUMENT FROM
EURONET, The European Children’s Network,
To Members of the Convention Working Group on the Human Rights Charter

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Contact details:
Euronet, the European Children’s Network
Rue Montoyer 39
1000 Brussels
Belgium

Mieke Schuurman, Co-ordinator Euronet
Tel: + 31 187 481396 or +32 2 512 4500
Fax: +31 187 487390 or +32 2 513 4903
E-mail: mieke.schuurman@tiscali.nl

Diana Sutton, European officer Save the Children
Tel: + 32 2 512 7851, Fax: +32 2 513 4903
E-mail: diana-savechildbru@skynet.be
“More and more initiatives, programs and policies pursued by the European Union affect, or have a direct impact, on children (...) The European Meeting of Ministers in charge of Childhood wishes an introduction of mainstreaming for Childhood and the rights of the child in all policies of the Union. Without creating a new competence for childhood within the European Union, it appears that taking better consideration of the Rights of the Child should help Europe to come closer to its citizens.”

(Conclusion EU Ministers Informal Meeting, 9 November 2001)

Introduction

At the moment there is a group of 90 million citizens, Europe’s children, which is without any legal status in the European Treaties. The protection of children should be a priority for all relevant policies, whether at EU or national level. Because of children’s particular vulnerability and needs, adults have a particular responsibility to safeguard them. This means that to protect children from EU legislation affecting them in negative ways children’s rights and best interests need to be referred to in a Treaty article. This would mean that no new competences are created for children within the EU Treaty, but that children are mainstreamed into existing EU competences.

The Convention Working group II on “Incorporation of the Charter/accession to the ECHR” is discussing the possibility and way of how to incorporate the Charter of Fundamental Rights into the EU Treaty and whether or not the EU should accede to the ECHR. Although this document argues in favour of both the incorporation of the Charter of Fundamental Rights into the EU Treaty and accession of the EU to the ECHR, it stresses that these alone are not sufficient to guarantee the protection and promotion of the rights of the child. It therefore gives proposals for Treaty articles mainstreaming children in EU policies to ensure that children’s rights are incorporated into existing EU policies and legislation and in this way respecting the principle of subsidiarity.

Would Incorporation of the Charter of Fundamental Rights in the EU Treaty help children?

In Convention Document (CONV 116/02) from 18 June 2002 prepared by the Secretariat of the Convention several (six) options on how to incorporate the Charter in the Treaties have been presented. As turned out from the working group discussions, a majority of members of the Working Group II is in favour of option f stating that “the full body of the 54 articles of the Charter should be inserted into a title or chapter of the EU Treaty, or into a new basic Treaty, of which it would for example form the first title or chapter”.

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This is the option, which would give the Charter the status of a fully binding text. Euronet supports option f, which will include the Charter in the EU Treaty and will give it fully binding status.

At the time of drafting of the Charter Euronet recommended the inclusion of a reference to the UN Convention on the Rights of the Child (UN CRC) in the Charter of Fundamental Rights. The UN CRC is the most comprehensive instrument for the promotion of children’s rights, giving a holistic view of children’s rights and being ratified by all EU member states. The Charter of Fundamental Rights has, however, not incorporated a reference to the UN CRC. In Article 53 of the Charter it is stated that International Conventions need to be taken into account, although it is not clear which International Conventions. This would have to be clarified when the Charter will be incorporated in the EU Treaty.

Article 24 of the Charter on the rights of children states in its explanatory note that “this Article is based on the United Nations (original text states ‘New York’ which is not correct) Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof. This is a positive reference, but the explanatory note does not have binding effect by itself. Moreover, the explanatory note and Article 24 of the Charter are only referring to some of the general principles of the UN CRC and not all of them.

To conclude, Euronet supports the inclusion of the Charter of Fundamental Rights in the EU Treaty, since it would contribute to the protection of the rights of children within the EU. But at the same time Euronet stresses that a reference to the United Nations Convention on the Rights of the Child in the EU Treaty would be essential, as is explained below.

**Why is a legal base necessary for children?**

Euronet believes that incorporation of the Charter in the EU Treaty is not enough alone to guarantee children’s rights and interests taken into consideration in EU policies and legislation. Moreover, it will not be a programmatic legal base. To ensure that children are systematically taken into account when EU policy and legislation is made that affects them, children need to be mainstreamed into the EU Treaty. This would mean creating a legal base on children’s rights which stresses that they would be mainstreamed within current EU competences and would not propose an extension of areas that would be included. This would NOT mean that the EU is gaining a new competence on children’s rights, but that EU legislation will no longer affect children in a negative way and take their rights and ‘best interests’ into consideration. This is a simpler and better way of incorporating children’s rights into the EU Treaty.

