

Initiative for children in migration

The role of the European Parliament in promoting rights of children in asylum and migration: focus on the Common European Asylum System and the European Parliament elections

March 2019

Decisions made on asylum and migration legislation at the European level affect children throughout Europe. The European Parliament (EP) is a co-legislator and is also involved in the monitoring of implementation of EU laws and related EU funding for implementation of policy and law. This makes the EP an important target and interlocutor for NGOs working on the rights of children in migration. In May 2019, there will be European Parliament elections, with national MEPs being elected across Europe. This paper provides background information for civil society working on children's rights, migration or both, to support their positioning, advocacy and campaigning work in the run-up to the European Parliament elections. It describes:

- Why the European Parliament matters. (The general role of the EP)
- What are the key problems for children under the Common European Asylum System (CEAS)? (An overview of the most important problems relating to children's rights)
- What is happening in the ongoing reform of the CEAS? (The state of play on the legislative negotiations to reform the CEAS which have taken place over the past two years)
- What can civil society organisations do ahead of the European elections?
- What are key messages on asylum seeking and refugee children for MEPs seeking election? (Potential advocacy and campaign calls on children's rights in the CEAS)

I. Why the next European Parliament matters for children's rights, asylum and migration

The European Parliament (EP) as co-legislator plays a key role in the formulation of EU asylum and migration policy, including the reform of the Common European Asylum System (CEAS). (The other co-legislator is the Council of the EU, which consists of representatives of EU Member States.) The European Parliament also plays a key role in the implementation of EU policy, through its budgetary and supervisory powers.

Legislative power

Within the context of the EP's legislative power, there are instances in which MEPs can play an important role in the formulation of legislation. Legislative proposals prepared by the European Commission are considered by specific committees of the European Parliament. The MEP who is appointed rapporteur (from the parliamentary committee to which a proposal has been assigned), plays a fundamental role in proposing changes to the proposal and seeking consensus for the Parliament's position on how to – from their perspective – improve the proposal. Shadow rapporteurs (from each of the other political groups) follow the proposal on behalf of different political groups also assess, prepare and support amendments. Once the EP's position is agreed, it is used for negotiation with the Council of the EU (also involving the Commission) to find compromises and agree a final version of the legislative text. The European Parliament has therefore an important role to play in supporting and reinforcing protection and implementation of rights of all children which at times is challenged by the position of Member States represented in the Council of the EU.

In addition, the EP's own-initiative reports enable it to raise issues of concern which may later result in a legislative proposal.

Budgetary power

The role of the EP in budget matters has increased gradually and now the EP has an equal say with the Council on the EU budget. The EP has the power to monitor different funding instruments and influence their spending, for example, the increase of the Asylum, Migration and Integration (AMIF) fund in the current EU budget. Additionally, the Parliament often uses its budgetary powers to influence decisions that do not normally fall within its remit, for example, where it has a lesser role politically.

Supervisory and control powers

The EP has supervisory and control powers that allows it to exercise oversight over other institutions, to monitor the proper use of the EU budget, and to ensure implementation of EU law.

Overall, the EP is often a key ally for civil society to shape, influence and monitor the implementation of the EU legislation and policy with regard to the rights of children in migration. This has been the case during the process of reviewing the Common European Asylum System (CEAS) which was initiated in 2016, where the European Parliament consistently upheld a more right-based position than the European Council.

Furthermore, the commitment to put refugee and migrant children on top of the political agenda has been complemented by the work done by the European Parliament Intergroup on Children's Rights¹ (composed of MEPs from different political groups) which represents the first formal body in the EP to mainstream children's rights and assess the impact of legislative and non-legislative work on children. The intergroup members work across key EP Committees to strengthen the protection of children's rights and ensure that the best interests of the child is taken into account in EU internal and external action.

To date, more than 100 Members of the European Parliament (MEPs) have pledged to become child rights champions in the Parliament by signing the Child Rights Manifesto.² Many of those MEPs have joined the Child Rights Intergroup in the European Parliament. It is important that the next Parliament continue to have significant numbers of MEPs championing child rights and should seek to re-establish the Child Rights Intergroup.

For this reason, a group of NGOs created a coalition campaign named Vote for Children, seeking to put children's issues on top of the agenda for the European Parliament elections in 2019. The campaign asks MEP candidates to become a Child Rights Champion (#childrightschampion) and demonstrate their commitment to child rights and to support the creation of a new Intergroup already ahead of the election.

