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BRIEFING
ON
CHILDREN AND THE IGC

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda. Briefings will be updated as negotiations proceed.

Already out:

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
16. The Council of the European Union
17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and the allocation of powers
20. The Union's legal personality and external representation
21. Commitology
22. Fundamental rights
23. The IGC and the democratic nature of the Union
24. The coherence of the external action of the EU under the first (Community) and second (CFSP) pillars
25. The 1996 IGC and the effectiveness of the Union
26. Europol
27. The IGC and the Schengen Convention
28. Combating fraud
29. Energy Policy
30. Tourism and the IGC
31. Economic and social cohesion
32. European environmental policy and the IGC
33. The common agricultural policy and the IGC
34. Civil protection and the IGC
35. Non-discrimination on sexual grounds
36. EU enlargement
37. Employment and the IGC
38. The IGC and Economic and Monetary union
39. Asylum and immigration policy
40. Social exclusion and the IGC
41. Children and the IGC

**BRIEFING
ON
CHILDREN AND THE IGC**

INTRODUCTION

The emotions aroused by recent events in Belgium have brutally highlighted the problem of sexual abuse and illtreatment of children. This social phenomenon is not new and is generally underestimated.

Child prostitution affects about a million children every year throughout the world and is increasing under the combined effect of various social, cultural and economic factors, often interconnected, such as poverty and economic disparities, breakdown of socio-economic fabric, loss of traditional standards and family disfunction. These combined to form a favourable environment for the sexual exploitation of children.

The World Conference against the sexual exploitation of children, held in Stockholm from 27 to 31 August 1996 has doubtless had a favourable effect on raising public awareness of the need to combat this evil. Although there is no evident legal basis for children's rights in the EU Treaty, and although to date it has not been placed on the agenda for the IGC, it has become a topic of major concern⁽¹⁾. The European Council held in Turin on 29 March 1996 called on the IGC to base its work on the fact that the people are at the heart of European integration: it was vital that the Union address their needs and concerns. Thus there is a need to begin to think about Europe's particular responsibility with regard to children.

The increasing impact of the single market and the effects of current policies on children are already evident in some areas, such as family mobility, migration and family separation⁽²⁾. The question is gradually becoming one of the internal challenges of the future, and discussion of this subject at the IGC have been making progress as a result of increasing pressure from public opinion and concerted action by NGOs, which consider that a practical response to this problem could present a unique opportunity of the IGC to remedy Europe's low profile and bring Europe closer to its citizens.

Mr Gay Mitchell, President-in-Office of the Council, speaking at the Parliament plenary sitting in Strasbourg on 18 September 1996, said that possible changes to the Treaty were currently being considered by the IGC and that the Union would try to implement the conclusions of the Stockholm Conference.

⁽¹⁾ Mrs Owen, Irish Minister of Justice

⁽²⁾ This consideration is the basis of Parliament's resolution, A3-0172/92, of 8 July 1992 on a European Charter of Rights of the Child.

'If there ought to be a change of emphasis in the IGC, I think it will be in that direction'.... the EU had 'especially to show that it can protect its children'⁽¹⁾.

INTERNATIONAL LEGISLATIVE FRAMEWORK

The definition of a child is any human being aged under 18, unless the age of majority is reached earlier under the legislation applicable to that individual.

The needs of children engender a series of rights which since 1924 have gradually come to be recognized. Among the various legal instruments in connection with issues concerning children, the United Nations Convention of 20 November 1989 on the rights of the child, ratified by more than 150 countries is an important reference document.

Children, as human beings and citizens of one of the Member States of the Union, are entitled to all the rights recognized by:

- the European Convention of Human Rights,
- the United Nations Convention on the rights of the child,
- the Declaration of Rights and Fundamental Freedoms adopted by Parliament in its resolution of 12 April 1989
- national constitutions.

