CHILDREN ARE EUROPEAN CITIZENS TOO:

CHILDREN IN THE EU TREATY

DOCUMENT FROM
EURONET, THE EUROPEAN CHILDREN’S NETWORK,
TO ALL MEMBERS OF THE CONVENTION FOR THE FUTURE OF
EUROPE

Written by Mieke Schuurman and Diana Sutton on behalf of Euronet

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SUMMARY

CHILDREN ARE EUROPEAN CITIZENS TOO:
Children in the EU Treaty

Euronet, the European Children’s Network’s position on children and the Convention on the Future of Europe.

Euronet believes that the EU should be brought closer to its 90 million youngest citizens: children. To achieve this children’s rights need to be respected as laid down in the United Nations Convention on the Rights of the Child.

Why is a legal base important for children?
Euronet believes to achieve a Europe which is close to its youngest citizens – i.e. children’s legal recognition in the Treaty is necessary because:

• The current legal status of the child in the EU Treaty is unclear and in practice children are only considered in an ad hoc manner in EU legislation.
• Animals have been given rights before children in the current EU Treaty
• Children’s rights are set out in the UN Convention on the Rights of the Child (UN CRC), ratified by all EU member states. However the EU which passes legislation with direct or indirect bearing on children has no obligation to respect the Convention on the Rights of the Child.
• EU legislation may affect children in a negative way, since there is no need to assess the child impact of EU policies. This may also result in unnecessary expensive Court of Justice Cases and can result in time wasting debates in the EU institutions.

The UN Convention on the Rights of the Child is the fullest contemporary international expression of a holistic view of the child below the age of 18. Therefore the UN CRC should be taken as a basis for EU policies affecting children and the “best interests” of the child need to be taken into consideration.

What about subsidiarity?
Euronet believes that children’s rights need to be taken into account within the existing competences of the EU, and to achieve this a legal base for children needs to be included in the Treaty.

PROPOSALS FOR ARTICLES

Amendment to Common Provisions Article 6.2
The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and fundamental Freedom signed in Rome on 4 November 1950 and the UN Convention on the Rights of the Child adopted on 20 November 1989 and as they result from the constitutional traditions from the member states as general principles of community law. (amendment in italics).

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1 Euronet is a network of NGOs campaigning for the rights of children within the European Union
Amendments within Part One of the Treaty: Principles, e.g. 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.*

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.

Title XI: Social Policy, Education, Vocational Training and Youth, Chapter 3

New Article after Article 149

*The European Union shall contribute to the development of children and youth participation at a European level and encourage co-operation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of their children's and youth participation.*
# CHILDREN ARE EUROPEAN CITIZENS TOO:
## CHILDREN IN THE EU TREATY

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DOCUMENT FROM
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TO ALL MEMBERS OF THE CONVENTION FOR THE FUTURE OF
EUROPE
TEXT TO BE ADOPTED IN 2004 BY THE COUNCIL

Introduction

“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”.

European Meeting of Children’s Ministers, 9 November 2001

Euronet, the European Children’s Network, welcomes the initiative of the European
Council in the Laeken Declaration to set up a Convention to prepare for the future of
the European Union and welcomes the idea of bringing citizens “…and primarily the
young, closer to the European design and the European institutions”2. Euronet
welcomes the creation of the Forum for organisations representing civil society.
Euronet is submitting in this paper proposals for the inclusion of children in the EU
Treaty.

EURONET WANTS:
• The rights of the child to be included in the revised EU Treaty to be
  adopted by Council in 2004 and to bring children closer to the EU.
• To listen to the voices of its 90 million children and young people under
  18 years of age.

Children are European Citizens Too

“In our Europe every child will be respected and listened to and every child will have
the right to participate in the democratic process”

A Children’s Agenda for Europe, “Active Citizens – Children’s Choices”, Belfast
Euronet Symposium 28/29 May 1998

Children are European citizens and should be treated as such. In a democratic
Europe the participation of all its citizens, including its children, needs to be
guaranteed. To bring children closer to the European Union and to ensure that the
European Union also means something for them there are two ways of achieving
this: firstly, respecting children’s rights should be ensured and secondly, it should be
possible for children to participate in decisions that affect them. The treatment of

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2 Laeken Declaration on the Future of the European Union, Annex I to the Presidency conclusions –
Laeken, 14 and 15 December 2001
children as European Citizens and the promotion of their participation are not only to protect children but is contributing to a social Europe with the involvement of all its citizens. Some positive attempts to involve children as active citizens in policy and planning have been made on local and national level.

The importance and the respect for the rights of the child would benefit all Europe in the future, since children are the future of Europe. Investing in Europe’s children is investing in Europe’s future generations.