II. The Common European Asylum System and children

The need to ensure that children's rights are protected within the CEAS has become even more important due to the recent increase in the number of children arriving in Europe, many of whom are in need of international protection. Under international and EU law, the best interests of the child should be a guiding principle at all stages of migration and international protection processes and children's rights should be respected throughout. A comprehensive and coordinated approach is needed to ensure that children, both alone and with their families, and regardless of their migration status, are protected throughout their migratory journey and upon arrival in their country

¹ For more information, please visit: <http://www.childrightsmanifesto.eu/childrens-rights-ep-intergroup/about-the-intergroup>

² For more information, please visit <http://www.childrightsmanifesto.eu/>

of destination. Too many children fall through the gaps in national and transnational protection systems.

There are a wide range of ongoing concerns and violations of children's rights under the current legislative framework of CEAS. As highlighted in the "Spotlight on the EU" on Procedural Safeguards and in the Spotlight on the EU on Durable Solutions, in the section 'What's at the Heart of the Matter', EU procedures should be adapted to the needs and rights of children.

The non-exhaustive list below highlights key challenges that still need strong collective advocacy efforts - both at EU and national level - to provide a solid framework for child protection both in law and in practice³:

1. **Where should a child's claim for international protection be heard? (the Dublin procedure which addresses which Member State should decide on the claim):** The use of the family provisions of the Dublin Regulation, allowing children in one country to be reunited with their families in another country and have their claims heard there, remains inadequate. The procedure under the current Dublin Regulation is very lengthy and bureaucratic. Restrictive interpretation and poor implementation of the provisions has led to families being kept apart and sometimes trying to reunite through irregular means. The current Dublin Regulation provisions have also been problematic for unaccompanied children, who sometimes run the risk being sent from one EU country back to an EU country of arrival to have their claim heard, without a proper assessment of how their best interests are affected by such a transfer. Improvements to the Dublin procedures for all children are badly needed under the CEAS reform.
2. **Guardianship:** the role, qualification and appointment of guardians for unaccompanied children vary greatly across the EU, affecting the nature and quality of the assistance and support provided to unaccompanied children, including as regards access to international protection procedures and reception conditions. The absence of more robust obligations on guardianship is also a major impediment to the proper functioning of transnational cooperation including on family tracing, disappearances, the application of Dublin procedures and identifying durable solutions.
3. **Age assessment:** Despite the guidance from the European Asylum Support Office (EASO) for clear priority to be given to documentary evidence and multidisciplinary assessments by qualified professionals, the majority of European countries continue to rely heavily on medical assessments, such as those based on x-rays, the reliability of which remain disputed, and do not ensure compliance with the benefit of the doubt principle, nor full respect for children's rights.⁴
4. **Assessments of special needs arising from vulnerability:** Better procedures are required, with proper onward referrals to necessary services.
5. **Examination of international protection procedure:** In many European countries, there are delays in decision making, due to the length of asylum procedures, including as regards appointment for the first interview as well as processing the applications.⁵ These delays appear at times to be deliberate policies to delay the processing of claims for unaccompanied children so that they "age out" (i.e. reach adulthood during the process).⁶ There are also deficiencies in the process for examining a child's best interests in international protection procedures.

3 ECRE Rights of refugee children: Overview of developments in 2017, available at https://www.ecre.org/wp-content/uploads/2018/05/AIDA_2017Update_Children.pdf

4 Ibid.

5 AIDA, The length of asylum procedures in Europe, October 2016, available at <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>

6 AIDA, The concept of vulnerability in European asylum procedures, September 2017, available at: <http://bit.ly/2f9gOmN>

6. **Detention**⁷: The current legal framework already allows for detention of children, and leads to excessive use of detention, as illustrated by the trends in national practice identified through the Asylum Information Database (AIDA).⁸ This is due to the discretion afforded to Member States by the current Reception Conditions Directive, as well as dubious interpretation of their provisions.⁹ The detention of children and families increased during 2018 in many European countries.¹⁰ Some countries, including Belgium, have reinstated detention of children and their families after a return decision. Additionally, the examination of international protection claims in detention has impacted on procedural rights with regard to the age assessment of unaccompanied children; duration and review of international protection status; length of international protection procedures; travel documents; accelerated procedures; and expansion in the use and length of detention.¹¹
7. **Non-refoulement**: Not all countries refrain from ordering Dublin transfers of vulnerable persons, including children, back to Hungary, Bulgaria and Greece, so that their claim will be heard there, despite the often wholly inadequate reception conditions available.¹²
8. **Reception conditions** (including accommodation): Legal obligations relating to the treatment of children under EU and international law have clearly not been met by several Member States to the point that both unaccompanied children and children with their families regularly live in situations of squalor and destitution.
9. **Education**: In several countries, gaps persist in education systems, in particular, as a result of a lack of national financing or investment by relevant EU funding of the Asylum, Migration and Integration Fund.

