Does the EU need a competence for children in the treaty?

Document from
EURONET, The European Children’s Network,
To Members of the Convention Working Group on Complementary Competencies

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**Does the EU need a competence for children in the Treaty?**

“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**

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 best interests need to be referred to in a Treaty article. This would mean that no new competencies are created for children within the EU Treaty, but that the children are mainstreamed into existing EU competencies.

The Convention Working Group V on Complementary Competences is discussing the competences of the Union. Working group member Peter Altmaier submitted working document 9 to the Working group “the division of competencies between the Union and the Member States” in which he drafted his first ideas for a general set of competence-rules. This working document stresses that there is consensus within the Convention about the three competence-categories of the EU. An EU Treaty Article on children would fall within the third category, which covers the areas where the main-competence lies with the Member States but the Union enjoys complementary competencies in order to deal with marginal aspects. This category is called “The complementary competencies of the Union in areas of Member States’ competence”. Peter Altmaier in his working document also stresses that there is a need for a clarification on the “marge of manoeuvre” of the Union and that it also needs some new competencies in areas where European action is needed to cope with new and future challenges. Euronet, the European Children’s Network, believes that the “marge of manoeuvre” of the Union to protect children’s best interests needs to be elaborated. This document argues why this is necessary and gives proposals for possible Treaty articles mainstreaming children in EU policies. The EU does affect children in a negative way in several areas, such as media policy and consumer policy.
Current Competence of the EU on Children

At the moment the EU is under no obligation to respect children’s rights in legislation that affects them. This is contrary to what the EU member states are obliged to. They have all ratified the UN Convention on the Rights of the Child and are bound to this, whereas the EU, which passes legislation with direct or indirect bearing on children’s lives is under no such obligation. The only specific reference to children in the EU Treaty is Article 29 which refers to ‘offences against children’. However, this article does not provide an adequate legal base in the EU Treaties as it is intergovernmental and also only deals with one aspect of children’s lives - offences against children. It does not for example provide a programmatic legal base, when the EU was trying to fight sexual abuse of children in a EU wide action programme, the Daphne Programme, Article 29 could not even be used as a legal base. Article 308 was then proposed instead, but not accepted by all member states. With as a result a delay in the adoption of the programme whilst another legal base, Article 152 on health, was found at the last minute. Secondly, it does not ensure that in all areas where the EU legislates children’s interests are taken into account.

Negative effects on children from EU policies

A number of areas have now moved from national competence to EU competence such as asylum and immigration policy, consumer policy, media policy. When the EU is legislating in these areas there is no consideration of children’s interests. There are a number of cases where the EU has legislated and did not take children’s best interests into consideration. Such are the directives on distance selling and misleading advertising, which do not include references to children, despite evidence that children are often unable to distinguish between covert advertising and information and are therefore at specific risk. Similarly EU law on TV advertising does allow free transmission of advertisements to children below the age of 12 between different EU member states, even though a country has prohibited this to protect its children. In this case the Single Market allows this action, but it may not be in the best interests of children. There are many more examples of EU legislation that affect children in negative ways, in particular in the field of media and consumers affairs. At the same time children’s rights in the EU were established by taking cases to the Court of Justice, which is very inefficient and costly. For example, the case of the Commission v Belgium (42/87) and Baumbast and R. (413/99 preliminary ruling) which were dealing with the right to education of a child within the EU.

To avoid lengthy discussions or Court cases on the affect 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.
Mainstreaming Children in EU Policies

Mainstreaming children’s interests in the EU Treaty would not mean that a new legal competence would have to be created. Euronet believes that the principal competence for policy and legislation on children’s issues is at member state level. However, the Treaty should provide a clear, simple legal basis which enables European legislators to ensure that the best interests of the child is taken into account in all EU policy, law and programming.

As with the article on education, Article 149 EC, referred to in the Note from the European Commission on “The European Union’s complementary powers: scope and limits” (Working group V, Working document 7), a Treaty article which would mainstream the interests of children into EU policies would fully respect the responsibility of the member states for their policies directed at children. A new Treaty article on children would only protect the best interests of children in EU policies and legislation where the competence for policy is already at the EU level.
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

In all actions concerning children the best interests of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express his/her views freely in all matters affecting the child, the views of the child being given due weight.

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; contribution to the Convention Forum.
### Annex I: EURONET Member Organisations

- Austrian Coalition of Child Rights NGOs (Austria)
- Kind en Samenleving (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)