

GENERAL MEASURES TO IMPLEMENT A COMPREHENSIVE APPROACH TO CHILDREN IN MIGRATION

General measures of implementation:

WHAT'S AT THE HEART OF THE MATTER?

Migrant children often experience significant difficulties to access the rights that should be fulfilled for them as children. Their rights and needs are often under-addressed – or explicitly excluded – from general public social policies, such as those on health, education and child protection. Much of immigration and asylum law and policy at EU and national level makes little reference to children, despite them making up a significant proportion of people affected by those same policies. This ‘invisibility’ in law and policy can be perpetuated by a lack of disaggregated data on children in migration, particularly when accompanied by their parents or other caregivers. EU migration policies, and immigration and asylum procedures and practices at national level are often ill-adapted to children’s rights and needs.

Although children may be subject to different status determination rules (for example, international protection, trafficking, family reunification, etc.) or have individual needs that should be met, they all have equal rights as children. However, many children fall through the gaps in this piecemeal system, and children are usually treated very differently according to their status, in violation of their rights, particularly when they are undocumented.

Resolving these issues means adopting a [comprehensive approach](#) to all children in migration. This implies that States must take a number of measures at each stage of designing, planning, resourcing, implementing, monitoring and evaluating laws, policies, actions and programmes (“general measures of implementation”).

Key measures include:

- Domestic legislation protecting children’s rights that can be relied upon in court
- A comprehensive national strategy or plan of action for advancing children’s rights
- Official guidelines and policy documents on implementation practically address the rights and needs of children
- Mechanisms to coordinate between different levels of government and government bodies or agencies responsible for children, including across borders
- Child impact assessments and evaluations with child rights indicators
- Data collection
- Adequate and targeted funding
- Training and capacity building of professionals working with children
- Structures for cooperation with civil society and participation of children in policy making, monitoring and evaluation
- Independent monitoring and complaints mechanisms (e.g. children’s ombudspersons)

WHAT CHILD RIGHTS ARE AT STAKE?

[CRC](#) rights are organised by the [UN Child Rights Clusters used for country reporting to the Committee on the Rights of the Child \(periodic review\)](#). These Clusters are used by national governments when reporting to the UN Committee on the Rights of the Child and are a useful point of reference. The following clusters are in particular focus: General measures of implementation (arts. 4,42 and 44, para. 6, of the Convention).

More particularly, Article 4 of the CRC requires governments to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

[General Comment No. 5](#) on General measures of implementation explores the issue of how to concretely implement the CRC, and in particular Article 4, in law, policy and practice.

Other [General Comments of the UN Committee on the Rights of the Child](#) of particular relevance include:

General comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child

[General Comment No. 6 \(2005\)](#): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin

[General Comment No 12 \(2009\)](#): The right of the child to be heard

[General Comment No 13 \(2011\)](#): The rights of the child to freedom from all forms of violence

[General Comment No. 14 \(2013\)](#) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)

General comment No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4)

[Joint General Comment No. 3 of the CMW and No. 22](#) of the CRC in the context of International Migration: General principles

[Joint General Comment No. 4 of the CMW and No. 23 of the CRC](#) in the context of International Migration: States parties' obligations in particular with respect to countries of transit and destination

WHAT EU POLICIES, INSTRUMENTS & STRUCTURES ARE RELEVANT?

Legal framework:

All EU member states have ratified the CRC, and compatibility with children’s rights is required of all European Union legislation, in particular due to the following:

- [Treaty on the European Union](#) - 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 (Article 3).
- [EU Charter on Fundamental Rights](#) specifically reiterates the rights of the child, that children shall have the right to such protection and care as is necessary for their well-being and that the best interests of the child must be a primary consideration in all actions relating to children (Article 24).

Key EU policy documents, strategies and action plans:

A compilation of all EU acquis and policy documents on the rights of the child can be found [here](#) (as of October 2017).

On children’s rights in general

- [Council Conclusions on the promotion and protection of the rights of the child](#) of 18 November 2014 – includes direct commitments to implement children’s rights, including to hold debates on child rights in relevant Council working groups and consistently check fundamental rights compatibility, including on child rights, in the Council’s preparatory bodies;

as well as numerous recommendations to member states, the Commission, and EU agencies. A few of particular relevance include, to strengthen child rights monitoring, reporting and complaint mechanisms; to develop and strengthen data collection; to ensure in practice that all children are protected from discrimination and enjoy equal opportunities; to give full recognition to children as rights-holders and the best interests of the child, effectively implement the right to be heard, and ensure equal access to education, housing, health and protection services, as well as pay particular attention to unaccompanied children; and to create child-friendly justice and procedures.

