The European Constitution and the Rights of Children

Contribution to L’Europe de l’Enfance meeting
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Introduction

I am delighted to be able to speak at your meeting today on the important impact of the new European Constitution on Children and would like to thank the Luxembourg Presidency for inviting me and to place this important subject on the agenda of this meeting.

EURONET, the European Children’s Network, has campaigned for the inclusion of children’s rights in the European Treaties since 1995. The reason for this was that it was very obvious that the EU’s ability to act on questions concerning children’s rights was very limited. It became particularly apparent following the horrific child murders in Belgium that the EU's ability to respond and act was constrained by lack of legal base. In other areas too, legal actions by certain Member States questioning the use of legal bases stopped most work that DG Employment and Social Affairs had carried out under the Family and Children budget line. Children’s rights NGOs throughout the European Union came together to form EURONET to campaign for a legal base - finally after 10 years of work we have achieved this goal. I will not discuss the details of our campaign but rather the implications of the new texts in the Constitutional Treaty. We have prepared a legal analysis which has been published in January this year.

Charter of Fundamental Rights

First it is important to mention the significance of the Charter of Fundamental Rights (adopted on 7 December 2000) and in particular Article II-84 is a welcome step to achieve the recognition for children’s rights in the Union. The Constitutional Treaty now acknowledges the high profile constitutional nature of
the Charter and also makes it legally binding. However the Charter's incorporation into the European Constitution is a significant step forward but this alone would not be sufficient, its scope of application is limited as it has no direct effect within a national context. This is why references in the Constitutional Treaty itself are essential.

The most relevant Article of the Charter for children is Article II-84 in the European Constitution. The text of this Article includes the "best interests of the child" principle, references to children's rights and references to the child's right to participate. It 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 principles referred to in this Article are lower than the ones in the UN Convention on the Rights of the Child and only refer to a limited set of children’s rights. Therefore it is crucial that a reference has been made to the UNCRC in the explanatory note to the Charter. The impact of this Article on children in the Union, in its legislation and policies, is that children’s rights must be taken into account, as described in this Article. It is, however, a simpler and more effective way to incorporate children’s rights directly into the EU Treaty.

As well as Article II-84 the Charter includes other relevant articles for the implementation of children’s rights in the Union. I mention only a few here:

- **The prohibition of slavery and forced labour (Art. II-65).** The inclusion of the prohibition of trafficking in human beings in this Article is welcomed by EURONET. However, the definition of trafficking is too limited and not consistent with the UN’s Palermo protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000)
- **Respect for private and family life (Art. II-67)** which is based on Article 8 of the European Convention on Human Rights and which was positively applied in the Pini and Bertani case last year (June 2004). (more on that later)
- **The right to education (Art. II-74)** has a positive wording as “everyone has the right to education”, whereas the European Convention on Human Rights is worded negatively “no person shall be denied the right to education”. The critical point I would like to make here is that there is no
link to Articles 28 and 29 on education in the UN Convention on the Rights of the Child, which state that the child has a right to education and the education should develop respect for the child’s own cultural and national values and those of others.

- **The right to Non-discrimination (Art. II-81)** which strengthens the rights of the child not be discriminated against by the Union’s institutions when they adopt laws and policies. The two positive achievements of this Article are non-discrimination on the grounds of age and non-discrimination on the grounds of disability. The last one is not included as an explicit ground in Article 14 of the ECHR.

- **Prohibition of child labour (Art. II-92)** which is welcomed by EURONET in that it aligns the minimum age to work with the minimum school leaving age.

**Constitutional Treaty – The Union’s Objectives**

What does the new Constitution mean for children’s rights and most fundamentally for those of you working to develop policy at national and European level for children.

The most important achievement for Children’s Rights is found in Part I, Article 3 of the Constitution. This contains the objectives of the Union, including 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 can now 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. But it ensures that the areas where the EU is allowed to legislate and adopt policies the rights of the child can be taken into account. This means also that the possible negative effects of EU legislation on children can be considered at the drafting stage.
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.

Other relevant Articles in the first Part of the Constitution are:

- **Article I-4 on fundamental freedoms and non-discrimination**, which gives children the right not be discriminated against because of their nationality.
- **Articles I-7 on legal personality and I-9 on fundamental rights**, which will give the Union legal personality, which means that the Union can accede to international Treaties and Conventions. This could have a positive impact for children’s rights. In particular, **accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)**. The ECHR has several articles which directly impact on children and although this impact is limited to date, the recent Pini and Bertani & Manera and Atripaldi versus Romania case of June 2004 has changed this positively. The case concerned the stopping of adoptions of two Romanian children by Italian families and the Court of Human Rights considered the best interests of the child and their views in the proceedings. Therefore, accession to the ECHR can have positive impact on children in the Union.
- **Article I-47 – the principle of participatory democracy.** We believe that this Article can have two very positive implications for children: one is that organisations, representing children, can engage in broad consultation with the EU institutions to ensure the proper implementation of the Union’s objectives to protect children’s rights. The second is that a million children can ask the Commission to submit a proposal on matters where they consider that their rights should be implemented.

