

**EURONET**

The European Children's Network



Briefing

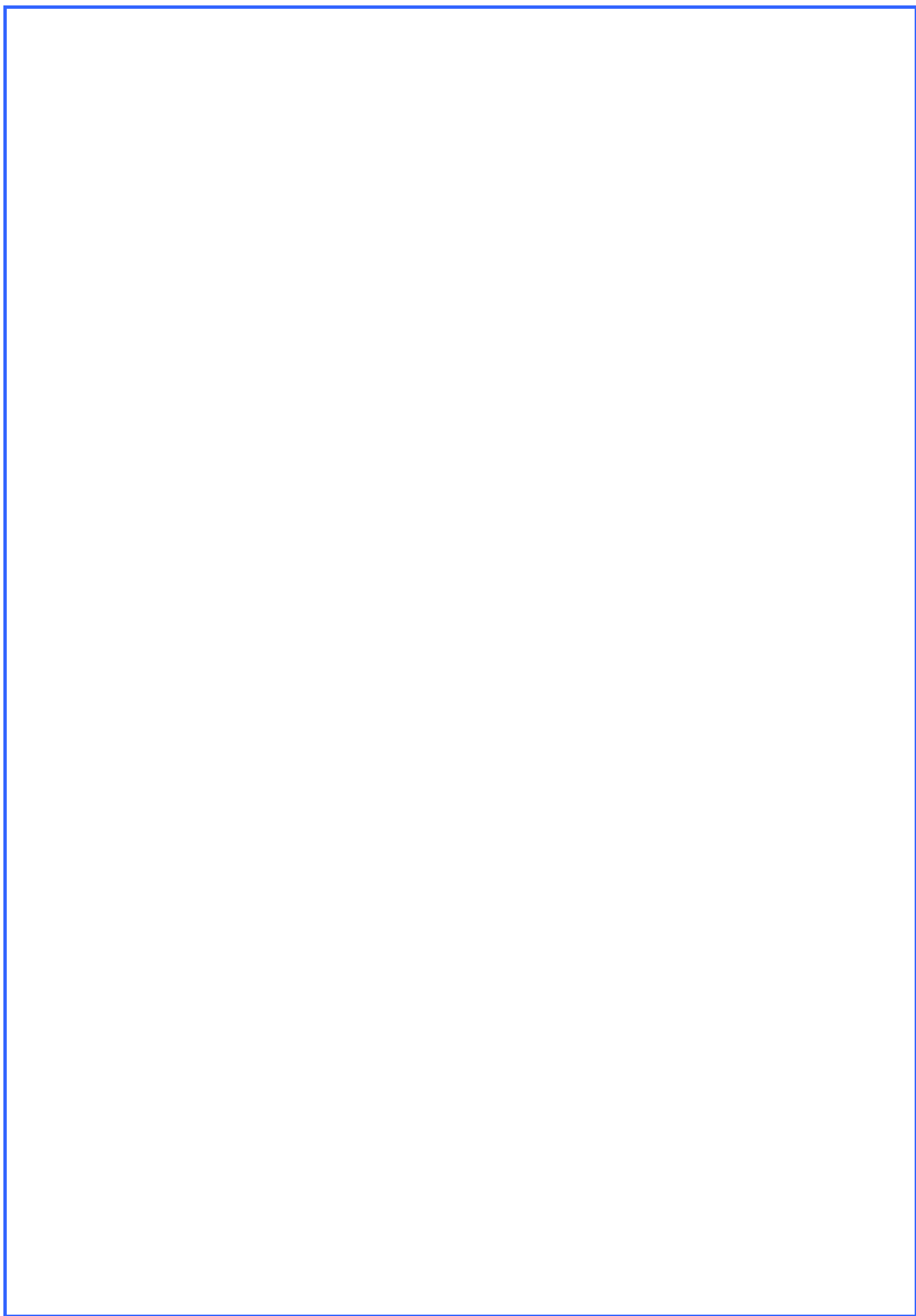
ANALYSIS OF THE TREATY ESTABLISHING A  
CONSTITUTION FOR EUROPE:

The impact on Children

**Brussels, January 2005**

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### Executive Summary

EURONET, the European Children's Network, has campaigned for the inclusion of children's rights in the European Treaties since 1995. EURONET's campaign gained the active support of the European Convention, which included members of the European Parliament, Government Ministers, former Heads of State and Commission officials, who prepared the draft Constitution for Europe.

EURONET welcomes the new references to children's rights in the Treaty establishing a Constitution for Europe. In particular, the inclusion of children's rights in the internal and external objectives of the Constitution and the inclusion of the EU Charter of fundamental rights strengthen the rights of the child. The analysis assesses the articles which are likely to impact on children. The executive summary gives an overview of the main results of the assessment.

#### Part I

##### Article I-3 – the Union's objectives

The inclusion of children's rights in the internal and external objectives of the Union will ensure that children's rights will be mainstreamed into relevant legislation, policies and programmes for which the EU has a competence as set out in the Constitution. The Union will have a duty to consider the "best interests" of the child (Article 3 UN Convention on the Rights of the Child (UNCRC)) in the same way that Member States have a duty to do so. This Article will give the Union competence for political actions with children as a target group and it will allow for the provision and commitment of budgetary funds for children in existing budgetary lines. The inclusion of children's rights also means it will become part of the *acquis communautaire* of the EU. With regard to the observance and development of international law in the external relations of the Union, the Union has to take the UNCRC into account when developing external policies.

##### Article I-4 – fundamental freedoms and non-discrimination

This article gives children the right not be discriminated against because of their nationality.

##### Article I-7 – legal personality and I-9 – fundamental rights

That the Union will gain legal personality means that the Union can accede to international Treaties and Conventions. This could be positive for children's rights. Discussions on accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) have been going on for some time. The ECHR has several articles with a direct impact on children and although the impact of the ECHR has been limited to date, the recent *Pini and Bertani & Manera and Atripaldi v. Romania* case of 22 June 2004 has changed this positively.<sup>1</sup> In this case the Court considered the best interests of the child and also included their views in the proceedings. In view of this case and the references in the ECHR to children EURONET believes that accession to the ECHR can have a positive impact on children in the Union.