At the moment children are only taken into consideration in an ad hoc manner. To avoid Court cases or lengthy discussions on the effect of EU directives on children and the need to protect them, it is necessary to include a reference to children’s rights in the EU Treaty. This would help ensure that children’s interests are systematically integrated in the policy and decision making processes of the EU. (see enclosed longer briefing for examples of problems on Directives.)
Children Rights are Human Rights

Euronet, therefore, recommends Working group II to include in its conclusions a legal base on children’s rights to be included in the EU Treaty. (Proposals of articles, see at the end of this paper)

Would accession to the European Convention on Human Rights by the EU help children?

Accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by the EU would bring limited value for children. Children are not specifically mentioned in the ECHR, although it has been frequently used to protect children’s rights in such areas as respect for family life, the right to education, protection against discrimination and the protection of physical integrity. However, there are significant limitations on the ECHR as an instrument for the promotion and protection of children’s rights including its focus on relations between the state and individuals, its silence on many important areas of children’s lives.

The ECHR “is ... in many ways blind to children. It does make limited reference to children for example – in respect of the public nature of court proceedings in respect of juveniles and liberty and security of the person. But it fails entirely to address the concept of human rights for children within a framework appropriate to childhood in the way developed by the UN Convention on the Rights of the Child.”¹

Accession to the ECHR would not deal with the issue of a legal base on children’s rights in the EU Treaty, since the principles and norms of the UN Convention on the Rights of the Child are not reflected as a standard in the ECHR, though some optional protocols are covering the sexual exploitation of children, child trafficking, education and refugees.² This is not sufficient and does neither recognise a holistic view nor the universality expressed in the UN Convention on the Rights of the Child (UN CRC).³

Euronet does, however, support the accession of the EU to the ECHR, since it will contribute to the protection of some general human rights of children. It will however, not allow for EU legislation and policies to take children’s rights as defined in the UN CRC systematically into consideration. For this a specific article on children is necessary in the EU Treaty. (For proposals of articles, see below)

¹ Statement from the then Irish Foreign Minister Gay Mitchell, representing the Irish Presidency of the EU, during revision of Amsterdam Treaty.
Proposals for Articles:

Euronet has drafted several proposals for articles which would mainstream children into current EU policies:

Amendments within Part One of the Treaty: Principles, for example after Article 13

The European Union shall take the best interests of the child into account in all actions under the provisions of the Treaties as expressed in the UN Convention on the Rights of the Child.

This article would mainstream a child perspective in all EU policies and legislation. It would safeguard incorporating children’s interests whilst respecting the principle of subsidiarity.

Or

The European Union shall take the best interests of the child into account in all actions under the provisions of the Treaties as expressed in the UN Convention on the Rights of the Child.

This text is inspired by the principles and provisions of the UN Convention on the Rights of the Child and would also mainstream a child perspective in all EU actions, without creating a new competence for the EU.

For further details on Children in the EU Treaty see Euronet’s Documents:

“Children are European Citizens Too: Children in the EU Treaty”, April 2002; and “Does the EU need a competence for children in the Treaty?”, 11 September 2002, contribution to the Convention working group on complementary competences.
Annex I: EURONET Member Organisations

- Austrian Coalition of Child Rights NGOs (Austria)
- Kind en Samenleven (Belgium)
- Red Barnet (Denmark)
- Pelastakaa Lapset r.y. (Finland)
- COFRADE, French coalition of children’s NGOs (France)
- Deutscher Kinderschutzbund (Germany)
- Institute of Child Health (Greece)
- FICE (Luxembourg)
- Irish Society for the Prevention of Cruelty to Children (Ireland)
- Save the Children - Italia (Italy)
- Defence for Children International (The Netherlands)
- Instituto de Apoio à Criança (Portugal)
- Plataforma de Organizaciones de Infancia (Spain)
- Swedish NGO Network for the Convention on the Right of the Child, c/o Rädda Barnen (Sweden)
- The Save the Children Fund (UK)
- Bureau International Catholique de l’Enfance (European delegation)
- European Network of Street Children Worldwide (ENSCW) (International)
- International Save the Children Alliance (Europe Group)
- Organisation Mondiale Pour l’Education Prescolaire (European delegation)

Associated Organisations

- Child Focus (Belgium)
- Polish Forum for Children’s Rights (Poland)
- European Television Centre for Children (Greece)
- Salvati Copii (Romania)