

Briefing Paper with key recommendations on

Making proposed EU measures concerning migrant children at the EU external border more child-centred and child-sensitive

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1. Introduction and overview of key recommendations

The EU Migration and Asylum Pact published by the Commission in September 2020 contains a wide-ranging set of proposed measures and recommendations in relation to EU migration and asylum management. In May 2020, Child Circle and KIND published a joint [Briefing Paper and Key Recommendations Concerning Measures at EU Borders for Unaccompanied Children](#). Following the publication of the Pact, in December 2020, a [joint statement](#) published by a group of NGOs in Europe shared broad concerns about the Pact's impact on children as well as general recommendations for change, including as regards the proposed border measures, which are a lynchpin of the overall system proposed by the EU. In January 2021, Child Circle and KIND have published recommendations to the EU in its report on [Advancing Protection for Unaccompanied Children in Europe by Strengthening Legal Assistance](#).

The goal of this paper is: **to review more closely the issues that arise for children at the EU external borders, to identify challenges which need to be considered more closely, and to share more detailed recommendations in relation to the proposed new EU screening and border procedures.**

1.1. The proposed new border procedures in a nutshell

The New Pact introduces a mandatory border procedure for all those arriving at an EU border by air, sea or land or encountered for the first time within the EU, having previously made an irregular entry.

It anticipates that third country nationals arriving without an appropriate permit will first be screened at the border. This will mean that their identity, including any risks they may pose to national security and public order, will be checked against any existing records. They will also be subject to health and vulnerability checks and their claimed age may be disputed. There is no requirement that screening occur in the presence of guardians and lawyers and no obligations are specified as regards informed consent, cultural mediators or interviewers and interpreters with the experience of working with children. For the purposes of screening, persons may potentially be detained for that purpose for up to five days and, in certain circumstances, up to ten days.

After this proposed screening process, if they do not fall into certain exempt categories, including that of being an unaccompanied child or a family including children under the age of 12, third country nationals may then be subject to an asylum or return procedure at the border with the possibility of being detained throughout these procedures for up to ten months. The mandatory asylum and return border procedures apply for nationals of countries where the average EU protection rate for that country is below 20%. This border process will involve expedited procedures and diminished procedural safeguards. For example, legal assistance will only be provided if an appeal is made. As families with children over 12 would not be exempt from these border procedures, accompanied children could be detained for significant periods of time, as could unaccompanied children wrongfully assessed to be adults.

Throughout the process it is proposed that third country nationals are deemed not to have entered the EU. Moreover, persons encountered for the first time on the territory may be subjected to border procedures, regardless of their age or situation.

The introduction of such widely applicable, restrictive procedures, accompanied by detention, is predicated on the assumption that a large number of persons arriving in the EU have no grounds for international or other grounds for protection and residence and that persons should be returned rapidly to third countries from EU borders.

1.2. Overview of key recommendations

- › The proposed EU procedures at the border should not become an expedited substitute for normal migration management procedures within the EU. This would potentially have very serious adverse consequences for migrant children. Instead, the proposed screening procedure should be remodelled, to serve primarily as a triage stage in an enhanced case management approach, in particular to identify and to refer persons in vulnerable situations away from the border.
- › The proposed EU screening procedure must be designed in a child-centred and child-sensitive manner. The screening procedure must be explicitly shaped and guided by the best interests principle, in particular through ensuring the situation of each child, whether unaccompanied or travelling with family members or adults, is assessed during the screening. As well as meeting migration management responsibilities, the screening procedure should serve as an element of an integrated child protection system. EU measures should expressly acknowledge the child protection responsibilities implicated by the arrival of children at the border. EU guidance on how this can be achieved should be developed to assist Member States in this regard.
- › Specific safeguards for children must be in place throughout the screening process. These should address the provision of information, independent support and assistance to children, identifying whether an individual is a child, identifying whether a child is accompanied by a parent, legal guardian or customary caregiver, undertaking health checks and identification of medical risks, identifying additional vulnerabilities, identification and referral of suspected child victims of trafficking, identification of risks to national security and public order, the debriefing process and prohibition of detention and deprivation of liberty.
- › Achieving transparency and accountability for procedures at the border will be vital to avoid violations of the rights of persons at the border, whether arising as a result of deliberate actions or arising from omissions, such as failure to put in place adequate resources. The proposed monitoring mechanisms need to be designed so as to take account of the specific needs of children as well as the safeguards that should be in place for them.

2. Focus on key recommendations

2.1. The proposed EU procedures at the border should be remodelled, to serve primarily as a triage stage, in particular to identify and to refer persons in vulnerable situations away from the border.

The proposed introduction of mandatory border procedures is said to be a proportionate and necessary response to the large numbers of third country nationals, who have arrived at the EU's borders in recent years and the relatively high percentage of all applicants from a particular State who applied for asylum, but did not subsequently qualify for international protection.