##### Article I-47 – the principle of participatory democracy

EURONET believes that this article means 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. It also means that a million children can ask the Commission to submit a proposal on matters where they consider that their rights should be implemented.

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<sup>1</sup> In this case, the adoptions of two Romanian children by Italian families were stopped.

### Part II: The Charter of Fundamental Rights

EURONET welcomes the Charter of Fundamental Rights in the European Constitution and in particular article II-84 is a welcome step to achieving recognition for children's rights in the Union. However, it should be noted that the incorporation of the Charter into the European Constitution is not sufficient to ensure the protection of children's rights because its scope of application is limited and its provisions have no direct effect within the national context.

#### Relevant Articles are:

**Article II-65 on the prohibition of slavery and forced labour**, including the prohibition of trafficking in human beings. However, it only contains a limited definition of trafficking which is not consistent with the UN's Palermo protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000)

**Article II-67 on respect for private and family life:** the basis of this article is article 8 of the ECHR which was positively applied in the Pini and Bertani case (June 2004, see above).

Article II-74 **on the right to education**. In this article there is no link to Articles 28 and 29 of the UNCRC which state that the child has a right to education and that education should develop respect for the child's own cultural and national values and those of others.

**Article II-84 on the rights of the child**. Because the principles included in article II-84 are lower than the ones in the UNCRC and only refer to a limited set of children's rights, EURONET believes it is crucial that a reference has been made to the UNCRC in the explanatory note to the Charter. Although this article within the Charter is welcomed, EURONET believes that a legal base for children's rights is a simpler and better way of incorporating children's rights into the EU Treaty.

**Article II-92 on the prohibition of child labour** is welcomed by EURONET in that it aligns the minimum age of admission to employment with the minimum school leaving age.

The first part of **Article II-93 on family and profession life** which ensures legal, economic and social protection of children living in families is welcomed by EURONET. The second part is focussing on workers' rights to combine family and professional life and forgets about the rights of children. The latter also applies to **article II-94 – social security and social assistance**.

### Part III: the policies and functioning of the Union

Several articles within the policy area of the Union have a direct or indirect effect on children. The most relevant ones are:

#### **Declaration to Article III-116 on domestic violence**

EURONET welcomes this Declaration as children are often victims of domestic violence. As a declaration it does not have legally binding obligations on Member States, however within the context of eliminating inequalities between women and men, this is a welcome addition.

#### **Article III-124 – non-discrimination**

EURONET's concerns remain the same as for the former article 13 (TEC), since it has severe limitations as unanimity is required which makes action in this area very limited and since it does not have direct effect. This is concerning since children are among the most vulnerable groups in society to experience discrimination. This includes Roma and traveller children, children with disabilities, children in the youth justice system and children living in severe poverty (although the latter two do not fall within the

grounds of discrimination). However, EURONET welcomes the inclusion of a non-discrimination clause on the grounds of age in the Treaty of the European Union.

**Articles III-209 and III-210 on social protection and combating of social exclusion**

These are no new articles. It can provide a legal base for the continuation of the Union's work in this area including the combating of child poverty and social exclusion.

**Area of Freedom, Security and Justice**

**Article III-266 (d)** combating trafficking in persons, in particular women and children.

This inclusion is of importance to EURONET, but it concerningly places trafficking 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 judicial cooperation in civil matters**

This article can in particular be used to cover cases for example concerning the custody of children when parents separate and go to live in different countries in the EU.

**Article III-270 judicial cooperation in criminal matters**

This article includes the rights of victims of crime, which includes children. It is not a new article and has been used to harmonise penalties for sexual abuse and exploitation of children as well as several other framework decisions on trafficking.

**Article III-271 judicial cooperation in criminal matters**

This is a new article including, the areas of crime: trafficking in human beings and sexual exploitation of women and children. It confers a new power on the Union to develop framework laws on definitions of criminal offences. This article whilst welcome also places the issue of trafficking in children in the arena of criminal penalties rather than victim protection. Therefore it may be useful in dealing with the criminal elements of the trafficking process but may only provide a limited legal framework for EU protective measures for children and other victims.

**Article III-282- Education, youth, sport and vocational training**

EURONET welcomes this article and in particular the emphasis on children's involvement in democratic life. This article encourages young people's participation within a broad educational context. EURONET believes that young people should include children from the age of 12 years onwards. EURONET also welcomes paragraph G, which acknowledges the important role sport plays in the lives of millions of children throughout the Union. Sport can be a positive influence and beneficial to the health and well-being of children.

### Foreword

The following is an analysis of the impact of the Treaty establishing a Constitution for Europe<sup>2</sup> on current and future children's policy at European level. The analysis is based on the document agreed by the Conference of Representatives of the Governments of the European Union (EU) Member States on October 29<sup>th</sup> 2004.

EURONET has been actively campaigning for the inclusion of children's rights in the European Treaties since 1995. We are delighted that this ten year campaign has resulted in several references to children's rights in the Treaty establishing a Constitution for Europe. EURONET welcomes these references, in particular in the internal and external objectives of the Union, and the inclusion of the EU Charter of Fundamental Rights in the Constitution. We believe these references will help give children the rights they are entitled to as European citizens.

This analysis has been produced by the European Children's Network (EURONET) and co-written by Mieke Schuurman (Secretary-General, EURONET), Diana Sutton (European Officer, Save the Children, Brussels) and Tara Hopkins (European Adviser, NSPCC, UK)

### Acknowledgements

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### 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, Belgium)*

The EU should be brought closer to its 90 million youngest citizens, and to achieve this, children's rights must be respected, as laid down in the United Nations Convention on the Rights of the Child (UNCRC) which has been ratified by every EU Member State. The UNCRC is the most comprehensive, international expression of a holistic view of the rights of the child (all persons below the age of 18). The UNCRC must be the basis for all EU policies and legislation affecting children.

EURONET began its campaign for the recognition of children's rights in the EU Treaties when the Treaty of Amsterdam was being drafted in 1997, and although the Amsterdam Treaty included a reference to children, it has a very limited scope. Since 1997, EURONET has continued to argue for a legal base for children.

The EURONET campaign received the active support of the European Convention who prepared the draft text of the Constitution for Europe. The Convention included members of the European Parliament, Government Ministers, former Heads of State and European Commission officials.