III. Update on CEAS reform

Higher numbers of arrivals of persons seeking protection in 2015–2016 laid bare problems with the CEAS. Purportedly to address gaps in the functioning of the CEAS, the European Commission tabled seven legislative proposals for reform, in two packages, published in May and July 2016.

The European Parliament has worked hard as co-legislator to adopt its position on all of the legislative files related to the reform of the EU international protection law. There are diverse political views on migration and asylum in the European Parliament, but the consensus reached for the reports adopted in the Committee for Civil liberties, justice and home affairs (LIBE) on the asylum proposals overall reinforce the protection of asylum-seeking and refugee children at all stages of the migration process. As well as supporting provisions to protect children, the European Parliament also suggests amendments to certain proposals to strengthen protection of children's rights. While some key concerns regarding children's rights remain, the EP has clearly been a positive influence in the negotiations.

Progress on the negotiations over the course of the last two years has been uneven across the different files. The eventual adoption of the different proposals remains unclear. The status quo at the time of writing is as follows.

- An agreement reached between the European Parliament and the European Council on three of the proposals (Qualification Directive, Reception Conditions Directive and Union

⁷ AIDA, Boundaries of liberty: Asylum and de facto detention in Europe, April 2018 <https://www.asylumineurope.org/sites/default/files/shadow-reports/boundariesliberty.pdf>

⁸ AIDA website : <https://www.asylumineurope.org/>

⁹ ECRE Policy Note, Taking Liberties – Detention and Asylum Law Reform, September 2018, available <https://www.ecre.org/policy-note-taking-liberties-detention-and-asylum-law-reform/>, pg.3.

¹⁰ AIDA, The detention of asylum seekers in Europe Constructed on shaky ground? http://www.asylumineurope.org/sites/default/files/print_pdf/aida-brief_detention-1.pdf

¹¹ AIDA, Boundaries of liberty Asylum and de facto detention in Europe <http://www.asylumineurope.org/sites/default/files/shadow-reports/boundariesliberty.pdf>

¹² ECRE, The Dublin system in the first half of 2018, Key figures from selected European countries http://www.asylumineurope.org/sites/default/files/aida_2018halfupdate_dublin.pdf, October 2018, available at http://www.asylumineurope.org/sites/default/files/aida_2018halfupdate_dublin.pdf

Resettlement Framework) has recently been called into question by the European Council, and adoption of the proposals without another round of negotiations now seems unlikely.

- While a compromise was reached on the draft EU Asylum Agency (EU AA) Regulation, this awaits final approval, as some parts of the text relate to other legislative proposals in the package, and the process has further complicated by an amended proposal from the European Commission in September 2018.
- The Council of the European Union has yet to adopt their negotiating position on the proposed reform of the Dublin and Asylum Procedures Regulation so negotiations on these files between the EP and the Council have not started yet.

During the same time period, there have also been several other proposals to reform migration legislation in which the EP has been involved as co-legislator, some of which have been concluded and others which are still ongoing. These include:

- the Regulation on the European Border and Coast Guard (Frontex) (adopted 2016 and new proposal published 2018 and currently under discussion),
- the Regulation for a European travel document for the return (adopted),
- the Proposal for a Recast of the Return Directive (published 2018 and currently under discussion),
- the revision of the Schengen Information System (adopted by Council on 19 November 2018),
- the Regulation on migration and asylum statistics (published 2018 and currently under discussion).

While this brief focuses on the CEAS reform, these parallel reforms have been an important part of the political and practical context for the CEAS negotiations, and advocacy around the rights of children in these measures should also be central to advocacy work around the European Parliament elections.