There are a number of evident problems with this rationale. These are illustrated by the following points:

- a) The Refugee Convention provides for the possibility that individuals from a State may be granted protection, even though many others from the same State may not. It does so by both outlining the particular basis on which protection may be needed, in terms of fear of persecution based on race, nationality, religion, political opinion or by acknowledging that some individuals may be in need of protection because of being a member of a particular social group. Therefore, the restrictive approach being proposed is likely to disadvantage a number of individuals, who may not be able to fully express their claim without support. In particular, it may have an adverse effect on children, who may face persecution for reasons which do not affect adults from their country of origin. Children may also find it more difficult to articulate a cogent asylum claim at a border without the assistance of a guardian and a lawyer, and without the time needed by the children to establish a relationship of trust with them.
- b) Data on first instance decisions is also deceptive, as it fails to take into account the significant number of individuals who succeed on appeal and establish that they are entitled to international protection.
- c) Data focusing on international protection claims also fails to take into account the significant number of individuals who can show that not granting them leave to remain would amount to a breach of the European Convention on Human Rights or international law, including the UN Convention on the Rights of the Child (UNCRC), and who can, therefore, be entitled to a national protection status under domestic law in many EU Member States (see further the European Migration Network's 2020 [Comparative Overview of National Protection Statuses in the EU and Norway](#)).
- d) The proposal also continues to concentrate the responsibility for initial screening on the relatively small number of States in which migrants arrive, due to search and rescue operations and the routes organised by human smugglers. It fails to recognise that where border procedures are overwhelmed and, there are inadequate monitoring mechanisms in place, there is a tendency for "push-back" responses to increase.

- e) Equally, little attention has been paid to the experiences of these States, who have until now been trying to process arrivals at their borders in “hotspots”. Significant challenges occur in the immediate period after arrival when a State is trying to achieve an appropriate balance between the need for a faster and more efficient border procedure and the respect to be given to the fundamental rights of those arriving at the EU’s borders. This is particularly the case when the individuals arriving are children.
- f) Moreover, the proposal does not satisfactorily address the reality that persons from third countries may engage in irregular border crossing, without passing through a formal border. Indeed, stricter measures at the border may aggravate the risk of people, including children, turning to smugglers and traffickers, using these often more dangerous routes.
- g) In addition, the proposal anticipates that people subsequently found on the territory would be brought to the border, which would deprive them of already established support systems. For unaccompanied children, this may mean that they may be denied access to a child protection system, where they would have access to alternative care arrangements as well as a guardian and a lawyer, and instead be brought to a border area where they may not have immediate access to such professionals and where their accommodation and support may not meet agreed child protection standards.
- h) Furthermore, it is not clear that the proposals would in any event be workable in many EU Member States, as they are not currently equipped to undertake such procedures or detain such large number of migrants at the border. For example, borders areas often do not have child-friendly spaces, child protection staff and onward referral mechanisms.
- i) Finally, whilst it is welcome that the European Commission has acknowledged that the proposed border asylum procedure is not suitable for vulnerable persons, including unaccompanied children, or for accompanied children under the age of 12 and their families, we do not believe that any accompanied children, whatever their age, should be subject to these procedures and detained at the border for what may be a very long period of time. More generally, we are concerned that the restrictive procedures proposed, with diminished procedural safeguards and possibility for protracted detention, give rise to risks of human rights violations for all third country nationals.
- j) These risks cannot be avoided by employing the legal fiction that a third country national has not entered the EU, when they are physically in the territory of a Member State and are being processed by employees of that State. Such a legal fiction has been found to be unlawful by the European Court of Human Rights. For example, in **Amur v France**, Application No. 19776/92 the Court accepted that, if France held four Somalia nationals at an international airport, they became subject to French law and in **Hirsi Jamaa & Others v Italy**, Application No. 27765/09, the Court found that, when an Italian ship picked up migrants at sea, they became subject to Italian law. States should also respect their obligations under Article 2 of the UNCRC and ensure the rights of every child within their jurisdiction without discrimination, including children attempting to enter their jurisdiction.

Conclusion: As a consequence, the Pact's rationale for the new border procedures does not appear to be evidence-based. In addition, it does not appear to have been preceded by an adequate child rights impact assessment, as recommended in the [position paper](#) of the European Network of Ombudspersons for Children and authoritative guidance from the UN Committee on the Rights of the Child in its General Comments. Such a child rights impact assessment should address whether the proposed measures would respect children's rights and whether they are necessary, proportionate and workable. Moreover, there are significant concerns that the procedures will give rise to serious breaches of human rights law and at the same time fail to be effective in terms of border management. For these reasons, we recommend that the proposed screening and border procedures, as a whole, should be re-considered and reshaped.

At a glance: our recommendations on resetting the purpose and scope of the proposed screening and border procedures.