This analysis is EURONET's assessment of the articles in the Constitution for Europe which are likely to have an impact, directly and indirectly, on children. It should be noted that the Constitution still has to be ratified by Member States; therefore these provisions will not come into force until 2006 at the earliest.

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<sup>2</sup> CIG 87/2/04, REV 2, Brussels, 29 October 2004

## A legal base is vital for children's rights

To achieve a Union which is closer to its youngest citizens, EURONET has long since recognised that a legal base for children's rights in the Treaty of the European Union (TEU) was necessary for the following reasons:

- The current legal status of the child in the TEU is extremely unclear. In practice children are only considered in an ad hoc manner in EU legislation. In EU law children are usually seen as "victims", "dependents" or "barriers to work" which is in contradiction to their status in the UNCRC.
- The EU passes legislation with direct and indirect bearing on children and yet, as a legislative body, the EU has no obligation to respect the UNCRC.
- Article 6 of the TEU states that, the "EU is founded on ... the respect for human rights". This article also states that the "Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950..."
- EU legislation can negatively affect children since there is no legal obligation to assess the impact of EU policies on them as a group. The failure to recognise children in the TEU has resulted in children's rights being developed in a piecemeal manner. In some cases children's rights have had to be established by taking cases to the European Court of Justice, which is both inefficient and costly. Integration of the rights of the child into the EU's legislative processes would have made such cases unnecessary. The lack of a legal base has also resulted in time wasting debates in the EU institutions. For example: the delay in the adoption of the Daphne Programme in 1998, because of a lack of a proper legal base resulted in long discussions to decide which article could be used for this programme.
- Children have yet to be accepted as holders of human rights in the current Treaties even though animals achieved legal recognition in 1997, under Protocol 33 on the protection and welfare of animals.

## Framework of the Constitution for Europe

The Constitution for Europe consists of four parts, preceded by a preamble.

- **Part I** includes the definition and objectives of the European 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** includes the Charter of Fundamental Rights of the Union.
- **Part III** includes the policies and functioning of the Union. This covers all the existing policies of the EU Treaties and incorporates provisions in the areas of freedom, security, justice and external affairs which used to be in the non-binding EU Treaty inter-governmental articles.
- **Part IV** contains general and final provisions.

Two Addendums are attached to the European Constitution. **Addendum 1** includes several Protocols and **Addendum 2** contains a list of declarations, including a Declaration on domestic violence (Declaration to III-116) and a Declaration on the Charter of Fundamental Rights.

## PART I of the Constitution for Europe

### *Article 1-3 – The Union’s objectives*

3. *“The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*

*It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.*

*It shall promote economic, social and territorial cohesion, and solidarity among Member States.*

*It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.*

4. *“In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”*

*Emphasis added*

## EURONET comment

### **A) Mainstreaming children’s rights in the Union’s legislation and policies**

EURONET welcomes this article which is a direct result of the EURONET campaign for the inclusion of children’s rights in the Constitution for Europe. We particularly welcome the inclusion of the reference to children’s rights in the internal and external objectives of the Union.

This inclusion means that children’s rights can be mainstreamed into relevant legislation, policies and programmes for which the EU has a competence<sup>3</sup>. In other words, children’s rights will have a *horizontal influence* on all the Union’s policies and this should ensure that EU legislation is ‘child proofed’. When the EU passes legislation there will be a duty to consider the ‘best interests’ of the child (Article 3 UNCRC) in the same way that member states have a duty to revise legislation in line with the principle “...in all actions concerning children, the best interests of the child shall be a primary consideration” (Art. 3, para 1).

This article ensures that, in areas in which the EU is permitted to legislate and adopt policies, the rights and interests of children will be taken into consideration. Therefore if EU legislation could impact negatively on children, this can be considered at the drafting stage.

### **B) Competence for political actions**

In addition, this article gives the EU competence for political actions with children as the target group, such as a communication or specific guidelines.

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<sup>3</sup> EU having valid legal authority to legislate as laid down in the Constitution.

**C) Budgetary expenditure**

As children's rights have been included in the objectives of the EU, this should allow for the provision and commitment of budgetary funds for children in existing budgetary lines, and the inclusion of children within action programmes based on articles in Part III of the Constitution.

**D) Children's rights as part of the 'acquis'<sup>4</sup>**

With the inclusion of children's rights in the objectives of the Union, children's rights now become part of the "acquis". This means that when countries enter association or membership negotiations with the EU, respect for the rights of the child will be assessed. Respect for the rights of the child will now be explicitly part of the Union's objectives, as opposed to being subsumed within the 1993 political Copenhagen criteria which include the protection of human rights and respect for the rights of minorities.

As the European Council signed the Constitutional Treaty on 29 October 2004, the text may now be considered as part of the *acquis communautaire* even though all Member States still need to approve of the text in their national parliaments and/or referenda.

**E) Mainstreaming of social exclusion and discrimination**

Article 3.3 indicates that the Union's social objectives are not subordinate to its economic objectives and that the combating of social exclusion and discrimination will be mainstreamed throughout the policies of the Union. This will have an indirect effect on the social exclusion of, and discrimination against children. (See further EURONET's comments to PART III: Article III-124 on discrimination and Articles III-209 and III-210 on social exclusion).

**F) Observance and development of international law**

The specific reference to children's rights in the external objectives of the EU and the statement on the '*strict observance and development of international law*' in the external relations of the EU, means that children's rights must be taken into account when developing external policies. Although the UNCRC and its optional protocols are not specifically mentioned, since it is part of international law and the most widely ratified international Convention, it is implicit that this should also be taken into account.

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<sup>4</sup> Acquis - this means the laws and standards of the EU - so that when new members join, they are obliged to meet certain EU standards and laws and this is called the "acquis"

## ***Specific articles affecting children in Part I***

### ***Article I-4 – Fundamental freedoms and non-discrimination***

*“2. Within the scope of the Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited”.*

#### *EURONET comment*

This article gives children the right not to be discriminated against because of their nationality. But as it refers to provisions “within the scope of the Constitution”, it has only a limited effect on children: only articles that directly affect children and which are included in this analysis.