In case there is further movement on the proposals, and in any related policy or AMIF funding discussions, the EP should work to further improve provisions with the aim of ensuring full compliance with obligations under international human rights law as well as the EU Charter of Fundamental Rights, in particular:

- Improvements to the Dublin process for children;
- Improvements to the guardianship system and procedure across the EU;
- Improvements of processes related to age assessment, by reference to a holistic, multi-disciplinary, non-invasive age assessment procedure to determine the age of the child, only as a last resort, and with safeguards, including a presumption of childhood during the process and if there is any doubt about the outcome, as well as a right of appeal.
- Improvements in processes for identifying, assessing and responding to special needs;
- Improvements in the procedures to determine international protection needs, in particular, by improving the process for examining the best interests principle;
- Banning detention of children without exception;
- Remove procedural sanctions and exclusion from reception conditions to address secondary movements;
- Focus on the legal right and practical access to education to be granted to all the children regardless of status;
- Ensuring that the collection, use and retention of children's data meets the highest data protection and child protection standards, including by banning the use of coercion against children to collect their biometric data.

Overall, it now seems unlikely that any of the CEAS package of proposals will be adopted during this Parliament's term.

IV. Advocacy on the European Parliament elections in May 2019

A. What can civil society organisations do ahead of the European Parliament elections in May 2019?

Organisations working to promote children rights who are interested in working on the European Parliament elections may want to consider a range of different options:

1. Meeting with MEP candidates, including Spitzenkandidaten

Meetings with MEP candidates are an effective way to communicate support for or concerns about their party's positioning on asylum and migration policies and children's rights. It also makes clear that constituents expect them to take a rights-based position including on promoting the rights of all children in migration.

Several parties have appointed lead candidates for the Presidency of the European Commission, also known as Spitzenkandidaten. Targeting those MEP candidates may be particularly useful.

2. Running awareness raising campaigns to mobilize voters

The most promising avenue to prevent a further right-wing shift in the next EP is to mobilize progressive voters, including supporters of organisations working on children's rights, asylum and migration to vote in the election. This is of particular importance in cases where the EP elections do not coincide with national elections or where potential voters have to register to participate in the elections.

B. What are potential advocacy and campaign calls ahead of the European Parliament elections in regard to children's rights in migration?

In the run-up to the EP elections, organisations interested in engaging in advocacy and campaigns could ask MEP candidates to commit to:

1. Hold EU institutions to account for the implementation of the existing EU acquis on children so that the principle of the best interests of the child applies fully across all legislation, and is implemented through specific procedures and safeguards for children in migration.
2. Develop policies that fulfil the rights of all children in migration, regardless of their status, or the status of their parent(s) or primary caregiver(s), and without discrimination.
3. Support the recommendations of the [Lost in Migration Conference](#), to be adopted in April 2019 and based on [key thematic areas](#) identified by the coalition of NGOs working on children in migration (Initiative for Children in Migration). An online campaign will be launched to promote the recommendations with candidates MEPs
4. Push for the highest standards for the protection of all refugee and migrant children in any upcoming review of EU legislation on migration and asylum, including the CEAS framework and related legislative proposals.
5. Pledge their support for the Child Rights Manifesto¹³ and to be a Child Rights Champion in their work in the European Parliament.
6. Push for the re-establishment of the Intergroup for Children's Rights in the new European Parliament, and dedicate time and support to it.
7. Exercise budgetary control to ensure EU funding is used in line with the best interests of the child inside and outside the EU.¹⁴

For more detail, the [vision on how to fulfil the rights of children in migration](#) is a useful reference.

¹³ <http://www.childrightsmanifesto.eu/the-champions>

¹⁴ 8 Ways to make the next EU Multiannual Financial Framework a vehicle for protection and integration of children in migration available at http://picum.org/wp-content/uploads/2018/04/MultiannualFinancialFramework_Statement.pdf

C. What can be done after the European Parliament elections?

The following are potential actions that can be taken by national or European level organisations after the EP elections have taken place:

1. Identify supporters for children's rights in the new European Parliament
2. Reach out to newly elected MEPs and/or MEPs who return and who have a positive track record on children's rights and migration
3. Provide general and issue specific briefings on issues related to children's rights to support MEPs playing a stronger role on this issue
4. Encourage supportive MEPs to become members of specific Committees (e.g. LIBE) and to become child rights champions in their parliamentary activities

Please find more information on the following websites:

List of ECRE publications, including on CEAS: <https://www.ecre.org/ecre-publications/>

Your Vote Our Future campaign: <https://www.ecre.org/campaign/>

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