

**Revision of the EU Asylum Instruments – the Situation of Children
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Rebecca O’ Donnell, Senior Policy and Advocacy Adviser
Save the Children EU Office**

I am very grateful for the invitation to be here to discuss the issue of children in EU asylum legislation and the positions of the European Parliament in the ongoing negotiations. I would like to focus on some of the key issues with which the EU Parliament is currently concerned.

The EU Asylum and Migration Context

As background, Save the Children has followed the evolution of EU asylum law for many years and we have made many concrete proposals for specific provisions concerning children, both as regards children within asylum seeking families and children who are unaccompanied or separated from family and seeking asylum alone. We also work on other EU laws which address the situation of a third country national child in Europe, including the EU Trafficking Directive and the EU Return Directive. We advocated for the EU to take a horizontal approach to *all* unaccompanied children across the different policy areas, including asylum. A horizontal approach means setting out common responses to the needs and rights of unaccompanied children, whether they are trafficked, seeking asylum, or migrating for other reasons. The adoption of the EU Action Plan on Unaccompanied Minors marks a solid step in that direction.

Core Positions

So we take as our starting point that, in all situations, children must be treated as individuals with rights and they must be treated as children first and foremost, regardless of their immigration status. In the case of unaccompanied and separated children, they should receive special assistance. To avoid confusion, let me underline a central point. This does not mean that we believe that unaccompanied children from third countries arriving in the EU should be placed under the protection of EU States permanently. No, rather it means that a durable solution must be found for each child, taking the best interests as a primary consideration. States are obliged, under both international and EU law principles, carefully to examine the individual circumstances of these children and determine where their future should lie - either here in the EU or in other countries. This is guided by their best interests, taking account of their specific claims, including whether or not they are refugees.

Now this might all sound simply like common sense. The best interests’ principle is a golden thread that runs through all EU legislation that addresses the situation of children. We find it in the Trafficking Directive; we find it in the Returns Directive. We find it now more prominent in the proposed new EU asylum instruments. It is extremely welcome that it is becoming systematically more visible in our laws. However, the risk that we must avoid is that the best interests’ principle is something the EU simply cuts and pastes into each of its measures, in the belief either that it is self

executing or that Member States can take care of its implementation nationally. *On the contrary, EU laws must include specific safeguards to make a reality of the principle.* The Commission has recognized this in the asylum proposals before you. They include some key safeguards which I would like to talk about now.

Current Status

So let’s turn to the current status. In the existing EU asylum laws, apart from some measures for unaccompanied children and families, children are practically invisible. There is not even a definition of a child as being any individual under 18. But in the proposals under negotiation, the EU is moving towards:

- reception standards across Europe which are better adapted for children;
- greater respect for their rights to family life and unity;
- improved access for children to asylum procedures; and
- measures to ensure that the claims of children are properly elicited and assessed.

We welcome this progress. We see room for some strengthening of them. And we are very concerned that some of these hard-won improvements are under significant pressure in the ongoing discussions. We suggest that the goal of Parliament should be to secure the basic progress made in the Commission proposals in this regard and to bring further clarity to central provisions.

Let me take two brief examples of improvements under significant pressure. Then let me point to three key areas where provisions should be strengthened.

1. Detention

In the first recast proposal for Reception Directive, the Commission put forward a prohibition on the detention of unaccompanied children. In the second recast proposal, this has been rolled back. In the new proposal, detention of unaccompanied children may take place where it is in their best interests. It is hard to imagine when this might be the case.

There is significant evidence of the damage wrought to children when they are detained. The idea that they should generally be locked up for their protection sounds medieval. And in no case should children have to bear any burden of proof to show that it is not in their best interests to be locked up. So we think the Parliament should insist that, as a general rule, children should not be detained.

(The International Detention Coalition Campaign to End Child Detention in Asylum and Immigration Procedures will be of interest to Parliament.)

2. Family Unity

In the asylum proposals, there are definitions of family members. Parliament has discussed this most recently in relation to the Qualifications Directive and put forward a more restrictive definition than the Commission.

We would urge Parliament not to do so in the context of the Reception Directive but rather to support the Commission proposal that, if it is in their best interests, a married child should be united with their parents or siblings who are seeking asylum in Europe. Children are children, regardless of whether they are married. It is also important to remember that children may have been through forced marriages. Left alone in Europe, they are often in a situation of extreme vulnerability, particularly where they may have protection needs. And it will likely be to the benefit of the Member State to allow families to forge a unit together to gain some sense of security while they seek asylum.

Now to where we think the provisions in the current proposals should be strengthened. Here are three key examples.

1. Representatives/Guardians. It should be crystal clear that guardians who represent children should be there to advise and protect the child and ensure their best interests are taken into account. This means they should be independent of any agency which might have another interest. So, for example, representatives should not be linked to the border or immigration agency. The Parliament has recognized this in its Report on the first Recast Reception Proposal where it says that “Agencies or individuals whose interests could potentially conflict with those of the child’s shall not be eligible for guardianship.” We would urge the Parliament to continue to push for explicit language on this.

Guardians are a vital safeguard and Nidos, here today, will talk more about their role. It should also be very clear that children need both guardians and legal expert advisers.

2. Age Assessment. Although the question of age assessment is a crucial question, unfortunately, there are no accurate *scientific* age assessment processes; they just do not exist. The Parliament needs to take this fully on board so that countries cannot simply routinely x-ray individuals. The age assessment provision in the Procedures Directive should take account of this.

3. Dublin II. There has been progress on improving the mechanisms for considering when unaccompanied children should be transferred to another EU country. But this is something on which Parliament should be working further.

There must be a procedure which can properly take into account their best interests, involve the right actors in both countries and ensure that there is a proper transfer of care and custodial responsibilities.

Of course this is not the time to address each and every issue in detail. For concrete discussions on each of these points, I invite you to look at the more detailed papers on our website. Instead, in my final remarks I would more like to address some general arguments that we sometimes hear against safeguards, like guardians. For example, some say that that they will cost too much, that they cannot be implemented in a practical way, or that protective mechanisms will perhaps act as a pull factor which will bring more children into the EU. Now, these are arguments that Parliament must consider carefully.

My first point is that these practical arguments can never negate the need to ensure basic legal requirements are in place. The Courts throughout Europe know this and they are increasingly holding the Member States accountable for failures to take account of the best interests of the child both in terms of substance and in terms of procedure.

My second point is that these safeguards do not need to be too difficult or too expensive. We certainly recognize the dilemma some Member States face when they do not know how to assess the best interests of children or address their situation. We are working to provide support and tools for Member States to enable them to do so, and so are many other actors:

- Save the Children worked with the Finnish Ministry on detailed guidelines for interviewing children seeking asylum.
- We are also working with ECRE on a project for the European Commission which will establish a checklist to support Member States when they are considering return processes for children.
- UNHCR and UNICEF, supported by a range of actors, are adapting guidance on best interests’ determination procedures in Western Europe.
- Various actors are working on standards and supports for guardians throughout Europe, in particular, Nidos, who are here today as well as DCI and the Separated Children in Europe Programme (“SCEP”).

All of these tools should help Member States deliver these safeguards. So the Parliament can play its role, and indeed should play its role, by insisting on an European framework which will protect very vulnerable children in reality, and not just in theory.