In December 2001 the 15 Heads of State or Government meeting within the European Council decided to convene a European Convention to pave the way for the reform of the European Union. The purpose of the European Convention was to propose a framework and structures for the European Union which are geared to changes in the world situation, the needs of the citizens of Europe and the future enlargement of the Union. The Convention started at the beginning of 2002 and finished its work in July 2003 with proposals for a constitutional treaty to the European Council. An intergovernmental conference will start on 4 October 2003 and take the final decisions on the draft constitutional treaty. An intergovernmental conference is a period of consultation within each member state on the reform of the EU Treaty and negotiations between member states. It is not a conference where one comes and attends for a few days. The aim is to finish the IGC before May 2004 when the ten new Member States will accede to the European Union.

Who are the members of the Convention?

Valéry Giscard d’Estaing (France) was appointed as Chairman of the Convention, and Giuliano Amato (Italian) and Jean-Luc Dehaene (Belgium) as Vice-Chairmen. The Convention was composed of 105 members representing the governments and national parliaments of the Member States and candidate countries, the European Parliament and the European Commission. Observers representing the European Economic and Social Committee, the Committee of the Regions, the social partners and the European Ombudsman were invited as well.
How did the Convention carry out its work?

The Convention had a programme of work in three phases:

- **A listening phase**: identification of the expectations and needs of the Member States, their governments and parliaments and those representing the European society, including civil society and NGOs.

- **A deliberating phase**: comparison of the various opinions put forward and assessment of their implications and consequences. For this purpose specific working groups were created within the Convention to look at specific issues.

The working groups of interest for children’s rights were:

- The working group which looked at the inclusion of the European Charter of Fundamental Rights in the Union’s Treaties,
- The working group on ‘complementary competences’ (i.e. areas in which the Union complements or supports action by the Member States),
- The working group on social Europe.

- **A proposing phase**: synthesis and drafting of proposals

To involve civil society a Forum on the Convention’s website was created to which all the organisations concerned could submit written contributions. Meetings with different groups of civil society were organised as well. Euronet submitted several contributions to the Convention Forum and took part in meetings with Convention members.

Contents of the Constitution for Europe

Before going into the parts of the draft Constitution for Europe that are relevant for children it is helpful to have a clear picture of the contents of the draft European Constitution. The draft Constitution for Europe consists of four Parts.

- **Part I**: the definition and objectives of the Union, its institutions, the exercise of its competences, the democratic life of the Union, its finances, its immediate environment and Union membership. This is a completely new text, which did not exist, in previous Treaties.

- **Part II**: the Charter of Fundamental Rights of the Union.

- **Part III**: the policies and functioning of the Union. This includes all the existing policies of the EU Treaties and also incorporates articles on the area of freedom, security and justice and the area of external action, which are in
the current EU Treaty intergovernmental Articles, with no direct binding effect.

- **Part IV:** contains general and final provisions.

**The impact of the European Convention on children’s rights**

For the first time in the history of the European Union children’s rights are recognised in the draft Treaty establishing a Constitution for Europe. The text of the Constitution includes the protection of children’s rights as part of the internal and external objectives of the European Union. The complete texts were adopted by consensus on 10 July 2003.

**Children are invisible in the current EU Treaties.**

Until now the EU Treaties have not adequately safeguarded/protected its 90 million children below the age of 18. Children have no legal status at EU level and are hardly mentioned within the EU Treaty. The EU Treaty primarily focuses on the “citizen as worker” and sees children only as “victims” or “dependents” or “barriers to work”. This is in contradiction to their status in the almost universally ratified UN Convention on the Rights of the Child (1989). Children are only mentioned in **Article 29 of the EU Treaty which refers to ‘offences against children’**. Since this is an intergovernmental article it cannot be used as a legal base to combat offences against children. This means that governments can cooperate in this area but not adopt any EU policies or legislation. Moreover, the Article does not cover other areas of concern for children in the EU, while there are many more European policy areas which affect children, such as health, the environment and education.