This could apply, for example, to non-national children receiving differential treatment from national children (which is contrary to the principle of the UNCRC (article 2)), where this is within Community law. An example of differential treatment of non-national children regards the right to education, which is denied in several EU Member States to refugee or illegal immigrant children. This article also means that it will only be applied to children who are EU member state nationals.

### ***Article I-7 – Legal personality***

#### *EURONET comment*

*“The Union shall have legal personality”.*

The fact that the Union will gain legal personality means that the Union can accede to international Treaties and Conventions. The Union has not had a legal personality previously. This is a positive development for children’s rights because the Union will now be in a position to accede to the UNCRC, its two Protocols, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Discussions have been taking place for some time over the possibility of the EU acceding to the ECHR. References to the ECHR are already frequently made by the European Court of Justice in its case law. The impact of an accession to the ECHR on children’s rights is examined in the comments to **Article I-9**.

### ***Article I-9 – Fundamental rights***

*“1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.*

*2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Constitution.*

*3. Fundamental Rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”*

**Protocol 32 and Declaration 2**, both relating to Article I-9(2) state that accession to the ECHR will preserve the specific features of Union law and that a regular dialogue between the Court of Justice and the European Court of Human Rights will be reinforced when the Union accedes to that Convention. **Article III-325** lays out the procedure for the Union to accede to the ECHR.

*EURONET comment*Accession to the European Convention on Human Rights (ECHR)

This article provides for EU accession to the ECHR (1953). In principle, the human rights within the ECHR are also applicable to children, but in practice this is not always the case. Although children hold rights in legal instruments such as the UNCRC, there is no agreement over the issue of children's legal competence.

Because such a competence has not been recognised, "specific" human rights instruments have been created for children at the universal and regional level.<sup>5</sup>

Within the ECHR there are only two articles that directly refer to children, whilst a series of indirect references, particularly in interpretation (jurisprudence) can also be found.

Children are directly mentioned in respect of illegal detention (Art. 5) and special protection in the reporting of trials (Art. 6.1). Indirect references are found above all in Article 8.1, which concerns the right to respect for private life and family life (the basis for the Pini and Bertani case (2004)) and Article 8.2, which refers to non-interference in private life, which applies to children.

Although the impact of the ECHR on children has been limited to date, the recent case of Pini and Bertani & Manera and Atripaldi v. Romania of 22 June 2004 has changed this positively. In this case, the adoptions of two Romanian children by Italian families were stopped. The case relied on Article 8 of the ECHR: the right to respect to family life. The Court considered in this case the best interests of the child and also included their views in the proceedings. The children did not want to be adopted abroad in Italy and wanted to remain in Romania. The views of the children prevailed over the views of the prospective adoptive parents.<sup>6</sup>

In view of these references and the recent Pini and Bertani case, EURONET believes that accession of the Union to the ECHR would have a positive impact on children in the Union.

**Article I-10 – Citizenship of the Union**

*"1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.*

*2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:*

- o the right to move and reside freely within the territory of the Member States;*
- o the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;*
- o the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;*
- o the right to petition the European Parliament, to apply to the European Ombudsman, (...)"*.

<sup>5</sup> Eugeen Verhellen, "Children's Rights in Europe" in Understanding Children's Rights, Ghent Papers on Children's Rights – No. 6, University of Ghent (Belgium) – December 2000

<sup>6</sup> The Court's judgement is accessible on <http://www.echr.coe.int>

### *EURONET comment*

*'The advice I have received...is that the reference to all persons who have citizenship of a Member State covers everybody, including children'. Gay Mitchell, Irish Foreign Minister, representing the Irish Presidency of the EU, 1996<sup>7</sup>*

This is a general article referring to citizenship of the Union for all nationals of Member States. The definition of EU citizenship is closely related to the role of the citizen as a worker. Given that children are not part of the active labour force (unless they are over 15 and working), they are usually excluded from many of the rights which are conferred by EU citizenship. The rights they do enjoy are usually derived from the circumstances of their parents. ECJ rulings have helped to elaborate the concept of European citizenship in the Treaties and to extend citizenship rights to non-workers in certain cases.

Although in theory this article means that children are citizens of the Union and enjoy the rights provided for in the Constitution, in practice these rights have very limited application to children. For example, children cannot participate in elections since these are based on national legal minimum age requirements, workers rights only apply to children after the school-leaving age.

Moreover, there is no Article on education that would give EU citizens a right to education in the EU. The right to free movement, however, is applicable to children and could for example cover a situation concerning the payment of child benefit (or other social security benefits which are targeted at children) to children who are resident in a different member state, although in practice entitlements usually depend on parental circumstances and contributions.

There may still be a situation where children from third countries are excluded from EU citizenship, which will not be solved by this article, because in several EU countries citizenship depends on parental nationality rather than the birthplace of the child. In this way, entire families can remain in a country without host country citizenship, e.g: Germany. See also EURONET's comments to Article I-4 on non-discrimination and the exclusion of children from third countries for EU citizenship.

### **Article I-18 – Flexibility clause**

#### *EURONET comment*

*"1. If action by the Union should prove necessary, within the framework of the policies defined in Part III, to attain one of the objectives set out in the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures."*

This article can be used when there is no article in Part III of the Constitution that allows for action in a certain area. Unanimity in the Council is necessary to implement this article. In practice it will be difficult to obtain unanimity to adopt such measures and therefore it is not likely to have a serious effect on children's rights.

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<sup>7</sup> In a 'Children's Policy for 21<sup>st</sup> Century Europe: First Steps', EURONET report, written by Sandy Ruxton, 2000

### **Article I-47 – The principle of participatory democracy**

*“1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*

*2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*

*3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.*

*4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens’ initiative, including the minimum number of Member States from which such citizens must come.”*

#### *EURONET comment*

*“We are consulted to death yet there is little evidence that action is taken in response to the issues and concerns we raise”. **Scottish Children** in EURONET Consultation on the Future of Europe, 2003*

EURONET welcomes the inclusion of the principle of participatory democracy and the opportunity given to civil society to have regular dialogue with the Commission. The power of initiative of a group of European citizens is also welcomed by EURONET.

For children this means that organisations representing children can have broad consultations with the EU institutions to ensure that the Union’s objective to protect children’s rights is implemented by coherent and transparent actions.