The Conclusions also invite the Commission to develop a renewed EU Agenda on the rights of the Child (the last one was from 2011-2014), prioritise use of EU funds to combat child poverty and social inclusion, and support integrated child protection systems. See in relation to the latter, the [10 Principles for integrated child protection systems](#), developed by the European Commission in 2015.

- [European Commission Recommendation “Investing in Children: breaking the cycle of disadvantage”](#) of 20 February 2013 sets out principles to guide the policy-making of member states to reduce child poverty and social exclusion. It recommends the development of integrated strategies based on three key pillars: Access to adequate resources, access to affordable quality services and children’s right to participate. It applies to all children regardless of status.

- EU [Guidelines on the Promotion and Protection of the Rights of the Child](#) (2017) set out the EU’s strategy to promote children’s rights through its external policies and actions. The guidelines promote the General Measures of Implementation (GMI) of the UNCRC as set out in its General Comment No. 5, for the full enjoyment of all rights in the CRC by all children through legislation, budget allocations, the establishment of coordinating and monitoring bodies – governmental and independent, comprehensive data collection, awareness-raising and training, and the development and implementation of appropriate policies, services and programmes.

Specifically related to children in migration:

- [European Commission Communication on the protection of children in migration](#) (April 2017)- sets out a number of challenges for the protection of children in migration and actions to be taken by the European Commission, member states and EU agencies. The progress on the implementation of the actions in the Communication by the [Commission and EU Agencies](#) as well as by [Member States](#) is regularly monitored.

- [Council Conclusions on the protection of children in migration](#) (June 2017)- encourages member states to take or implement actions, as appropriate, to protect children at all stages of migration, building on the Commission Communication on the protection of children in migration, and report on implementation of these actions, among other things.

- European Parliament [resolution](#) of 3 May 2018 on the protection of children in migration sets out a number of recommendations, including related to non-discrimination, funding, and the use of infringement proceedings against member states violating children’s rights through immigration detention.

- [Action Plan on the integration of third country nationals](#) (EC Communication 2016) – actions to promote integration of all children in migration except undocumented/ irregularly resident children.

- The [Global Compact on Migration](#), which the EU and member states negotiated with other countries at the UN (due to be adopted in December 2018), has child rights and best interests as a cross-cutting and guiding principle, and includes the action: *“Account for migrant children in national child protection systems by establishing robust*

procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions, as well as in all migration policies and programmes that impact children, including consular protection policies and services, as well as cross-border cooperation frameworks, in order to ensure the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities ...”(para 23e)

Funding:

- Various EU funding instruments can be used by governments to advance the rights of children in migration. Ahead of the 2016 EU Forum on the rights of the child, which was dedicated to children in migration, the European Commission prepared a [background document](#) (revised on 5 of February 2018) with an overview of the different EU funds and their scope, with examples of recent EU contributions. These funds are undergoing change, however the document provides a useful illustration of projects to date.

Institutional structures:

- The European Commission has a [Child Rights Coordinator](#) and an inter-service group to coordinate work among the departments of the Commission and provide mechanisms for the consideration of children’s rights in all relevant policies and actions.
- The European Commission coordinates an informal [Expert Group on the Protection of Children in Migration](#), bringing together representatives from governments, the Commission and EU agencies. Its primary purpose is to discuss progress in the implementation of the Commission Communication on the protection of children in migration. It has met twice in [December 2017](#) and [June 2018](#). It is currently supposed to meet twice a year, jointly with the [Expert Group on the rights of the child](#).
- The European Parliament has an [Intergroup on Children’s Rights](#) – a cross-party and cross-national group of MEPs - that seeks to mainstream children’s rights and assess the impact of legislative and non-legislative work on children. The rights of children in migration have been one of the priority issues considered by the group.

Data collection:

- [Regulation on EU statistics on migration and international protection](#) – sets out EU rules for the collection and compilation of statistics on migration (emigration and immigration), international protection (asylum), regular and irregular migration and returns by EU and EFTA countries (to be communicated to [Eurostat](#)). Some of the data is disaggregated by age. *This regulation is currently being revised based on a proposal from the European Commission.*

Independent monitoring and complaints mechanisms:

- The European Commission monitors transposition and implementation of EU laws. There is a [database](#) on measures taken by member states to incorporate EU law into national law (transposition), and [annual report](#) reviewing main challenges in implementation of EU law and [infringement proceedings](#) launched. There are also reports related to the transposition and implementation of specific directives undertaken by the relevant

department in the Commission. Individuals can also submit [complaints](#) directly to the European Commission for breaches of EU law.