THE RIGHTS OF CHILDREN IN THE EU

The word 'child' does not feature in the Treaty. There is no explicit responsibility. Responsibility in this area is for the Member States alone, which are free to pursue whatever policies they wish. The various divisions which separate the Member States in the area of family policy lead to different conceptions of the role of public authorities in the economic and social life of the family, the principle of children rights and their place in society. Against this background, and on the basis of a communication from the Commission to the Council on family policy (COM(89)363), family ministers meeting on 29 September 1989 adopted conclusions on family policy (89/C277/02). One of the conclusions was the decision to set up a 'European Observatory on family policy' which produces an annual report on changes in family policies in the Member States, including a chapter of family violence which covers sexual abuse of children, which often happens within the family.

A regular exchange of information on topics of common interest with regard to family policy was conducted by the Group of senior officials in family affairs which meets twice yearly under

⁽¹⁾ Mr J. Bruton, at the end of the special European Council convened in Dublin on 5 October by the Irish Presidency in order to allow for an exchange of views on revision of the Maastricht Treaty, emphasising the importance that issues relating to the Treaty's third pillar have for the citizen.

the chairmanship of the Commission and provides a forum for exchanges of views on various initiatives and action to be taken in future with regard to families and children, including various models and national measures to combat the sexual exploitation of children. On the basis of this legislative framework, a number of activities on children's rights have been carried out in cooperation with NGOs (conferences, seminars, colloquia and international fora).

CHILDREN AND THE AGENDA FOR THE IGC

The topic of protection of children is not officially on the agenda for the Conference, and at the time of writing it is difficult to predict whether the IGC's mandate will be extended when there is a risk that the Conference's agenda will be overloaded.

In the part of the Westendorp report on 'Promoting European Values', the Reflection group tackles the problem indirectly by widening the concept of non-discrimination.

With a view to enabling the Union to continue to embody Europe's common values, the group decided to extend the non-discrimination clause (by adding to Article 6 the provision prohibiting discrimination on grounds of nationality) to cover other factors such as age: 'it seems important that the Treaty should clearly affirm European values such as ... non-discrimination on grounds of ... age'.

POSITIONS ADOPTED BY THE INSTITUTIONS

1. THE COUNCIL

With regard to the Community approach, it should be noted that in general the Council has stated many times that it is and remains firmly wedded to respect for human rights and, a fortiori, children's rights, both within and outside the Union.

In this respect the EU is continuing its efforts with regard to application by all governments of the Convention on children's rights and of the action plan to prevent the sale of children, child prostitution and pornography involving children.

The Union is also active in the working group of the United Nations' Commission on Human Rights which is currently drawing up a draft additional protocol to the Convention on children's rights on this subject'.

But the report of 10 April 1995 on the functioning of the Treaty on European Union does not consider the issue of children's rights, and they do not appear in the list of priority issues for the IGC agenda drawn up at the special European Council convened by the Italian Presidency in Turin, except for the invitation to draw the appropriate conclusions on the need to protect the Union's citizens against organized crime.

The Italian presidency expressed its views on children's rights at the 52nd session of the United Nations Commission on human rights (April 1996), remarking on behalf of the Union on the growing public awareness in recent years of the devious practices of child prostitution and sex tourism. Governments had response to these problems by recognizing that specific action was

needed at both national and international level. Effective measures to combat the phenomenon had to be taken in those places where child prostitution was prevalent, and international cooperation would be extremely desirable.

The Irish presidency, speaking on behalf of the Union at the Stockholm Congress against the commercial exploitation of children (August 1996), emphasized that the European Union was extremely concerned and was firmly committed to child protection. The draft declaration identified a number of ideas for future action which would be undertaken in cooperation with the Member States, national and international organizations and several society. Governments should facilitate effective international cooperation between all the parties involved in combatting this phenomenon, particularly between police forces.

The Congress would help the European Union to see clearly how other countries could be assisted in preventing and combating this scourge.

Concerned to enable the Union to maintain its commitment to common European values, Mr Mitchell, President in Office, declared at the Parliament part-session in Strasbourg in September the Council's intention to initiate effective cooperation between the Member States and reported on a joint action which would extend the mandate of the Europol drugs unit to encompass trafficking in human beings and paedophilia.

