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Joint statement

on the impact of the new Pact on Migration and Asylum on children in migration

December 2020

In the EU Pact on Migration and Asylum, children are more than a footnote. However, human rights organisations raise several serious concerns regarding the new measures proposed.

Children have consistently been one of the largest groups of persons seeking protection in Europe, and in 2019 they represented almost [one third](#) of the total number of first-time asylum applicants. Whilst in 2015 children were only contemplated in a footnote in the Agenda on Migration, the 2020 Pact on Migration and Asylum includes various welcome safeguards for (mainly unaccompanied) children. However, we still have serious concerns in relation to certain procedures proposed.

[Guardians & family tracing](#)

We are glad to see the role of the **guardian strengthened in assessing the best interests of the child related to possible transfers between Member States, including in family tracing efforts. We also welcome the EU's support for the European Network on Guardianship.** Clear progress will be made through the adoption of the proposed expanded definition of 'family', which now includes siblings and families formed in transit, and an increased flexibility in the evidence requirements for family reunification.

[Formal best interest assessments & legal assistance](#)

We also welcome the proposed **mechanism for assessing the best interests of the child in all circumstances implying the transfer of a child between EU Member States, which makes this assessment more operational.** Transfer decisions are critical decisions for a child's life and safety. Therefore, we call on the EU Institutions and Member States to require that these assessments are formal and robust, supported by effective and timely cross-border cooperation and additional procedural safeguards including resulting in a reasoned decision in writing that is given to the child and his/her guardian. In particular, **children, their guardians and families should benefit from procedural information and legal advice ahead of transfer decisions, and transfer procedures themselves should ensure continuity and stability of assistance to the child.**

While the Pact recognises that unaccompanied children should never be transferred without such an assessment, its specific **proposal to transfer unaccompanied children back to countries where they first lodged an application for international protection - unless it is not in their best interests - appears to set this safeguard aside, in deference to the concern to deter secondary movements.** The EU should amend this proposed provision to ensure that such a transfer takes place in these circumstances only where it is in fact assessed to be in the best interests of the child. There is no lesser need in these cases for a proper assessment of the child's circumstances and the care and custodial arrangements that may await them in another country. Such procedures should always imply the involvement of guardian and legal assistance.

[Return Sponsorship Procedures](#)

The Pact also proposes a new form of transfers under the so-called Return Sponsorship procedures. It is not clear how these procedures will affect persons subject to them and not certain that any such transfers are in line with fundamental rights generally. However, should these procedures be discussed, we believe children should be excluded from them. They serve migration management purposes exclusively and do not have the best interests of the children as a primary consideration. In this regard, it is important to underline that when balancing the child's best interests and other

considerations, non-rights-based arguments, such as those relating to general migration control, cannot override best interests' considerations¹.

Detention

We are also particularly concerned with the proposed procedures at borders. **Both pre-entry screening and border procedures may lead to the prolonged detention of children.** Whilst some children are excluded from the border procedure, none are excluded from the pre-entry process. This means that all children arriving to the EU irregularly could end up being detained for up to ten days, and in the worst-case scenario, which concerns children aged 12-18 travelling with families, children would be detained also within the border procedures, which could last up to ten months in situations of so-called "crisis". This is **the first time under EU law that immigration detention of children could become the rule rather than a measure of last resort.**

Families with children over 12

Distinguishing between children above or below the age of twelve may pose significant practical problems, for instance in relation to carrying out sustainable age assessments at the border. More fundamentally, it also goes against the UN Convention on the Rights of the Child, along with the Fundamental Rights Charter of the EU and all legal instruments constituting the asylum *acquis* which state that a child is any person below the age of 18 and that all children should benefit from their rights, and not just younger children. There is no legitimate reason to protect only children under 12 from detention, as detention affects all children, including adolescents and those with additional vulnerabilities, very adversely. Indeed, under the proposed procedure, there is a great risk of prolonged detention of children in large centres, which is always traumatizing, never in their best interests and may expose the child to abuse and exploitation by adults who are also detained there.

Safeguards in Screening Procedures

We recommend that all unaccompanied children and children within families identified during screening procedures will immediately referred onwards (with their family members), away from the border to locations where their best interests can be properly addressed. Screening procedures will require strong safeguards, and children will need the assistance of child protection authorities, anti-trafficking experts, doctors, lawyers, interpreters and also in many places civil society organisations, who have been properly resourced. A screening procedure should not be used to elicit information that will ultimately have an impact on the child's protection claim. One of the real risks of interviewing children at the border with few safeguards is that the child might make statements, which could undermine his or her future credibility, or that the child might not make relevant disclosures and might remain vulnerable to further exploitation and potential re-trafficking. **Unaccompanied children should have access to guardianship and legal assistance to operationalise an appropriate referral at the border to child specific services and support within the regular reception system.**

An effort to keep people in hotspots, where in theory they might have access to such services in procedures more broadly, was already tested on the Greek islands, and clearly failed. **The only realistic option for better migration management is to make sure that children are not detained in prison-like facilities and best interest assessments are properly carried out.** It is essential that Member States continue to invest in building solid reception and asylum systems, addressing the current gaps and weaknesses, instead of spending limited resources on border facilities and

¹ See [General comment No. 6 \(2005\): Treatment of Unaccompanied and Separated Children Outside their Country of Origin](#)

processes that are unlikely to guarantee a screening that fully respects children's rights and safeguards.

Relocation

Relocation should be mandatory in the new proposed solidarity mechanism. EU measures should ensure that relocation procedures are [child-centred](#) and properly involve the NGOs and child protection services, who can ensure they are successful and sustainable. We call on the European Commission to appoint an [EU Relocation Coordinator](#) who can support Member States and all stakeholders involved. Disputes between Member States can no longer leave migrants stranded at sea or at the borders.

Status Resolution

Apart from asylum and return, **other non-harmonised national protection statuses or residency schemes provided by Member States should remain accessible, in order to prevent further situations of legal limbo.** In 2019, [25%](#) of the asylum seekers who were granted protection, received it for **humanitarian reasons**. [Several EU Member States](#) provide a temporary residence permit on medical grounds; at least [five countries](#) have legislation granting special permits for undocumented victims of domestic violence; and at least [eight countries](#) have regularisation mechanisms for children, young people or families.

Solutions must be provided for people whose identity cannot be confirmed at the border, those who are stateless and those who cannot be returned. Return has always been a challenge for the EC and its Member States. Even if returns increase, many people would still be left with a return decision that is not enforceable, either for human rights grounds or practical reasons. Alternative solutions to resolve their status, (including statelessness determination procedures) as well as training and job schemes, linked to temporary residency, must be provided to protect vulnerable people from exploitation.

External Relations

In its external relations, the EU must continue to ensure **aid always targets those that are most in need.** As a general principle, no conditionality over migration control and security objectives should be applied to partner countries receiving funds, including when aid is committed to migration related issues.

To conclude, the EU reform should take the opportunity **to introduce procedural safeguards for all children across all procedures in a consistent way, and to ensure that asylum systems in different Member States meet the same high protection standards - this must be a top priority.** Under the proposals, however, EU safeguards continue to apply to children only in a piecemeal way and dependent on their age, circumstances and the procedure in which they find themselves. Whether at the border, when seeking international protection, when trafficked or prior to any decision on return, children and their families should receive information, support and assistance, including guardianship and quality legal advice and representation. This is a crucial safeguard for these children where procedures are becoming increasingly complex and the consequences potentially severe. We underline that these are also vital safeguards for States, to prevent inefficient procedures, wholesale failures in decision making, and unsustainable outcomes.



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