**Children’s rights in the Charter of Fundamental Rights**

Children have also been included in Article 24 of the European Charter of Fundamental Rights (adopted on 7 December 2000). The text of Article 24 states:

> The rights of the child

1. Children have the rights to such protection and care as is necessary for their well being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relation to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contradictory to his or her interests.

The explanatory note of the Charter states that this Article is based on the ‘New York’ (should be United Nations) Convention on the Rights of the Child signed on 20 November 1989.

Although this Article was a welcome step recognising children’s rights in the EU, unfortunately it is insufficient, since it does not have binding force. It does also not include the guiding principles and norms of the UN Convention on the Rights of the Child.

In the draft Treaty for a European Constitution the complete text of the Charter of Fundamental Rights has been included. This means that Article 24 on Children’s Rights will be an integral part of the new European Constitution. (See below under References to children’s rights in the draft Constitutions about the implication of this)
References to Children’s Rights in the draft Constitution

The Internal and External Objectives of the EU

Part I, Article 3 of the draft Constitution, which contains the objectives of the Union, includes children’s rights in its internal and external objectives.

- Article 3, paragraph 3, states that the Union “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children’s rights”.

- Article 3, paragraph 4, which deals with the Union’s relations with the wider world, states that the Union “shall contribute to (...) the protection of human rights and in particular children’s rights, as well as to the strict observance and development of international law, including respect for the principles of the United Nations Charter”.

The inclusion of children’s rights in the internal and external objectives of the Union means that children’s rights will be mainstreamed into the EU’s legislation, policies and programmes for which the EU has a competence within the Constitution.

This does not create a new competence for children at European level and it does not take away competences of national governments in the areas of children’s rights. It ensures that in the areas where the EU is allowed to legislate and adopt policies the rights of children will be considered. This means that children will no longer be harmed by negative effects of EU laws and policies. In particular the reference to the “strict observance and development of international law” in the external relations of the EU means that the UN Convention on the Rights of the Child also needs to be taken into account.

Children’s Article in Charter of Fundamental Rights in draft Constitution

Next to the inclusion of children’s rights in the objectives of the European Union, the Charter of Fundamental Rights has been incorporated in full within Part II of the draft EU Constitution with only some technical adjustments. This means that Article 24 on children’s rights is included in this part. With the inclusion of the
Charter of Fundamental Rights in the EU Constitution the rights included in this Charter will become binding. However, these fundamental rights only have effect determined by the powers given to the Union by the Constitution. Which means that the EU is bound to these rights when they are developing legislation and policies: EU legislation has to be in accordance with the rights of the child as mentioned in Article 24 of the Charter of Fundamental Rights. It also means that these rights bind Member States, when implementing Community rules. It does not mean that EU citizens, including children, can file complaints with the EU about the violation of their rights. They can only do this when they believe that EU laws and policies are in contradiction to the rights in the Charter or when the Member States do not respect these rights when implementing EU rules.

References to Children in Policies Areas of the European Union

The policy part of the draft Constitution, Part III, also includes several articles of direct concern to children. In the area of judicial cooperation there are two articles of direct relevance to children.

- **Article 168 of Part III** concerns immigration policy and covers family reunion and the “combating of trafficking in persons, in particular women and children”. In these areas the EU shall establish measures by European laws or framework laws, which are binding legislative acts. This means that these laws are directly binding for the Member States of the EU.

- **Article 172 of Part III** covers judicial co-operation in criminal matters may establish minimum rules by European framework laws in different areas of crime with cross-border dimensions including “sexual exploitation of women and children”. If European laws for judicial cooperation in the area of the sexual exploitation of women and children would be made these would also be directly binding for the Member States.

Next to the area of judicial co-operation, there is Article 182 of Part III which covers education, youth and sport. It does not directly refer to children, but to youth. Up till now youth has been defined by the EU as young people aged 15 until 25 years. This is not stated in the EU Treaty, but is an agreement between the Member States, since Member States have different definitions of youth.