**Clause 4** means that a million children, who are European citizens, can ask the Commission to submit a proposal on matters where they consider their rights should be implemented.

## PART II: The Charter of Fundamental Rights of the EU

EURONET welcomes the incorporation of the Charter of Fundamental Rights in the European Constitution and believes it is a significant step forward. In particular the article on children's rights II-84 (former article 24) is a welcome step to get children's rights recognised in the Union. Other than this specific article, there are several other articles in the charter of relevance to children. Before analysing the impact these articles have on children, EURONET stresses that the incorporation of the Charter done into the European Constitution is not sufficient to ensure the protection of children's rights. Its scope of application is limited and its provisions have no direct effect within the national context.

### *Scope of application*

The Charter of Fundamental Rights of the Union, which was developed and adopted in 2000, has been incorporated in full in the European Constitution. This means that the fundamental right, as laid down in the Charter, will be legally binding on all Member States. However, the scope of the application is limited as it will only be legally binding for the EU institutions and bodies and the Member States when implementing Union law:

*"They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution" (Article II-111, Field of application).*

This means that there is no direct application within a purely national context. In other words, a violation of the rights of the Charter cannot be taken up by national citizens within the European Union with the Court of Justice of the Union. Only if a right within the Charter is violated by the EU institutions and the Member States in their legislation, policies or activities can the case be brought before the European Court of Justice.

*The Courts of the Union and the Member States shall interpret the Charter with the guidance of the explanations relating to the Charter. (Article II-112, Scope and interpretation of rights and principles).*

These explanations are laid down in **Addendum 2** of the European Constitution.

### *General remark on the rights included in the Charter of Fundamental Rights*

EURONET believes that not only Article II-84 (former Article 24) on the rights of the child is relevant but also other human rights articles in the Charter are applicable to children. The more general articles such as the right to life (II-62), human dignity (II-61), prohibition of slavery and forced labour (II-65), freedom of expression and information (II-71), are also relevant to children.

The Preamble of the Charter of Fundamental Rights states:

*“Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations”.*

In this paper the analysis of the Charter of Fundamental Rights and its implications for children will focus on the articles specifically referring to or covering children’s rights. The analysis includes the references to the explanatory comments in **Addendum 2**.

## ***Specific articles for children in the Charter of Fundamental Rights***

### ***Article II-65 – Prohibition of slavery and forced labour***

*“3. Trafficking in human beings is prohibited.”*

#### *EURONET comment*

The explanatory comments refer to the definition of trafficking for sexual purposes and for profit included in the annex to the Europol Convention which states “(...) *and assault of minors or trade in abandoned children*”. The explanatory note also refers to the Convention implementing the Schengen Agreement and the framework decision adopted by the Council on 19 July 2002 on combating trafficking in human beings.

EURONET believes that this article can contribute to the combating of trafficking in children as a breach of their fundamental rights, although the definition of trafficking is limited and not consistent with the internationally agreed definition in the Palermo protocol<sup>8</sup>. Article III-172 brings this into the criminal justice area. (See further comments on Article III- 172)

### ***Article II-66 – Right to liberty and security***

*“Everyone has the right to liberty and security of person.”*

#### *EURONET comment*

The explanatory note refers to Article 5 of the ECHR and indicates that this article has the same meaning and scope. Article 5 of the ECHR directly refers to children and states in Paragraph 1:

*“Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority”*

In this way children’s rights to liberty and security of the person are specifically protected except in certain cases, for example for educational supervision or lawful

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<sup>8</sup> Article 3 of the Palermo Protocol stipulates that “Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitations, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

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detention when brought before legal authorities. However EURONET notes that, despite guarantees in the ECHR, the Charter of Fundamental Rights and article 37 of the UNCRC, children continue to be detained, particularly migrant and asylum seeking children, in some Member States.

### **Article II-67 – Respect for private and family life**

*“Everyone has the right to respect for his or her private and family life, home and communications.”*

#### *EURONET comment*

EURONET welcomes the inclusion of this right and believes that this right guarantees the respect for children’s rights within the family and recognises the importance of families for the growth and well-being of children, as stated in the preamble of the UNCRC. This article also guarantees respect for a child’s privacy. The explanatory note states that this article corresponds to the rights guaranteed by article 8 of the ECHR, which has been interpreted positively for children’s rights by the Court of Human Rights (see comments under Article (I- 9)).

### **Article II-69 – Right to marry and right to found a family**

*“The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”*

#### *EURONET comment*

The explanatory note states that this Article is based on Article 12 of the ECHR, allowing men and women of marriageable age to marry and found a family, with a modernisation of words to cover cases in which national legislation recognises arrangements other than marriage for founding a family. EURONET believes that family life is important for the growth and well-being of children (UN CRC Preamble)

### **Article II-74 – Right to education**

*“1. Everyone has the right to education and to have access to vocational and continuing training.  
2. This right includes the possibility to receive free compulsory education.  
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.”*

#### *EURONET comment*

*“I cannot go to high school because I will have to work as soon as I finish primary school. I would have liked to learn more” Roma boy, 9 years old, Greece<sup>9</sup>*

EURONET regrets that this article lacks the full text of Article 28 of the UNCRC (the right to education). EURONET welcomes paragraph 1, the inclusion of free compulsory education for children which is in line with Article 28 of the UN CRC.

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<sup>9</sup> “Denied a Future? The right to education of Roma/Gypsy & Traveller Children in Europe”, Save the Children, 2001.

The explanatory note states that paragraph 2 implies that: *“each child has the possibility of attending an establishment which offers free education”*. The Article has a positive wording as *“everyone has the right to education”* whereas Article 1 of Protocol I of the ECHR is worded in a negative way *“no person shall be denied the right to education”*. For the Union this article means that in its training policies, the Union must respect free compulsory education, but this does not create new powers for the Union.

Regarding the rights of parents in paragraph 3, *“it must be interpreted in conjunction with the provisions of Article II-84”* is stated in the explanatory notes. EURONET believes that in relation to this paragraph (Article 28 and 29 of the UNCRC should have been taken into account). Paragraph 3 stresses that it is more of a parent's right to decide education upon their religious base, etc. Article 28 (UN CRC), on the other hand, states that the child has a right to education and Article 29 provides that education should develop respect for the child's own cultural and national values and those of others.