In the context of increased cooperation, the Irish presidency affirmed that trafficking in persons would be considered as one of the chief points for discussion in the structured dialogue with the associated countries of central and eastern Europe.

Informal Justice and Home Affairs Council, 26 and 27 September 1996

The view of several members of the European Parliament that the IGC should consider the question of the rights of minors and that children's rights should be enshrined in the Treaty, provided an impetus for the 15 justice and home affairs ministers at their informal Council of 26 and 27 September to reach a political agreement on three proposals for joint action with regard to :

- (1) extending the mandate of the Europol drugs unit to fight trafficking in human beings, particularly women and children for sexual purposes;
- (2) creating a directory of skills and knowledge in matters of fighting paedophilia and trafficking in human beings, which would develop into a 'centre of excellence';
- (3) establishing a programme of training and exchange of personnel involved in fighting trafficking in human beings.

The 15 Member States expressed their agreement on the principle of strengthening legal cooperation in order to combat more effectively trafficking in children, a project which would be discussed at the Council of Justice and Home affairs ministers on 28 and 29 November.

2. EUROPEAN PARLIAMENT

Parliament's initiatives and resolutions have always attached great importance to children's rights, and has urged the 15 Member States to criminalize procuring and child abuse carried out by European citizens abroad. Parliament has expressed its views on this issue several times:

- Resolution on the exploitation of prostitution and trade in human beings (14 April 1989) in which it calls on the 'Member States, in cooperation with those non-governmental associations which have recognized experience in this area, to adopt the following social measures: ... to organize campaigns aimed at denouncing the agencies and enterprises which act as fronts for the exploitation of prostitution and the traffic in persons, and increasing public awareness of their true nature';
- a resolution on the freedoms and fundamental rights of women (6 May 1994) in which it calls on the 'Union's institutions and the governments and parliaments of the Member States... as regards sex tourism ... to denounce the practices of those European countries which play the part of "consumers" as clear infringements of the fundamental rights and individual liberties of under-age victims and, therefore, to take all necessary measures to ban advertising for sex tourism from the Member States of the Union to third world countries in Asia and the Americas; ... to examine the possibility of a Directive to penalise the activities of tour operators promoting sex tourism';
- a resolution on the trafficking in human beings (18 January 1996), in which it calls for 'rules to be introduced on extra-territorial jurisdiction in order to allow the prosecution and punishment of individuals who have committed offences involving sexual exploitation of children and adolescents outside the Community territory', after having called on the Member States 'to provide a clear definition of the concept of sex tourism ... and to enter into agreements with the authorities concerned'.

In its resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 intergovernmental conference in the section on 'more rights for EU citizens and improved protection of the fundamental rights of all EU residents', Parliament calls for inclusion of an explicit reference in the treaty to the principle of equal treatment irrespective of ... age.

A more specific reference to children's rights is contained in the subsection entitled 'the children must strengthen its existing policies', where Parliament calls for the chapter on education, vocational training and youth to be strengthened in order to focus attention on the rights and interests of children and to provide for account to be taken of the consequences that current policies can have on children.

In the resolution of 13 March 1996 embodying Parliament's opinion on the convening of the IGC, the Dury/Maij-Weggen report considers that a key priority should be a more effective response to the concerns of the public over internal security and that 'action to combat drug trafficking (Article K1(9) together with the inclusion of an explicit reference in this article to the traffic in human beings, especially minors and women', should be dealt with through Community procedures.

At the plenary sitting of 18 September 1996, Parliament adopted a resolution advocating joint action under Article K of the TEU, third pillar, to set up a centralized register of abducted or missing children and also called for improved judicial and police cooperation at European level and the introduction of training courses for law officers and policemen specializing in matters relating to sexual offences against children.

Parliament called on the Member States to ratify and implement the United Nations Convention on the rights of the child and called on the IGC to incorporate into the future revised treaty a chapter containing provisions on the human rights of children.