"Welcomes the establishment of the Convention on the Future of Europe and calls on the Convention to recommend the inclusion of a legal basis in the EU Treaties to promote and protect the best interests of the child in all EU policy, programmes and legislation"

_European Parliament resolution on the EU position in the Special Session on Children of the UN General Assembly (10 April 2002; RC/466168EN.doc)_

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

Euronet is concerned with the lack of expression of the importance of the rights of the child:

1. The legal status of the child in the EU Treaty is unclear and inclusion of children’s rights in EU legislation is ad hoc. The only specific reference to children in the EU Treaty is in Article 29 which refers to ‘offences against children’. However, this Article does not cover many other areas of concern for children in the EU. The Treaty primarily focuses on the “citizen as worker” which excludes children. In EU law children are usually seen as only “victims” or “dependents” or “barriers to work” which is in contradiction with their status in the almost universally ratified 1989 UN Convention on the Rights of the Child. This means that children have no legal status at European level.

2. Children have not yet been accepted as holders of human rights in the current EU Treaty. Animals have achieved legal recognition but not children. (Protocol 33 on the protection and welfare of animals, 1997)

3. Children have special rights recognized in the UN Convention on the Rights of the Child (UN CRC). The UN CRC has been ratified by all EU member states, which are bound to this, but the EU, which passes legislation with direct or indirect bearing on children’s lives is under no such obligation.

4. A major failing of the Treaties on the European Union is, that they do not incorporate respect for the rights of the child. The Treaty only gives a very limited competence to work at European level on a whole range of cross border and transnational issues affecting children.

5. EU legislation may today affect children in a negative way. A recognition of the rights of the child according to international law, would guarantee that children are regarded as human beings with rights of their own.

6. The UN Convention on the Rights of the Child is the fullest contemporary international expression of children’s rights. It covers the civil, political, economic, social and cultural rights of children as well as humanitarian law.
(refugees and armed conflicts) and there are two new optional protocols on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflicts. The Convention includes many areas which concern the EU, e.g. refugee children, asylum seekers, separated children, all forms of sexual exploitation, trafficking, children in institutions, minorities, etc. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation and policy.

**PROPOSALS FOR ARTICLES**

Euronet proposals for articles:

1. **A general reference to children’s rights in the EU Treaty**

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This article would mainstream a child perspective in all EU policies and legislations. 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.
2. Extending the EU’s action for youth to children

Title XI: Social Policy, Education, Vocational Training and Youth, Chapter 3
New Article after Article 149

The European Union shall contribute to the development of children and young people’s participation at a European level and encourage co-operation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of their children’s and young people’s participation.

The EU Treaty only refers to youth with respect to education and vocational training. Youth is defined by the EU institutions and member states as age 15 until 24, although no rationale has ever been given for this. According to the United Nations Convention on the Rights of the Child children are defined as those below the age of 18. This amendment would extend the part of the Treaty on youth to children and promote participation. The European Meeting of Children’s Ministers of 9 November 2001 called on “the European authorities (Council, Commission, Parliament) to study the modalities of possible effective participation of children in the decision making process at the level of the European Union.” They also referred to the resolution related to youth participation adopted on 8 February 1999 by the Council and the Ministers of Youth. This Article should ensure that Member States are obliged to promote children’s participation.

What are the consequences of no reference to children in the EU Treaty?

One of the strongest illustrations of why it is necessary to have a reference to children in the Treaty is the current ad hoc nature of inclusion of the principle of “the best interests of the child” in EU legislation. This is evident from the legislative examples below.

a) Negative effects on children from EU Directives

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.

On the positive side there have been a number of cases where the EU has legislated to promote the highest standards of safety for children. These have included the Toy Safety Directive 1988, and other directives aimed at establishing standards for producers so that children cannot undo fastenings on potentially dangerous products, such as bottles of medicines. Beyond these specific cases, children have to some extent been covered by more general consumer protection initiatives and also asylum legislation has taken children’s interests into account.
However despite this, the following examples show that too often commercial considerations come before the best interests of the child with the potential to harm children’s interests. Examples include:

- **Distance Selling:** There is no reference to the protection of children in EU Directives on misleading advertising and on distance selling, despite evidence from consumer groups that children are often unable to distinguish between covert advertising and information and are therefore at specific risk.

- **Toy Advertising:** In a recent case, toy manufacturers called on the European Commission to take action against the Greek Government. The Greek Government had banned TV advertising of toys because of a concern to promote the best interests of the child and ensure that no advertising was transmitted between certain hours. However the Commission claims that the Greek Government’s action breaches single market rules, placing commercial interests above those of Europe’s youngest citizens.