### **Article II-81 – Non-discrimination**

*“1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

*2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.”*

#### *EURONET comment*

EURONET welcomes this article because it strengthens the right of the child not to be discriminated against, on grounds such as sex, race, colour, ethnic or social origins, religion, disability, age, sexual orientation, etc, by the Union's institutions when they exercise their powers and adopt laws and policies.

EURONET believes, supported by legal advice and a EURONET report on non-discrimination published by EURONET, that discrimination on the grounds of age includes children.<sup>10</sup> The other positive achievement for children is that the article includes discrimination on grounds of disability, which is not included as an explicit ground for discrimination in Article 14 ECHR.

However, the explanatory note refers to article III-124 of the Constitution on non-discrimination and explains that this article has a different scope and purpose: *“Article III-124 confers power on the Union to adopt laws, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination.”* (See EURONET's comments on [Article III-124](#)). Article II-81 *“only addresses discrimination by the institutions and bodies of the Union themselves (...) when they are implementing Union law.”*

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<sup>10</sup> “Challenging discrimination against children in the EU: A policy proposal by Euronet”, Gerison Lansdown, November 2000

### **Article II-84 – 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.”*

#### *EURONET comment*

While EURONET welcomes a specific article on children's rights in the Charter, we believe that these are not the only children's rights that need to be guaranteed by the Union. We believe there needs to be a reference to the UNCRC in this article, which is not the case, although the explanatory note to Article 24 does refer to the UN Convention on the Rights of the Child (1989). For interpretation purposes this reference is crucial. Moreover, not all key principles of the UN CRC have been incorporated in Article 24 of the Charter of Fundamental Rights or are lower than those in the CRC. The principle of the 'evolving capacity of the child' is not included as well as the principle of non-discrimination, which is one of the key principles of the UN CRC. The guiding principles and norms of the UN CRC must be reflected in EU legislation to avoid lowering the already adopted international human right standard on children's rights. The principles are:

- The best interests of the child shall be a primary consideration (Art. 3 UN CRC)
- The rights of the child shall be respected and ensured without discrimination of any kind (Art. 2 UN CRC)
- The right to life, and the State's obligation to ensure the child's survival and development. (Art. 6 UN CRC)
- 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 UN CRC)

*“A Child is free to express his opinion and fulfil his dreams. Unfortunately, their fulfilment is not up to him. Adults decide for us. What a pity! We know what is good and bad. We wish to be listened to and we promise you a better world! **13-year old Romanian boy**, taking part in EURONET Consultation on Future of Europe, 2003*

With regard to paragraph 1, which refers to children's participation, children *“may express their views freely”*, is not replicating the wording of **Article 12** of the UNCRC, which states

*“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”.*

The 'right to' express their views, is far stronger than 'may' express their views. Finally the text of **Article 84** does not contain the principle of taking the child as an individual with its own human rights as expressed in the UN CRC.

The impact of this article on children is that the Union, in its legislation and policies, must take children's rights into account, as described in this article. EURONET believes that a legal base for children's rights is a simpler and more effective way of incorporating children's rights into the EU Treaty.

Article 84 only refers to a limited set of children's rights, as explained above. A legal base would be simpler, since there would be a reference to children's rights which would ensure that all EU legislation and policies having an impact on children would have to comply with the rights of the child.

Next to the Union's institutions, the Member States also have to adhere to the rights in this article when implementing Union legislation. This article compliments article I-3.3 and I-3.4 (objectives of the Union), but because of its limited scope could never replace it!

In paragraph 3 of article II-84, the explanatory note states that this takes account of the fact that Union legislation on civil matters can have cross-border implications, for which Article III-269 confers power. This may include, notably, visiting rights ensuring that children can maintain regular personal and direct contact, with both his or her parents, unless this is contrary to his/her interests. EURONET values the inclusion of this paragraph.

### **Article II-92 – Prohibition of child labour and protection of young people at work**

*"The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.*

*Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education."*

#### *EURONET comment*

EURONET welcomes the alignment of the minimum age of admission to employment with the minimum school leaving age. EURONET believes that the protection of young people at work should be in line with article 32 of the UNCRC. EURONET believes that the Union should use its powers to ensure that this article is implemented in the laws and policies it adopts and ensure full and proper implementation by Member States.

As the explanatory note states, this article is based on Directive 94/33/EC on the protection of young people, Article 7 of the European Social Charter and points 20-23 of the Community Charter of the Fundamental Social Rights of Workers. Under directive 94/33/EC on the protection of young workers, Governments are required to protect the health and safety of persons under 18s, and specific requirements have been introduced covering certain types of work, working hours, rest breaks and night work. The directive is in line with article 32 of the UNCRC, which requires States to protect children *"from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development"*.

### **Article II-93 – Family and professional life**

*"1. The family shall enjoy legal, economic and social protection.*

*2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child"*.

### *EURONET comment*

EURONET welcomes paragraph 1, which ensures that children living in families shall enjoy legal, economic and social protection.

Paragraph 2 focuses on workers and their rights to combine family and professional life and not on the rights of children, which is an omission in this article.

### **Article II-94 – Social security and social assistance**

*“3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices”*

### *EURONET comment*

The first two paragraphs of this article focus exclusively on workers and their rights. Paragraph 3 has to be read in conjunction with Article III-210 (social exclusion) and should be read with the objective of ensuring that children have a decent existence. The implementation of this Article can only be done by the Member States and by the Union based on Article III-210. (See EURONET comments on Article III-210)

## PART III: The Union policies and its functioning

### Section I: Equality and Non-Discrimination

#### **Article III-108 (ex Article 141 TEC) - Equal Pay for equal work**

*1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.*

*2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.(...)*

*3. European laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. They shall be adopted after consultation of the Economic and Social Committee.*

#### *EURONET comment*

Whilst not directly relevant to children's rights, this Article could bring benefits, as it refers to equal treatment for men and women in matters of employment and occupation. This could, for example, have a bearing on issues such as parental leave and child care.

