

ICM Spotlight on the EU: Appropriate care for children in migration in the EU

WHAT'S AT THE HEART OF THE MATTER?

Under the non-discrimination provisions of the UN Convention on the Rights of the Child (UN CRC), all children in migration should access support and services on an equal basis with other children. Moreover, children who are separated from their primary caregivers or who travel unaccompanied by a primary caregiver have a right to special protection and assistance under the UN CRC.

However, in practice, migrant and refugee children in Europe are often placed in precarious and difficult conditions including when they are in hotspots, in protracted stays in refugee camps, large-scale reception centres or in large alternative care institutions. They may be left homeless, becoming easy prey to exploitation, abuse and violence. Migrant children also risk being detained, either at the border or in countries of transit and destination. In such situations, they cannot access the reception, care and social services to which they have a right both before and after status determination.

Furthermore, while a caring and protective family is central to a child's development, as recognised by the UN CRC, many displaced families lack the support services necessary to provide a stable and safe environment where children can develop and fulfil their potential. In addition, bureaucratic obstacles make it difficult for children who have been separated from their families to reunite with their families. Without adequate support, children in migration face poor prospects in life and risk poverty, social exclusion, exploitation and violence.

Key areas in need of attention from policy makers and practitioners so that migrant and refugee children are able to access their right to care include¹:

- All children in migration should have access to appropriate care, regardless of their status.
- Support for families so that they can play a protective role
- Quality family and community-based alternative care for unaccompanied and separated children
- Ending detention of all children for migration-management purposes
- Guardianship systems for unaccompanied and separated children
- Individual and gender- and age-sensitive assessments of the vulnerabilities and needs of children
- Access to health services, including mental health services, for children and their families
- Psychosocial support for children and their families
- Access to education
- Training and support of care and other professionals
- Equity of care and inclusion in the local communities
- Support for young people in their transition to adulthood
- The establishment or strengthening of a firewall between immigration enforcement services and child protection and other services

¹ Adapted from SOS Children's Villages International, Eurochild, (2017), *Let Children be Children, Lessons from the Field on the Protection and Integration of Refugee and Migrant Children in Europe*. Available at https://www.sos-childrensvillages.org/getmedia/32eeb951-d731-48ae-86fb-96b9aff63f3e/Let-Children-be-Children_Case-studies-refugee-programmes.pdf and expanded.

WHAT CHILD RIGHTS ARE AT STAKE?

Children are entitled to all the rights enshrined in the [United Nations Convention on the Rights of the Child](#) (UNCRC) regardless of their migration status or that of their parents. These include the right to such protection and care as is necessary for the child's wellbeing, the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, the right to an education, the right to the enjoyment of the highest attainable standard of health. Furthermore, Article 3 UNCRC states: *'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'*

The [UN Guidelines for the Alternative Care of Children](#) are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so. The Guidelines urges States to appoint a **guardian** as soon as unaccompanied children are identified; to offer the **same level of protection and care** as national children in the country concerned, to make all reasonable efforts to trace the children's families and **re-establish family ties**, when this is in the best interest of the child, as well as to **facilitate regular communication** between the child and his/her families provided this is in line with the child's wishes and in his or her best interests.

In their [Joint General Comments](#) published in November 2017², the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers has stated that States should:

- Ensure that children in the context of international migration are treated first and foremost as children. States parties to the Conventions have a duty to comply with their obligations to respect, protect and fulfil the rights of children in the context of international migration, regardless of their or their parents' or legal guardians' migration status.
- Integrate the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families into migration- related frameworks, policies, practices and/or other measures, reflecting the primacy of the rights of the child in the context of international migration.
- Conduct a best-interest assessment on a case-by-case basis to decide, if needed, and in accordance with the Guidelines for the Alternative Care of Children, the type of accommodation that would be most appropriate for an unaccompanied or separated child, or children with parents. In that process, community-based care solutions should be prioritized. Moreover,
- Forbid by law and in practice any kind of child and family immigration detention. When children are accompanied by their parents, the need to keep the family together is not a valid reason to justify the deprivation of liberty of a child. In the meantime, all procedures that can lead to detention.
- Provide, in accordance with the Guidelines for Alternative Care of Children, adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context. This includes by ensuring access to long-term regular migration status and reasonable opportunities for completing education, access to decent jobs and integrating into the society they live in. The Committees additionally encourage States to take protective and support measures beyond the age of 18 years.
- Appoint a qualified legal representative for all children, including those with parental care, and a trained guardian for unaccompanied and separated children, as soon as possible on arrival, free of charge.
- Take all appropriate measures to fully promote and facilitate the participation of children, including providing them with the opportunity to be heard in any administrative or judicial proceeding related to their or their families' cases, including any decision on care, shelter or migration status.