- **Article 182 (e)** encourages “the participation of young people in democratic life in Europe” and (g) aims to protect “the physical and moral integrity of
sportsmen and sportswomen, especially young sportsmen and sportswomen. The EU will encourage co-operation between Member States in this area and it will if necessary, support and complement their action. This means that no European laws will be made to make the participation of young people binding for all Member States, but it means that it will be stimulated and that good practices between Member States will be exchanged.

Next to these direct references to children in the draft Constitution there are many other articles with direct or indirect effect on children like in the current EU Treaty, such the articles on social exclusion, discrimination on the basis of age, health, environment, etc.

**What comes next?**

**Intergovernmental Conference (IGC)**

The draft EU Constitution has been submitted to the President of the European Council in Rome in July 2003. The text will form the working basis of the Intergovernmental Conference (IGC), which the Italian EU Presidency intends to convene on 4 October 2003. The IGC which is a conference of Heads of State and Governments of the current EU Member States and the ten accession countries will be finished at the latest by May 2004.

**Background**

The EU Founding Treaties can only be modified with the consent of all of the Member States within an Intergovernmental Conference (IGC). The IGC takes the form of negotiations among the Member States with the aim of modifying or supplementing the treaties. The EU has held five such conferences to modify its founding treaties with the aim of deepening the European integration process. The past IGCs set up the European Single Market and the Economic and Monetary Union. The sixth IGC, starting in October 2003, will be the first to be preceded by a Convention,

A new IGC has been called for by the EU leaders to amend the Treaties of Amsterdam and Nice which did not fulfil their role of preparing the Union for enlargement. Although the Amsterdam Treaty of 1997 introduced substantial
changes with a view to future enlargement, the amendments were not sufficient to allow for an inclusion of 10 and more new members in the EU. The intergovernmental method - negotiations among national governments behind closed doors - reached its limits in Nice. The EU appeared to be further and further removed from its citizens and the decision-making process appeared to be in the hands of un-elected bureaucrats rather than elected representatives. Realising this, the EU leaders decided to convene a Convention in order to facilitate a broad and open debate on the future of Europe. The Conventions task was to draw up the new institutional architecture of the EU and prepare the next IGC.

**Issues to be decided at the IGC**

The declared aims of EU Treaty changes to be decided at the IGC are:

- bringing the EU closer to its citizens,
- strengthening the EU's democratic character,
- facilitating the EU's capacity to make decisions, especially after its enlargement,
- enhancing the EU's ability to act as a coherent and unified force in the international system and
- effectively deal with the challenges globalisation and interdependence create.

Several contentious issues remain to be resolved at the IGC:

- The smaller countries fear that the draft Constitutional Treaty favours bigger countries. They especially oppose replacing the six-month rotating presidency with a permanent president of the European Council. They also object to proposals that only 15 members would have voting rights in a streamlined European Commission.

- A new voting system for the Council, whereby qualified majority will consist of a majority of countries representing 60 percent of Europe's population, will give the three biggest countries the right to block any decision supported by the other 22 Member States. This will considerably reduce the ability of the smaller countries to defend their interests. During the Convention, 16 countries, including Spain and Britain, argued that the present qualified majority voting system should be kept.
Some Member States still support extending qualified majority voting to the areas of taxation, immigration, foreign policy and culture. The Convention decided to keep the right of veto in these areas under pressure from the big Member States.

The Thessaloniki European Council decided on 20 June 2003 that the text of the Draft Constitutional Treaty is a good basis for starting in the Intergovernmental Conference. The EU heads of state and government asked the Italian Presidency to convene this conference in October 2003. The conference should complete its work and agree the Constitutional Treaty as soon as possible and in time for it to become known to European citizens before the June 2004 elections for the European Parliament. The leaders decided that the Constitutional Treaty is to be signed by the Member States of the enlarged Union as soon as possible after 1 May 2004, the envisaged date of enlargement.