#### **Declaration on Article III-116 - Domestic Violence**

*The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.*

#### *EURONET comment*

EURONET welcomes this Declaration as children are often victims of domestic violence. As a Declaration to the Constitutional Treaty, this clause does not place legally binding obligations on Member States to combat domestic violence. However, within the context of eliminating inequalities between women and men, this is a welcome addition.

#### **Article III-117**

*In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.*

#### *EURONET comment*

This is a new article and it aims to ensure mainstreaming the fight against social exclusion within the policy part of Part III of the Constitution. Including child poverty here means that in all measures taken by the EU based on the articles in Part III, the fight against social exclusion needs to be included. This article should be read in combination with comments to Articles III-124 (non-discrimination) and III-210 (social exclusion).

### **Article III-124 - Non-discrimination (ex Article III-8 & ex Article 13 TEC))**

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers assigned by it to the Union, a European law or framework law of the Council may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after obtaining the consent of the European Parliament.

2. By way of derogation from paragraph 1, European laws or framework laws may establish basic principles for Union incentive measures and define such measures, to support action taken by Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of their laws and regulations.

#### *EURONET comment*

This article confers powers on the Union to adopt legislative acts, including harmonisation of Member States' laws and regulations, to combat certain forms of discrimination. The specific reference to children in the new Constitutional Treaty will give a much stronger legal basis for Community action to combat discrimination on the different grounds included in this article. EURONET welcomes the inclusion of a non-discrimination clause on the grounds of age in the EU Treaty.

*"Everyone has the right to be treated equally."* **British children** in EURONET Consultation on the Future of Europe, 2003

Children are amongst some of the most vulnerable groups in society to experience discrimination. This includes Roma and Traveller children, refugee and asylum seeking children, children with disabilities, children in the youth justice system, and children living in severe poverty. These latter two groups do not fall within the EU's definition of grounds for discrimination as poverty per se is not a ground for discrimination. Many of these groups are excluded from mainstream education and other vital services. EURONET is concerned that this article has severe limitations:

#### **1. Unanimity Required**

All measures proposed under Art. III - 124 require unanimous agreement of all EU Member States. Therefore one state can block proposals. Given there is now a Union of 25 Member States, unanimity could make action within this area very limited.

#### **2. No Direct Effect**

This clause does not have 'direct effect' which means that it cannot be used by an individual in a court of law and cannot be used in the European Court of Justice. Therefore a child, experiencing discrimination, cannot rely on this article in either a European or national court of law. It can only be activated by all Member State Government's agreeing on specific measures, and it therefore only has a Community dimension (see also comments Art. II-81)

## Section II: Free movement of persons and services

### Article III-135 - Exchange of youth workers

*Member States shall, within the framework of a joint programme, encourage the exchange of young workers.*

#### EURONET comment

EURONET welcomes this new article, which is aimed at encouraging the exchange of young workers. Programmes of this kind can provide valuable opportunities for young people and contribute to combating youth unemployment. This article is also linked to other guarantees for workers which can have implications for young workers, including the Young Workers Directive (1994) which requires Member States to protect the health and safety of workers under 18. (see comments to article II-92)

## Section II: Social policy

### Article III-209 (ex Article 136 TEC)

*The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between the social partners, the development of human resources with a view to lasting high employment and the combating of exclusion. (...) *emphasis added**

### Article III-210 (ex Article 137 TEC)

*1. With a view to achieving the objectives of Article III-209, the Union shall support and complement the activities of the Member States in the following fields: (...)*

- (i) equality between men and women with regard to labour market opportunities and treatment at work;*
- (j) the combating of social exclusion;*
- (k) the modernisation of social protection systems without prejudice to point (c).*

*2. To this end:*

- (a) European laws or framework laws may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States; (...) *emphasis added**

#### EURONET comment

The principle legal significance of this article is that it creates a legal basis for actions to combat social exclusion. Children are one of the most at risk groups from social exclusion (or poverty), and in most countries child poverty rates are higher than those

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of the population as a whole.<sup>11</sup> This is not a new article and as such can provide a legal basis for the continuation of the EU's work in this area which has included research on child poverty, projects funded on child poverty and an action plan on key political priorities which include eliminating child poverty. Included in this article is also a provision to modernise social protection systems and to integrate those excluded from the labour market.

It is however important to note that this article explicitly excludes the harmonisation of legislation and is designed to ensure sharing of best practice and exchange of experience and achievement of political but not legislative goals between the member states.

*"Poverty cannot be a reason for children to end up in institutions (...) the children of Europe won't take it anymore!" 16-year old Irish girl, taking part in EURONET Consultation on the Future of Europe, 2003*

### Section II: Demographic reports

#### **Article III- 216 (ex Article 143 TEC)**

*The Commission shall draw up a report each year on progress in achieving the objectives of Art.III-209, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.*

#### *EURONET comment*

This article, which is not a new Article, is relevant for children in that a children's perspective should be included in reports on the demographic situation. In particular more work is needed on age disaggregated data including at the lower end of the age range. There are several issues in the demographic debate which are relevant for children, in particular the issue of the declining birth rate and ageing population in Europe.

### Section VI: Consumer protection

#### **Article III-235 (ex Article 153 TEC)**

*1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests. (...)*

#### *EURONET comment*

Children are consumers and their interests and needs should be taken into account in Union legislation in this area. Much EU consumer policy directly impacts on children and young people, e.g: tobacco advertising, toy safety and television advertising directed at children. There is no specific reference to children in this article which would guarantee that this would happen, however the overall reference to children's

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<sup>11</sup> A thematic Study Using Transnational Comparisons to analyse and identify what combination of policy responses are most successful in preventing and reducing high levels of child poverty, Final report March 2004 Submitted to European Commission - DG Employment and Social Affairs by Petra Hoelscher, University of Dortmund

rights in the objectives of the Union, combined with this Article could be used to ensure that much greater attention is given to the issue of children as consumers. This could include product harmonisation, responsible advertising to children and the effects of new media on children.