3. COMMISSION

The Commission agrees with the analysis which emerged from Stockholm that there are many often interconnected economic, social cultural and political factors which contribute to creating a favourable environment for the sexual exploitation of children and thus entirely supports the declaration adopted at Stockholm calling in particular for joint action at national, regional and international level.

It envisages contributing to the implementation of the action programme drawn up at Stockholm, using the instruments available in the Community context (conclusions of the Council of family affairs ministers of 29 September 1989 89/CC277/02) and under the third pillar with regard to justice and home affairs. It should be noted that the Commission has no right to propose legislation with regard to judicial, legal and police cooperation matters but has the right of joint initiative with the Member States with regard to immigration and asylum. In its report of 10 May 1995 on the functioning of the Treaty on European Union, the Commission does not mention the issue of children's rights.

At Parliament's plenary sitting of 19 September 1996, the Commissioner, Mrs Gradin, said that the Commission would play an active part in the fight against paedophilia and that the IGC would provide a unique opportunity to strengthen cooperation on justice and home affairs. She emphasized the decisive role which Europe could play in the fight against the sexual abuse of children, and supported the Irish Presidency's proposal to extend the powers of the Europol Drugs Unit.

On 16 October 1996 the Commission adopted a Green Paper on the protection of minors and human dignity in audio visual and information services and a communication detailing the measures which could be taken to combat illicit and harmful matter of the Internet.

THE MEMBER STATES

Although the fifteen Member States have made common cause in the fight against paedophilia, particularly following the crimes discovered in Belgium, and have all expressed their willingness to take rapid action to tackle these unacceptable crimes, it is noteworthy that there is no official text containing a specific reference concerning a wish to include this issue on the agenda for the IGC.

A specific position has been adopted by Belgium, which at the informal meeting of justice and home affairs ministers on 26 and 27 September outlined a series of measures to be taken at European level, specifically the implementation of the programme of encouragement and exchange, based on the concept that the trafficking in human beings and the sexual exploitation of children are a serious violation of fundamental human rights and that recent events show that the sexual exploitation of children may be a major form of international organized crime, which is taking on ever more worrying dimensions in the EU.

Belgium's position goes very much further in advocating the harmonization of national criminal laws.

NGOs

The inclusion in the new Treaty of children's rights as one of the Community's responsibilities is seen in NGO's circles as the only means of making up for the EU's current lack of provision for children.

The European Forum for Child Welfare (EFCW), a regional branch of IFCW (International Forum for Child Welfare) is aimed at all children on the European continent and calls for a reference in the Treaty to the global situation of children.

It considers that, if the European Union genuinely aspires to being comprehensive, it must into account the impact of any adverse effect of its policies and strategies on particular sectors or groups within the Union. In particular, children may suffer from the unintended consequences of the free movement of workers, social security rules and rights of residence for families, it cannot be maintained that all these issues can remain exclusively the responsibility of the national governments under the subsidiarity principle: they are transnational in their effect.

European Forum for Child Welfare calls for:

- an amendment to Article 3 , to be inserted after subparagraph (p)
measures to reinforce the equality of all citizens, regardless of age, sex, ethnic origin or disability;
- an amendment to Article 8, new paragraph 3
Children shall enjoy the rights of citizens of the Union, with the exception of the rights from which minors are excluded by national legislation;
- an amendment to Article 126, insertion of a new paragraph after paragraph 2
2a The Community and the Member States shall pay particular attention to the interests of children and young people, including their health.
- an amendment to Article 128, insertion of a new paragraph after paragraph 2
The Community and the member States shall promote the interests and rights of children and young people, including integration into their cultural heritage,

CONCLUSIONS

Children, their rights, their protection, their situation in a changing European economy which is often in crisis may become in the coming months one of the new topics to be tackled at the forthcoming IGC meetings.

The tragic events in several Member States particularly Belgium, the need of the Member States to give European integration a substance which can be more directly perceived by public opinion and real inadequacies in the current state of cooperation in this sector may not only arouse a general awareness of the need to act together, but also create the possibility of European action in a sensitive area where there is a general consensus in public opinion.

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