Who participates in the IGC?

The Intergovernmental Conference will be conducted by the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The representative of the Commission will participate in the Conference. The 10 future Member States will participate fully in the Intergovernmental Conference on an equal footing with the current Member States. The European Parliament will be closely associated and involved in the work of the Conference. The three candidate countries - Bulgaria and Romania, with whom accession negotiations are underway, and Turkey - will take part in all meetings of the Conference as observers.

Positions of different EU Member States before the start of the IGC:

Italian Prime Minister Silvio Berlusconi, who will preside over the IGC, promised to ensure that the Convention's proposal would not be radically changed.

Ireland, the next EU Presidency after Italy, said that the IGC was likely to continue into 2004. Irish Minister for European Affairs Dick Roche expressed doubt that the IGC would meet the Italian Presidency's timetable. He said there
was "a significant probability" that the IGC will be completed during the Irish Presidency in the first half of 2004.

Several small current and future Member States have challenged the Italian Presidency's plans to conclude the IGC within less than three months. Several smaller countries said that the discussions were too important to be restricted to such a tight schedule. On the contrary, several of the big countries would like to speed up the IGC, fearing that the longer the conference the greater the danger that countries will unravel the Convention's proposal.

Finnish Foreign Minister Erkki Tuomioja said Finland needed more time to consult its parliament, which would need to ratify the Constitutional Treaty. He complained that it was "unacceptable to start the discussions so early".

Austrian Foreign Minister Benita Ferrero-Waldner said that many sensitive issues were left unresolved by the Convention, notably the role of smaller countries in the Commission and the abolition of the rotating presidency.

Lithuanian Foreign Minister Antanas Valionis said that the IGC "should take as much time as it needs".

Germany will push for the extension of qualified majority voting for foreign policy decisions against strong opposition of Britain. On the other hand, Germany insists on the right of veto for decisions in the area of immigration. The Convention gave Berlin guarantees that it would keep the right to set the quotas for legal migrants seeking employment in Germany.

Britain plans to reopen negotiations on key sections of the proposed Constitutional Treaty. The British government will issue a White Paper in early September setting out its position for the final round of negotiations. Britain is expected to insist on removing a mutual defence clause that would undermine NATO and antagonise the United States. It will also block attempts to harmonise rules in the area of tax fraud and tax evasion and proposals for an EU public prosecutor. On the other hand, Britain would like more common EU action on immigration.
**Next steps: Time Schedule of the IGC**

The EU's foreign ministers started the first informal debate on the draft Constitutional Treaty at their informal meeting on 5 and 6 September 2003. The Italian Presidency of the EU will launch the Intergovernmental Conference on 4 October 2003 in Rome.

Three sessions are scheduled within the sixth IGC, which is expected to be concluded before the end of the Italian Presidency on 31 December 2003. The scheduled approval of the final text of the Constitution by all 25 heads of government by mid-December will allow for the final text to be translated into all 20 official languages so that it can be signed in Rome (Rome Treaty II) in early May 2004.

The Constitution must be signed by early May 2003, so that voters for the European Parliament elections know the context in which they go to the polls. Between May 2004 and the end of 2005 the treaty will be ratified by the 25 EU parliaments, with referenda being held where necessary.

The goal is for the Constitution to come into force in 2005, but some provisions would only go into effect in 2009.

**Role of Children’s NGOs in the IGC**

The IGC will not be as open as the European Convention, which allowed for the participation and contributions of civil society. Nevertheless, it is of the utmost importance to ensure that the current texts on children’s rights, in particular in the internal and external objectives of the Union, will remain in the final text to be adopted by the IGC. To achieve this it is important that national children’s rights organisations find out the positions of their governments on children’s rights and convince them of the need for children’s rights to remain included in the new Constitution of the European Union. The inclusion of children’s rights in the objectives of the European Union would finally ensure that children are no longer invisible and are recognised as European citizens too!
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