## Chapter IV: Area of Freedom Security and Justice

### *Article III-266 (points 3 and 4 of ex Article 63 TEC)*

*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*

*2. To this end, European laws or framework laws shall establish measures in the following areas:*

*(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;*

*(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;*

*(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;*

*(d) combating trafficking in persons, in particular women and children.*

*3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.*

*4. European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.*

*5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed. Emphasis added*

#### *EURONET comment*

This article (not new) gives the EU a competence to legislate in the areas listed in the article. Of particular interest and importance to EURONET is the specific reference to combating trafficking in children. 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. This article could be used as a basis for a legal instrument to frame protective legislation for children who have been trafficked. However the emphasis in the article is on combating illegal immigration and trafficking which implicitly places the issue of trafficking as one of immigration control rather than placing the rights of victims at the centre.

This article, in particular Part 2b, will define the rights of third country nationals who are resident in the EU. However, often children who are trafficked will be illegally resident in the EU and what is needed is a protective legal framework for these children.

*"We want people to notice the trafficking situation that exists in our own society." **17-year old Swedish girl**, taking part in EURONET Consultation on the Future of Europe, 2003*

### Section III: Judicial cooperation in civil matters

#### Article III-269 (ex Article 65 TEC)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. To this end, European laws or framework laws shall lay down measures, particularly when necessary for the proper functioning of the internal market (...);

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be laid down in a European law or framework law of the Council. The Council shall act unanimously after consulting the European Parliament. The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament. Emphasis added

#### EURONET comment

This article gives the Union the power to develop cross border harmonisation in civil matters. Part 3 covers family law and in particular can be used to cover cases concerning the custody of children when parents separate and live in different countries in the EU.

### Section IV: Judicial cooperation in criminal matters

#### Article III-270 (ex Article 31(1) TEU)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article III-271.(...)

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision, for the adoption of this decision, the Council shall act unanimously after obtaining the consent of the European Parliament. Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals. Emphasis added

#### EURONET comment

This article concerns judicial cooperation in criminal matters, including the rights of victims of crime, which includes children.

It is not a new Article and has also been used to harmonise penalties for sexual abuse and exploitation of children (Council Framework Decision 2004/68/JHA 22 December 2003 on combating the sexual exploitation of children and child pornography) as well as several other framework decisions on trafficking. It could also be used in the future for additional harmonization in this area.

### **Article III-271 (new)**

*1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.*

*2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, European framework laws may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question. Emphasis added*

#### *EURONET comment*

This is a new article which confers a power on the Union to develop framework laws on definitions of criminal offences. This article whilst welcome, places the issue of trafficking in children in the arena of criminal penalties rather than victim protection. Therefore it may be useful in dealing with the criminal elements of the trafficking process but may provide only a limited legal framework for EU action on the protective framework legislation that is necessary for children and indeed other victims.

## **Chapter V**

### **ARTICLE III-278 - Public Health**

*1. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.*

*Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to physical and mental health.(...)*

*3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health. (...)*

*5. European laws or framework laws may also establish incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, as well as measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee(...)*

### *EURONET comment*

This is not a new article. It provides the Union with a supportive and coordinating role in the field of public health, to be performed through the adoption of guidelines or incentive measures, or by facilitating the exchange of information about best practice.

Although there is no specific reference to children in this article, many of the EU's public health policies directly impact on children and young people, including tobacco and alcohol prevention and programmes to combat obesity. Given the reference to children's rights in the Objectives of the Union (Article I-3), public health programmes, measures and actions under this Article will be obliged to take account of the best interests of the child.

### **Article III-282 - Education, youth, sport and vocational training**

*1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and complementing their action. It shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.*

*The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function. Union action shall be aimed at: (...)*

*(e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors and encouraging the participation of young people in democratic life in Europe; (...);*

*(g) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen. (...) **Emphasis added***

### *EURONET comment*

Article III - 282 has a supporting, coordinating and complementary role while respecting the responsibility of Member States for education systems. EURONET welcomes this article and in particular the emphasis put on children's involvement in democratic life. As EU citizens, children have a right to participate in Europe's democratic life. This article encourages such participation within a broad educational context (see also EURONET comment on Article I-10 – Citizenship of the Union). EURONET believes that young people should be read here as including children from the age of 12 years onwards. The current age for youth programmes is 15-25 years and is based on a Council decision. EURONET believes that this age should be lowered or no age limit should be included at all.

EURONET also welcomes paragraph G, which acknowledges the important role sport plays in the lives of millions of children throughout the Union. Sport can be a positive influence and beneficial to the health and well-being of children. EURONET particularly welcomes the Union's commitment to protect the physical and moral integrity (...) especially of young sportsmen and women'. It should be noted that children compete, professionally and as amateurs, at very young ages throughout the Union (e.g. as young as nine in professional football clubs, swimming and gymnastics).

## EURONET member organisations

- BICE, Bureau International Catholique de l'Enfance (**EU Office**)
- International Save the Children Alliance (**European Office**)
- EACH, European Association for Children in Hospital
- ENSCW, European Network on Street Children Worldwide
- OMEP, World Organisation for early Childhood Education (**EU Office**)
- Austrian Coalition of Child Rights NGOs, represented by Die Kinderfreunde (**Austria**)
- Kinderrechtencoalitie Vlaanderen vzw (**Belgium**)
- Center for the Study of Childhood & Adolescence (**Cyprus**)
- Red Barnet (Save the Children **Denmark**)
- Pelastakaa Lapset (Save the Children **Finland**)
- COFRADE (French coalition of children's NGOs) (**France**)
- German National Coalition (**Germany**)
- Institute of Child Health (**Greece**)
- ISPCC, Irish Society for the Prevention of Cruelty to Children (**Ireland**)
- Save the Children Italia (**Italy**)
- Save the Children Lithuania (**Lithuania**)
- FICE (**Luxembourg**)
- DCI, Defence for Children International (**Netherlands**) (on behalf of Dutch Children's Rights Coalition)
- Polish Forum for Children's Rights (**Poland**)
- Instituto de Apoio à Criança (IAC) (**Portugal**)
- Plataforma de Organizaciones de Infancia (**Spain**)
- Rädde Barnen (Save the Children – **Sweden**) (on behalf of Swedish Children's Rights Coalition)
- Save the Children Fund (**United Kingdom**)
- NSPCC, National Society for the Prevention of Cruelty to Children (**United Kingdom**)

### ***Associated Organisations***

- Friends of Europe (Bulgaria)
- European Children's Television Centre (Greece)
- ARSIS (Greece)
- Salvati Copii (Romania)



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