- **TV Advertising:** In a similar case in 1995 a UK TV station transmitted advertisements to children in Sweden, although these are prohibited for children under 12 in Sweden. Because the single Market creates a free market for movement of goods and services, this action is perfectly lawful, even though it may not be in the best interests of children.

- **Chemicals and Toys:** Although many member states took action to institute a ban on the use of PVC (polyvinylchlorides) in toys the European Commission took months to introduce an EU wide emergency ban. This was despite evidence from consumer and environmental groups that such toys contain harmful levels of chemicals and may damage children’s health. An EU wide ban is currently in place but needs to be renewed every 6 months. It also does not include all toys intended for children below the age of three years. The Belgian Presidency (2001) attempted to extend the ban on toys containing PVC to all toys intended for children under 3, but this was blocked by several Member States in the Council.

- **Television Without Frontiers Directive:** During the Swedish Presidency in February 2001, the Presidency raised the issue of banning the advertising of products directed at children under 12 through a revision of the Television Without Frontiers Directive (Directive 89/552/EEC amended by Directive 97/36/EC). This is banned in Sweden and the Presidency wished to extend this ban to all member states. Sweden proposed a review of the treatment of children by the media at the Council of EU Culture Ministers in November 1999. Some member states supported Sweden, others opposed the ban and the European Commission also opposed this ban.

All these examples demonstrate that the need for better consideration of the best interests of the child at the drafting stage of legislation, within the policy and decision making processes of the EU. Inclusion of a reference to children’s rights in the Treaty would help ensure that this process was systematic and no longer ad hoc. It would also help ensure that member states and the Commission did not waste time discussing these issues after legislation was in force (e.g. in the case of PVC in toys and in the case of the Television without Frontiers Directive).
It may be argued that a legal base is unnecessary to ensure that this happens and that a Commission communication would suffice. However our experience illustrates that without a legal base, consideration of children’s rights will be ad hoc. Secondly, it would not be possible to have a communication on children’s rights because there is no legal base on which to base it.

b) Unnecessary Court of Justice Cases

The lack of recognition of children in the EU Treaties has meant that children’s rights in the EU have developed in a piecemeal way. In some cases these have had to be established by taking cases to the Court of Justice. This is inefficient and costly - it would be far more efficient to ensure that the principles of the Convention on the Rights of the Child were incorporated into the Treaty on European Union. Whilst both the judgements below did in fact rule in favour of the rights of the child, a further demonstration of the problems resulting from the lack of systematic protection of those rights, this was only achieved by taking the case to the European Court of Justice. Integration of the rights of the child into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children’s rights.

In the first case, the Commission v Belgium (42/87) established that children in one member state but living in another continue to be entitled to all forms of state education in the host country even if the working parent has retired or died in that state. The second case of Echternach and Moritz v the Netherlands Ministry of Education (390/87) established that this was the case even if the child moves back to the state of origin. These cases refer to Article 12 of Regulation 1612/68. A recent case Baumbast and R. (413/99 preliminary ruling) which is currently pending and on which the Advocate General Geelhoed gave its opinion on 5 July 2001 is also concerning the rights of children to education within the EU.

c) Asylum and Immigration policy

The EU is now legislating in a number of crucial areas of asylum and immigration policy now that this has moved to community competence. Children have very particular needs, especially child asylum seekers who are separated from their parents. Initial draft Directives from the European Commission have on the whole included positive references to children’s rights and the principles in the Convention on the Rights of the Child.

d) Adoption of Action programmes to benefit Children

The lack of a clear legal base has also created difficulty with the adoption of action programmes with children as a principle target group. In 1998, the Daphne

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3 Article 12 of Regulation 1612/68 states that children of a national of a Member State who is or has been employed in another Member State shall be admitted to that State’s general educational, apprenticeship and vocational training courses under the same conditions as nationals of that State, if such children are residing in its territory.
Programme, the EU wide action programme to fight sexual abuse of children was proposed on Article 308 (ex Article 235) the legal base used when there is no other legal base possible. However member states opposed the use of this as a legal base and the adoption of the programme was delayed whilst another legal base was found. The legal base was changed to Article 152 on health at the last minute.

**Conclusion:**

The examples above show that the consideration of the best interests of the child is ad hoc. On occasions it can be very good, with full integration of some of the key principles in the Convention on the Rights of the Child. On other occasions it can be overlooked, when this happens, the Commission’s, Council’s and European Parliament’s time and resources are wasted debating whether and how the best interests principle should be integrated. A legal base would ensure systematic consideration of the key principle of the Convention on the Rights of the Child “the best interests of the child” and would enable these concerns to be discussed at the drafting stage.