- The European Parliament (Petitions Committee) accepts [petitions](#) or complaints from any EU citizen or resident on matters which fall with the EU's activities.
- EU citizens and residents can also ask the [European Ombudsman](#) to look into cases of maladministration in the activities of EU institutions, bodies, offices or agencies.
- The [European Border and Coast Guard Regulation](#) set up a complaints mechanism. *This European Commission has proposed a new version of this Regulation, which is currently under negotiation. The complaints mechanism has not been changed.*

In all cases there is a lack of child-friendly information and complaints procedures.

- [Several EU member states](#) have ratified [Optional Protocol 3 to the Convention on the Rights of the Child on a communications procedure](#) (OP3 CRC), which enables children to bring complaints about violations of their rights to the UN Committee on the Rights of the Child, if they have not been fully resolved in national courts and establishes an inquiry procedure for grave and systematic violations of child rights. CRIN have developed a [Toolkit on the complaints procedure](#).

Jurisprudence

Important international and European jurisprudence has been handed down on grounds that can establish a right of residence in a country based on human (and child) rights, and international protection. Often this is in relation to appeals against return decisions or removal orders. Jurisprudence can be very helpful to support advocacy. Consult the websites of:

- the [Court of Justice of the European Union](#)
- the [European Court of Human Rights](#)
- the [UN Committee on the Rights of the Child](#) Optional Protocol No 3 Complaint Procedure
- <http://www.europeanmigrationlaw.eu/>
- [Asylum Information Database \(AIDA\)](#)
- [PICUM's Case Law Tool](#).

WATCH THIS SPACE: *Updated as of October 2018*

In a nutshell:

- **Full impact assessments, including in relation to children's rights, were not carried out prior to the launch of proposals to revise EU migration and international protection legislation by the European Commission**
- **The European Commission is making efforts to follow up on implementation of the Communication on the protection of children in migration, though it remains somewhat marginal to the overall [EU agenda on migration](#).**
- **The Regulation on EU statistics on migration and international protection revision could lead to some better data on children in migration.**
- **The multi-annual financial framework for 2021-2027 is in process, and has implications for how EU money is spent on children in migration.**

RESOURCES FOR ADVOCACY

Most member states have reported on their implementation of the 12 April Communication (updated as at 12 January 2018). You can see if your country has sent a report [here](#); it may be useful for you to refer to statements made there, and recommendations in the Communication that have not been followed up on, in your advocacy. You can also check who participates in the an informal Expert Group on the Protection of Children in Migration from your country [here](#).

The [proposal](#) to revise the Regulation on EU statistics on migration and international protection would increase data on children in migration in some cases, but does not systematically require disaggregation by age and unaccompanied or accompanied child so leaves some important gaps. The European Parliament report may address some of these in its position. The changes will be need to be agreed by the European Parliament, Commission and Council.

The European Commission has published a [Compilation: Data, situation and media reports on children in migration – latest version](#) (as of 23 February 2018).

Child rights organisations published the [statement](#) 8 Ways to make the next EU multiannual financial framework a vehicle for the protection and integration of children in migration in April 2018, as well as [recommendations](#) related to child poverty and investment in children more broadly.

The Initiative for Child Rights in the Global Compacts, which is made up of CSOs, UN bodies and agencies, is working to ensure that the rights of children in migration are fully respected and advanced through both the Global Compact for Safe, Orderly and Regular Migration and the Global Compact for Refugees. The Initiative actively engaged in the consultations and intergovernmental negotiations around the Compacts, and produced various [recommendations and statements](#) during the processes.

UNHCR's publication "[A framework for the Protection of Children](#)" (2012) articulates six goals that encapsulate UNHCR's commitment to protect and realize the rights of children of concern to the Office, and offers practical guidance on how to achieve them.

On 10 July 2017, UNHCR and UNICEF, together with the International Rescue Committee, released the Roadmap "[The Way Forward to Strengthened Policies and Practices for unaccompanied and separated refugee and migrant children in Europe](#)". The Roadmap underlines the relevance of data for protection oriented programming purposes. On 15 February 2018, Eurostat, IOM, OECD, UNHCR and UNICEF released [Call to Action: Protecting children on the move starts with better data](#), where they warned that gaps in data covering refugees, asylum-seekers, migrants and internally displaced populations are endangering the lives and well-being of millions of children on the move. Accordingly, in "[Strengthening current data on refugee and migrant children at EU-level](#)" UNHCR and UNICEF set out eight suggested priority areas and related recommendations with respect to data on refugee and migrant children.