² [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 ARE RELEVANT?

While the planned reform of the Common European Asylum System³ is on hold and it is uncertain whether new legislation will be passed, there is a need for adequate implementation of the current EU legislation in a manner that respects children's rights and ensures their ability to access care and services.

- The [European Commission Communication on the protection of children in migration](#) offers a set of principles and recommendations aiming to protect the rights of all children in migration. The Communication includes recommendations for adequate reception conditions. These comprise providing safe and appropriate accommodation, access to support services such as education, healthcare, psychosocial support and leisure, independent representation, and measures that promote migrant and refugee children's integration. The Communication also calls for Member States to "*ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided*". It also recommends the training of professionals working with children, including communicating with children in a gender, age, and context-appropriate manner. It also foresees the provision of EU funds for implementing the recommendations. However, the Communication falls short of banning detention for migrant and refugee children, and states that detention should be used only in exceptional circumstances, as a last resort and for the shortest time possible. See also, European Commission, [Key actions by the European Commission and EU agencies on the implementation of the Commission Communication of 12 April 2017 on the protection of children in migration](#), 1 April 2019, and [Member States reports on implementation of the 12 April Communication](#), 12 January 2018.
- The [Reception Conditions Directive](#) (2013/33/EU) deals with the treatment of asylum seekers – including asylum seeking children - by EU Member States from the moment they apply for asylum. In implementing the Directive, Member States should take the best interests of the child into primary consideration, respect the child's own views, and ensure an adequate standard of living that supports the child's physical, social, and mental development.

Accommodation. According to the Directive, unaccompanied children seeking asylum shall be placed: with adult relatives; with a foster family; in accommodation centres with special provisions for children; in other accommodation suitable for children. The Directive allows Member States to place unaccompanied children aged 16 or over in accommodation centres for adult applicants, if it is in their best interests. As far as possible, siblings shall be kept together, taking into account the best interests of the child concerned and, in particular, his or her age and degree of maturity. Changes of residence should be limited for unaccompanied children. However, the EU Reception Directive falls short of prohibiting the detention of children. It states that children can be detained as a measure of last resort, if there are no less-coercive measures available and for the shortest period of time. When it comes to unaccompanied children, the Directive states that they can only be detained in exceptional circumstances.

Training. As provided by the Directive, those working with unaccompanied children should be trained professionals.

Family tracing. Member States should start tracing the family of unaccompanied children as soon as possible.

Access to education. The Directive provides for access to education for children no later than three months after an application for asylum and « under similar conditions » as nationals, even though it allows for the possibility of education to be provided in accommodation centres (rather than mainstream schools). It also provides for preparatory classes, including language classes to facilitate access to the education system.

Access to health care. The Directive provides that people with special reception

³ Including the recast of the Dublin Regulation and of the Eurodac Regulation, a proposal for a Regulation on the establishment of the European Union Agency for Asylum, a proposal for a Regulation establishing a Common Procedure for International Protection in the EU, a proposal for a Qualification Regulation, the recast of the Reception Conditions Directive and a proposal for a Regulation establishing a Union Resettlement Framework.

needs, including children, should have access to “necessary medical or other assistance” including appropriate mental health care.

Adequate standard of living. The Reception Conditions Directive requires that children are ensured a standard of living adequate for their physical, mental, spiritual, moral and social development, as well as access to leisure activities, including age-appropriate play and recreational activities and to open-air activities.

Guardianship. Under the Directive, “Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor”. The role of the representative is to help secure the child’s rights.

Access to the labour market. The Directive establishes the time-limit for access to the labour market in no later than nine months from the date when the application for international protection was lodged. While Member States can decide the conditions for granting access to the labour market for the applicants, access to the labour market must remain “effective”.