**What about subsidiarity – Surely the protection of children’s interests rests at the member state level?**

> 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)

The principal competence for policy and legislation on children’s issues is at member state level. Euronet is not arguing for the competence for children’s policy to move to the European 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 European policy, law and programming. Children are affected differently from adults by legislation and it is important that all EU policy and legislative proposals takes their needs into consideration. It is important to understand this crucial distinction between having a reference to the rights of the child the EU Treaty and creating a new legal competence.

Where the EU passes legislation, policy and programmes, in areas of policy and law which have already been ceded to the European level the best interests of the child must be taken into account. Many issues affecting children are neither uniquely national nor transnational.

Member states are already under an obligation to respect the rights of the child when they pass legislation at the national level – it is therefore appropriate that the EU is under the same obligation.
EURONET POSITION ON THE CHARTER OF FUNDAMENTAL RIGHTS

“We, the children and young people of the Euronet Network for Children and Young People, recommend to the European Union: The implementation of the United Nations Convention on the Rights of the Child within the European Union must be a priority and a reality for those under 18 years of age. This will encourage Governments and young people’s organisations to work together more effectively”.

“Agenda 2000 for children and young people in Europe” from children and young people from Belgium, Italy, the UK, Ireland and Spain.

Euronet recommended the inclusion of a reference to the UN Convention on the Rights of the Child in the Charter of Fundamental Rights. The Charter of Fundamental Rights has, however, not incorporated a reference to the CRC. In Article 53 of the Convention it is stated that International Conventions need to be taken into account, however, it is not clear which International Conventions. The Charter does contain an article on the rights of children: Article 24.

Euronet position on Article 24 of the Charter of Fundamental Rights

**Article 24 (Chapter III: Equality)**

*The rights of the child*

1. *Children shall have the right 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 relating 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 contrary to his or her interests.*

The explanatory note states: 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.

Article 24 is not quoted exactly from the United Nations Convention on the Rights of the Child. Moreover, the principle of non-discrimination, which is one of the key principles of the UN CRC, is absent, which is of serious concern to Euronet. Moreover, children “may” express their views freely, while the UN CRC states that “States Parties shall assure to the child who is capable of forming his or her views, the right to express those views freely in all matters affecting the child and be given due weight”. Finally, the text of Article 24 does not contain the principle of taking the child as an individual with its own human rights as expressed in the UN CRC. Euronet recommends strengthening Article 24 of the EU Charter of Fundamental Rights to include a reference to the UN CRC in its Preamble.
The guiding principles and norms in the UN CRC must be reflected in new EU legislation to avoid lowering the already adopted international human rights standard on children’s rights. The principles are:

- the best interests of the child shall be a primary consideration (Art. 3 UNCRC)
- the rights of the child shall be respected and ensured without discrimination of any kind (Art. 2 UNCRC)
- the child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child (Art. 12 UNCRC)

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

The principles of the UN CRC that have been incorporated in Article 24 of the Charter of Fundamental Rights are lower than those in the CRC and some have not been incorporated in the Charter, although the explanatory note to Article 24 does refer to the UN Convention on the Rights of the Child. For interpretation purposes this reference is crucial. The place of Article 24 in the section on Equality suggests that children need to be equally treated, in other words should not be discriminated against.

Although Euronet would support the inclusion of the Charter of Fundamental Rights in the EU Treaty, with the changes suggested above, Euronet believes that a legal base on children’s rights is a simpler and better way of incorporating children’s rights into the EU Treaty.

EURONET POSITION ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS: Would incorporation of the ECHR into the EU Treaty help children?

Legal opinion varies as to whether incorporation of the ECHR into the EU Treaty is possible and desirable. Leaving this wider debate aside, incorporation would bring limited value for children.

The incorporation of the ECHR into the Treaty 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. This is not sufficient and does neither recognize a holistic view nor the universality expressed in the UN Convention on the Rights of the Child.

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Would the creation of a protocol on the protection of the best interests of the child help children?

The EU Treaty contains several protocols, among them the Protocol (33) on protection and welfare of animals (1997). If a similar protocol were included on the promotion of the best interests of the child, would this be sufficient? Euronet believes that this would not be sufficient to protect the best interests of children (as defined in the UN CRC) in all EU activities, since a protocol is not as strong as a legal text in the Treaty and has a weak legal value – its main purpose being political. Protocols are annexes to the Treaty to regulate certain specific issues, such as the statutes for different Community institutions and the position of specific countries. A protocol on children would not ensure that in all actions undertaken by the EU under the provisions of the EU Treaty the best interests of the child would be taken into account.

First draft proposal from Euronet, April 2002
Annex I
Euronet, the European Children’s Network, 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 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)