



European Parliament Brussels Belgium

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## The Lisbon Treaty and the rights of the child

by Ezio Perillo

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### SUMMARY

*In this short chapter Mr Ezio Perillo discusses the legal implications of the Lisbon Treaty on the rights of the child in Europe. Article 3 of the Treaty of the European Union states:*

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

*In Ezio Perillo's opinion, this provision imposes upon the European Union, when it exercises its competences, the obligation to promote the protection of the rights of the child. If words have true meaning, to "promote" means to do something new and something effective.*

*This is the challenge that lies before us.*

This is a short presentation about the implications of the Lisbon Treaty for the rights of the child.

I am not talking in my official capacity as the Director for Legislative Affairs in the Legal Service of the European Parliament, but as an interested party.

The Lisbon Treaty represents an important milestone in what the European Union can and must do for the rights of the child.

It has all the juridical potential to allow the European Union, if it wants, to develop an effective legislative strategy for the protection of the rights of the child.

I would like to specify that protection of the rights of the child does not mean only the protection of the child against criminal acts or abusive behaviors which violent adults can perpetrate towards children.

Child Protection means also, in a positive way, to assure their rights – by identifying all the obligations of the people directly involved with them – their rights to a healthy development – and as it is stated in Article 24 of the Charter of Fundamental Rights – “Children shall have the right to such protection and care as is necessary for their well-being”. The same Article specifies further on that “In all actions relating to children, – therefore in all legal and administrative actions of the EU – whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.”

On the basis of this fundamental right of the child, public authorities and private institutions, in the exercise of their competences – for the protection of the environment, for example, or in the area of transport or consumer protection and the food industry, have to give primary consideration to the child's best interests.

In this chapter I would like to refer to the new provisions of the Lisbon Treaty on this topic, which, if positively interpreted, can be the basis for a true European legislative strategy. I will then say few words about the Stockholm Programme and the Charter of Fundamental Rights.

We can start with article 3 of the Treaty of the European Union, which states in its third paragraph:

3. “...The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child....”

In my opinion, this provision imposes upon the European Union, when it exercises its competences, the obligation to promote the protection of the rights of the child.

Now, if words have true meaning, to “promote” means to do something new and something effective. In your status as Members of the European Parliament and therefore legislators, you can do what is in your capacity to propose to the European Commission to start new and effective initiatives.

The Stockholm Programme, which as you know provides a roadmap for the European Union (EU) work in the area of justice, freedom and security for the period 2010-14, deals with this theme, but very briefly and in pragmatic terms. In a short paragraph it says: “The rights of the child...They must be systematically and strategically taken into account with a view to ensuring an integrated approach.

The European Council calls upon the Commission to:

*– identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy.*

*As regards parental child abduction, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at international level should be explored, while taking account of good practices in the Member States. The Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems”.*

Of course, it is a vague programme: what does it mean that the rights of the child must be systematically and strategically taken into account with a view to ensuring an integrated approach? And why should the European Union limit its actions “to bring added value” when instead it can adopt and implement concrete and specific measures? However these aims of the Stockholm Programme are politically important and represent a possible legislative path to begin with. To this end, I am sure that with your careful attention, the European Commission will be forced to put some concrete measures on the table.

After article 3 of the Treaty of the European Union, the other part of the Lisbon Treaty that is important to mention is article 81 of the Treaty on the Functioning of the European Union.

Here we are in the field of *judicial cooperation in civil matters*, where the rule is that the European Parliament and the Council act in accordance with the ordinary legislative procedure, which is the Codecision, the Council voting by qualified majority.

Nevertheless, and this is an important point, when they deal with *"measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament"* (Article 81).

The Parliament therefore does not have a legislative prerogative on the matter. In my opinion it is a serious anomaly, which shows how EU Member States are still today very jealous of their own prerogatives in the field of the transnational rights of families.

The same article 81 foresees nevertheless that the Council, following a legislative proposal from the European Commission, can decide, once again by acting unanimously, to pass from the simple consultation of the European Parliament to the ordinary legislative procedure, which is the Codecision. It is therefore in the interest of the Parliament to convince the European Commission to adopt this proposal to modify the procedure, I would say, from the perspective of the implementation of Stockholm Programme. It is indeed only with the support of the Parliament that the European Commission can hope to implement some of the aims of this Programme to protect the rights of the child.

A few more words on the Charter of Fundamental Rights of the European Union. The Charter has a legally binding value; it has the same legal value as the Treaties.

The Treaty itself in article 6 says nevertheless that *"The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties"*.

Therefore the provisions of the Charter cannot form the legal basis on which to adopt EU legally binding acts. However, article 24 foresees the following:

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.*

These rights, as I was saying, must be respected in all legal or administrative acts of the EU, as well as in all European policies. Now, *"all European policies"* means all policies including common foreign policies, humanitarian and development policies. These are important aspects that allow the European Parliament to develop *"horizontal"* actions to protect the rights of the child. In other words, if the Parliament, on its own initiative, had a kind of vademecum (a style of handbook) on the protection of the rights of the child, with a compilation of all the essential provisions on this matter, it could insert these provisions in the adoption of legal acts, as a *"standard clause"* for the protection of the rights of the child.

I would like to conclude my talk by mentioning the other aspect of the problem related to the protection of the rights of the child, which is their protection against criminal acts. Article 83 TFUE (Treaty on the Functioning of the EU) says that the European Parliament and the Council may, by means of directives adopted in accordance with the Codecision procedure, establish minimum rules regarding the definition of *"criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension"*. These areas of crime, we can read in the article, are the following ones:

*"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"*.

So, in the Lisbon Treaty, *"sexual exploitation of women and children"*, is considered as a particularly serious crime and a matter for which the Lisbon Treaty gives legal competence to the European Union. Furthermore, this battle against *"sexual exploitation of women and children,"* is not only disciplined by judicial cooperation but is part of the logic of having an important piece of European legislation aimed at giving European protection against serious crimes, such as the exploitation of children.

As I said at the beginning the Lisbon Treaty has several legal potentials in the area of rights of the child and I am sure that you all, Members of the European Parliament who are very alert to this problem, will be able to use these potentials in the best way.

<sup>1</sup> In Brussels several non-governmental organisations work together in the CRAG, the Child Rights Action Group. The CRAG has recently set up the European Alliance for Children together with MEP Roberta Angelilli (Group of the European People's Party (EPP), Italy), Vice President of the European Parliament responsible for Children. This is a different group from the Working Group on the Quality of Childhood, which also holds its sessions in the European Parliament, and which has produced this book.

### Ezio Perillo

Ezio Perillo was born in 1950; Doctor of Laws and lawyer at the Padua Bar; Assistant lecturer and senior researcher in civil and comparative law in the law faculty of the University of Padua (1977-82); Lecturer in Community Law at the European College of Parma (1990-98), in the law faculties of the University of Padua (1985-87), the University of Macerata (1991-94) and the University of Naples (1995), and at the University of Milan (2000-01); Member of the Scientific Committee for the Master's in European Integration at the University of Padua; Official at the Court of Justice, in the Library, Research and Documentation Directorate (1982-84); Legal Secretary to Advocate General Mancini (1984-88); Legal Adviser to the Secretary-General of the European Parliament, Mr Enrico Vinci (1988-93); also, at the same institution: Head of Division in the Legal Service (1995-99); Director for Legislative Affairs and Conciliations, Inter-Institutional Relations and Relations with National Parliaments (1999-2004); Director for External Relations (2004-06); Director for Legislative Affairs in the Legal Service (2006-11); author of a number of publications on Italian civil law and European Union law; Judge at the Civil Service Tribunal since 6 October 2011.