- The [Dublin Regulation](#) (Regulation (EU) No 604/2013) whose aim is to determine the Member State responsible for processing an application for international protection, has an important impact on the ability of unaccompanied children to unite with family members living in the EU. If the unaccompanied child has a parent, spouse, child or sibling who is legally present in a Member State, that Member State will be responsible for examining the child’s asylum request unless this is not in their best interests. If this is not the case but the unaccompanied child has an adult aunt, uncle or grandparent who is legally present in a Member State and who following an individual examination, it is established that he or she is able to take care of the child, then that Member State is responsible for the asylum application of the child provided this is in his or her best interests.⁴
- The [Return Directive](#) (2008/115/EC) lays down standards and procedures for returning irregularly staying third country nationals to their country of origin or a third-country. When issuing return decisions, Member States must consider the best interests of the child, the right to family life, health, and the principle of non-refoulement. With regards to the return of unaccompanied children, the authorities enforcing the return should make sure that the child will be returned to his or her family or legal guardian, or to “adequate reception facilities in the State of return”⁵. The Directive sets the criteria and conditions for the detention of persons pending return. In particular, it states that unaccompanied children and families with children “shall only be detained as a measure of last resort and for the shortest appropriate period of time”⁶, and the best interests of the child should be a primary consideration⁷.
- The [Family Reunification Directive](#) (2003/86/EC) covers conditions under which family reunification is granted to regularly residing third country nationals.
- The [Qualification Directive](#) (2011/95/EU) establishes the rights which flow from international protection status, including full access to the education system to all children granted international protection, under the same conditions as nationals and access to healthcare to all beneficiaries of international protection under the same eligibility conditions as nationals of the Member State that has granted such protection.
- The [EU Directive on long-term residents](#) (2003/109/EC) covers status and rights of third country nationals who have resided regularly and continuously for five years, who meet certain criteria.

⁴ See “Unaccompanied Children and the Dublin III Regulation”, European Network of Guardianship Institutions, 2016 <https://engi.eu/wp-content/uploads/2016/11/Unaccompanied-Children-and-the-Dublin-III-Regulation.pdf>

⁵ Directive 2008/115/EC of the European Parliament and of the Council on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals, European Union, O.J. L 348/98, 16 December 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>. Art. 10

⁶ Ibid., art. 17

⁷ See also ECRE, ECRE Information Note on the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 7 January 2009, CO7/1/2009/Ext/ MDM, <http://www.refworld.org/docid/496c61e42.html>

- The [Anti-trafficking Directive \(2011/36/EU\)](#) includes provisions on victims' protection, assistance and support, but also on prevention and prosecution of the crime.
- The [Action Plan on the integration of third country nationals](#) includes actions to promote integration of children in migration, acknowledging that third country national children are at a particular risk of poverty. However, the action plan formally excludes undocumented children on the territory.
- 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 in April 2017) with an overview of the different EU funds and their scope, with examples of recent EU contributions.
- The [European Agenda on Migration](#) (May 2015) introduces a new 'hotspot approach'.
- European Union Agency for Fundamental Rights (2014), [Guardianship for Children Deprived of Parental Care](#). This handbook aims to strengthen the protection of children, specifically addressing the particular needs of child victims of trafficking.
- EASO (2018), [Guidance on reception conditions for unaccompanied children](#) aiming at supporting the EU and its Member States in the implementation of key provisions of the Reception Conditions Directive, while ensuring an adequate standard of living for unaccompanied children that takes into account their special reception needs.

Jurisprudence

- 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
- [European Database of Asylum Law \(EDAL\)](#)
- [Asylum Information Database \(AIDA\)](#)
- [PICUM's Case Law Tool](#).

WATCH THIS SPACE:

In a nutshell:

- The revision of the EU international protection instruments has proved protracted and contentious and is currently on hold. Key issues concerning care for children under revision include guardianship, accommodation and detention, family tracing, the possibility to reunite with family members within the EU, access to education and health care and access to the labour market. Some positive changes in the proposed recast include the appointment of a guardian within 5 working days, the broadening of the scope of the definition of family members with whom unaccompanied children can reunite with within the EU. However, punitive measures, such as the withdrawal of reception conditions for people moving to a country other than the one that is responsible for examining their asylum application risks violating children's rights and driving increasing numbers underground.
- In the current framework, many challenges remain [in practice](#), including the placement of unaccompanied and separated children in precarious conditions where they lack individual care such as hotspots, refugee camps and large scale reception centres; the detention of children for migration-management purposes; the lack of support for families to provide a stable and safe environment for their children; shortcomings in the guardianship systems preventing guardians from carrying out their responsibility to ensure that the rights of unaccompanied children are protected; major obstacles for children to reunite with their families; lack of access to health services, including mental health services, education and psychosocial support for children and their families; lack of training and support of care professionals; and insufficient support for young people in their transition to adulthood.
- In May 2015 the European Commission introduced a new '[hotspot approach](#)' where, according to the Commission, the European Asylum Support Office, Frontex and Europol would work with frontline professionals from Member States to swiftly identify, register and fingerprint migrants

arriving. In practice, the conditions in the hotspots in Greece and Italy, including for families and unaccompanied children, have repeatedly raised serious criticism including from the [EU Agency for Fundamental Rights](#), the [European Court of Auditors](#), the [European Parliament](#), and [NGOs](#).