**The Policy Part of the European Constitution**

The policy part of the Constitution, Part III, also includes several articles of direct concern to children.

I would like to mention here **the Declaration to Article III-116 on domestic violence**. Although it does not have legally binding obligations on the Member States it is very welcome as children are often victims of domestic violence. It is important also to mention **Article III - 124 combating discrimination** on grounds including age. This is an existing Treaty Article (currently article 13). Age has always been understood by the European Commission to only include older people and has not resulted in legal texts or action programmes which include children. The **Articles on social protection and the combating of social exclusion (Art. III-209 and III-210)** are no new articles and can provide a legal base for the continuation of the Union’s work in the area of combating child poverty and social exclusion.
The Area of Judicial Cooperation
In the area of judicial cooperation there are four articles of particular relevance to children.

Article III-266 includes the “combating of trafficking in persons, in particular women and children”. For 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. The critical point I would like to make on this Article is that trafficking is placed here as an issue of migration management and not as a human rights and protection issue. Children are particularly vulnerable to the effects of trafficking and need to be offered a protective framework if they arrive into the EU having been trafficked.

Article III-269 on judicial cooperation in criminal matters which covers cases concerning the custody of children when parents separate and go to live in different countries in the EU.

Article III-270 on judicial cooperation in criminal matters is not a new article and has been used to harmonise penalties for sexual abuse and exploitation of children as well as other framework decisions on trafficking.

Article III-271 is a new article and includes in the areas of crime: trafficking in human beings and sexual exploitation of women and children. Although this article is very welcome it also places the issue of trafficking in children in the arena of criminal penalties rather than victim protection. So it may be useful in dealing with the criminal elements of trafficking but not for protective measures for children victims of trafficking.

The constitution also contains Article III-182 which covers education, youth and sport. It does not directly refer to children, but to youth. Article 182 (e) encourages “the participation of young people in democratic life in Europe”. The EU will encourage cooperation 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 on young people's participation, but that it can be stimulated and good practices exchanged.

So what will a legal base mean for children?

It will give a legal bases for a number of political actions for children - e.g. a Communication. EURONET welcomes very much the initiative of Commissioner Frattini and the group of Commissioner on Fundamental Rights (chaired by Barroso) to write a Strategy on Children’s Rights by the beginning of next year. Up till now only on the most extreme cases (children affected by armed conflict in
external policy with the CAAC guidelines) and sexual exploitation and trafficking (in internal policy) have resulted in EU action – because of the political pressure on these issues. I would like to call on the L’Europe de l’Enfance group to use their next meeting in the UK to discuss this communication on a strategy for children and the give their feedback and input to it along side the input of the European Commission and Civil Society that will be consulted.

In terms of legal opportunities, it will ensure that EU legislation is “child proofed”. When the EU passes legislation – there would be a duty to consider the best interests of the child – in the same way that Member states have a duty to do so. In other words, the best interests of the child could be considered systematically something which is not the case today.

The legal basis, whilst technically not a legal base for budgetary expenditure and action programmes, would assist justification of expenditure on children. This would complement the budgetary remarks on children's rights which exist today but are hardly implemented.

On a political level, the most important change is that EU institutions can no longer blame the lack of a legal base for not addressing children’s rights. In other words, the Commission can take action on children’s rights in areas which fall within community competence. This is of course a very important consideration now as planning is taking place in a number of key areas, the Post Tampere II programme, the Social Policy agenda, on going work of the Commission and Member States on trafficking and child safety on the internet. On the external policy side the implementation of the Children in Armed Conflict Guidelines and the Millenium Development Goals review. Politically, it is also a clear signal from the Member States that they have understood that EU policy can affect children in a positive and negative way. This is an important step, which took more than 10 years work to achieve. I would like to call on all the national government representatives here to ensure that the positive impact of children’s rights in the European Constitution are brought across to all citizens within their country. In particular, when they have to vote on the Constitution in referenda.

**Conclusions**

To conclude, a legal basis will not solve all problems that we are faced with in relation to children’s rights in EU policies and practice today. Proper implementation is a key word of course – be it in terms of legal basis, an EU Communication, Mainstreaming policies and Budgetary remarks.

Linked to this the role of the L’Europe de l’Enfance group should be more balanced with a longer-term vision then at the moment takes place. At the moment each country selects subjects they work on mainly at national level, this is of course a good base to exchange experience between the different national Ministries here. But there is a lot more this group could do on children’s issues.
that are dealt with at EU level. The suggestions I would like to make here are:
Firstly to be involved in the discussion on the Communication on a strategy for
children. Secondly, to carry forward your discussions on children’s participation
and how this can be implemented at EU level. Thirdly, carry forward the
discussion started during the Italian Presidency on an EU Representative for
Children. And Lastly, ensure that issues affecting children in particular in the ten
new Member States, such as poverty, social exclusion, discrimination, Roma
children, children living in institutions, are discussed in this group as well.

Finally, in view of the European Constitution and in view of the Commission
Communication on a Strategy for Children’s Rights, EURONET believes that
there is a new era of opportunities for children’s rights to be implemented at EU
level.