- Although governments acknowledge third country nationals and other migrants often need additional support to ensure equal access to opportunities and services, including care, EU policies, such as the Action Plan on the integration of third country nationals, often explicitly exclude undocumented children and adults from their scope.
- See also, Initiative for [Children in Migration, Durable Solutions](#).

RESOURCES FOR ADVOCACY

- European Commission, [The protection of children in migration – promising practices](#) (database).
- SOS Children's Villages and Eurochild (2017), [Let Children be Children](#). The report documents work carried out by SOS Children's Villages and Eurochild's partners to support refugee children and families in Austria, Finland, Germany, Greece, Hungary, Ireland, Serbia, Slovakia, Sweden, The Netherlands and United Kingdom. Drawing on learnings from the field, the study offers recommendations to help child protection services respond to the needs of refugee and migrant children.
- ECRE, Child Circle, Missing Children Europe, Terre des Hommes (2019), [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](#).
- Joint Statement 'Let's work to end child migration detention' November 2017,
- [SOS Children's Villages](#) (2016), [Position paper on migrant and refugee children](#), provides an overview of the challenges for children on the move and includes ten recommendations on how to improve the care and protection of children.
- PICUM (2019), [Child Immigration Detention in the EU](#). This joint advocacy paper, developed in the framework of the Initiative for Children in Migration, considers immigration detention of children and families in the context of asylum and return procedures and suggests steps towards ending child immigration detention and implementing alternatives.
- PICUM (2016), [Hear our voices. Undocumented children and young people share their stories](#).
- PICUM (2015), [Protecting undocumented children; Promising policies and practices from governments](#).
- ECRE (2018), [To Dublin or not to Dublin? ECRE's Assessment of the Policy Choices Undermining the Functioning of the Dublin Regulation, with recommendations for rights-based compliance](#).
- ECRE (2018), [Taking Liberties: Detention and Asylum Law Reform. ECRE's Concerns about the Restrictions on Asylum Seekers' Liberty in the Reform of the Common European Asylum System and in Practice](#).
- ECRE (2018) [Comments on the Commission Proposal for a Recast Return Directive COM \(2018\) 634](#).
- ECRE (2018), [Withdrawal of reception conditions of asylum seekers. An appropriate, effective or legal sanction?](#)
- ECRE (2017) [The detention of asylum seekers in Europe. Constructed on shaky ground?](#)
- ECRE (2016), [Comments on the Commission Proposal for a Dublin IV Regulation](#).
- ECRE (2016), [Comments on the Commission Proposal to recast the Reception Conditions Directive](#)
- ECRE (2016), [Comments on the Commission Proposal for an Asylum Procedures Regulation](#).

- [ECRE \(2016\), Comments on the Commission Proposal for a Qualification Regulation.](#)
- [ECRE \(2015\), Information Note on Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\),](#)
- [ECRE, \(2014\), Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\),](#)
- [ECRE \(2013\), ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted \(recast\), October 2013.](#)
- [The Initiative for Child Rights in the Global Compacts , \(2017\) Child Rights in the Global Compacts. Recommendations for protecting, promoting and implementing the human rights of children on the move in the proposed Global Compacts.](#)
- [A compilation of good practices on migration-related child-friendly procedures gathered by the Council of Europe's Special Representative on Migration and Refugees is expected to be completed by end of June 2019.](#)
- [Defence for Children The Netherlands, Separated Children in Europe Programme Statement of Good Practice. 5th revised edition, 2019](#)
- [The report Caught in the middle: Unaccompanied children in Greece in the Dublin family reunification process by Safe Passage and Praksis highlights serious obstacles preventing unaccompanied children from quickly joining family members in other European countries.](#)
- [Coface, Building Inclusive Societies – First steps to bridging the gaps between family, education and migration policies, May 2019.](#)

Online course, webinars and videos

- [A Massive Open Online Course \(MOOC\) on Children on the Move](#) has been developed by Celcis, University of Strathclyde with technical advice from FXB Harvard and an inter-agency taskforce bringing together the Better Care Network, FICE, International Federation of Social Workers, Hope and Homes for Children, Global Partnership to End Violence Against Children, International Committee of the Red Cross, International Detention Coalition, the International Federation of the Red Cross and Red Crescent, IOM, International Social Service, Latin American Foster Care Network, Save the Children, SOS Children's Villages International, Terre des hommes, UNHCR and UNICEF.
- [Common European Asylum System and the European Parliament elections \(webinar\)](#), discussed the CEAS reform, the key child protection challenges and advocacy opportunities, April 2019.