- ✓ Border zones should be recognised as being within the Member State's geographical and legal jurisdiction and no third country national should be deemed not to have "entered" the State.
- ✓ More broadly, the reform of the proposals in the EU Asylum and Migration Pact should start with a reconsideration of whether those persons claiming asylum and other protection could not be better managed and protected by reinforcing existing reception and procedural arrangements in the EU. This means improving and enhancing case management throughout the normal asylum and migration management procedures in the territory.
- ✓ Any new EU screening procedure should be designed as the first step in this enhanced case management system. Its central purpose should be triage (vulnerability screening and referral), with a view to more effectively protecting the human rights of those arriving and managing the challenges that their arrival poses to receiving states.
- ✓ Mandatory EU border procedures should be confined to two primary aims:
 - a) **screening**, which serves to identify possible risks to health, security and public order as well as an **individual vulnerability check** to identify and to refer individuals to appropriate procedures away from the border:
 - b) undertaking only those status determination procedures of adults which may be addressed in an accelerated way at the border. These concern only **manifestly unfounded cases**. Border procedures should include key procedural safeguards including the right to appeal. They should never be applied to any children, whether unaccompanied or accompanied.
- ✓ After screening of their immediate situation and needs, all children should be referred away from the border for a comprehensive best interests procedure, which will address both their reception needs and durable solutions.

2.2. EU screening procedures must be designed in a child-centred and child-sensitive manner.

The references to the need to prioritise the rights of children on the move, and to undertake best interests assessments before certain actions are taken, are welcome commitments in the new EU Pact on Migration and Asylum. But these proposals will remain an aspiration unless the screening procedure has both the right purpose and the safeguards to respect and to fulfil the best interests of the child.

The border primarily serves as an opportunity to identify and screen children, referring them (and their families) into the child protection system or other support mechanisms. They should be designed to ensure that children are not mistaken for, and treated as, adults. They should ensure that health and immediate protection needs, arising from vulnerability and risks, are identified and addressed. They should provide for child safeguards to be in place in initial screenings for national security and public order concerns.

Following initial screening procedures, all children, including unaccompanied children and families with children of any age under 18, should be referred away from the border for status determination after the remaining proposed screening processes. As we noted in our May [briefing paper](#), the border is not the place for full assessments of the circumstances and best interests of the child, which are essential to the determination of their claims. A durable solution, whether that be integration into the host State, transfer to another EU Member State or return to a third country, should be determined in the context of a normal procedure within the territory, with enhanced case management to ensure for a timely and properly supported procedure.

Accordingly, the initial screening process serves as the first step in a more efficient, streamlined process that responds to the needs of all children and secures durable solutions for them taking their best interests as a primary consideration. The journey of a child on the move through the EU's proposed faster and more efficient asylum and migration process will begin as soon as a migrant child arrives at an EU border. The ability of the child ultimately to obtain a durable solution that complies with the requirements of the UNCRC will depend on the quality of the engagement with the individual child by relevant professionals from this first encounter and may in some cases be determined by what happens at the border.

Particular risks may arise for *unaccompanied children*, including, where an individual's age is disputed, where they may have been trafficked or where age or additional vulnerabilities prevent them from fully comprehending or engaging with the screening or subsequent parts of the wider asylum and migration process. Errors may be made about whether a child is unaccompanied or accompanied or, even, whether an individual is a child, or whether the child is in a vulnerable situation such as being stateless.

It is critical that a child-centred and child-sensitive approach be applied in all cases, *whether children are travelling alone or within families*. For example, even if their parents are deemed not to be entitled to a substantive asylum procedure, due to their country of origin, it may be the case that the child within a family is entitled to international protection on the basis of child-specific persecution, such as child marriage, exploitation as a child soldier or exploitation for criminal purposes, and it would amount to a breach of their own international rights to deny them entry to the substantive asylum procedures. In the alternative, it may be

the case that a child is not in reality a member of the family with whom they are travelling because they are already being exploited or it is planned to exploit them in Europe for the benefit of the adults involved. Children in families should also be individually screened, in particular, as part of the vulnerability check to identify whether they are at-risk, for example, of trafficking or of statelessness.

The presence of professionals with the competence to identify children and undertake screening of their particular circumstances including vulnerabilities they may have and risks they face is essential. In addition, unaccompanied migrant children should always be provided with access to guardians and lawyers throughout the proposed process. Previous experience has also shown that screening procedures within wider border procedures are unlikely to be efficient or human rights compliant unless there has been a significant increase in specially trained personnel and resources.

Providing child protection officers, guardians and lawyers at a later stage of the process will not prevent a child continuing to be abused and exploited on arrival or them giving an initial account which renders their later accounts incredible. It will also not prevent a child, who is wrongly assessed to be an adult, being detained and referred into procedures which may deny them the international or national protection to which they are entitled.

In conclusion, a key practical issue at the border is the need to ensure the proper interaction between the migration management system and the child protection system. As encouraged by the UN Committee on the Rights of the Child and UN Committee on the Rights of Migrants and their Families in their joint General Comment No 22/3: States should *"ensure that the authorities responsible for children's rights have a leading role, with clear decision-making power, on policies, practices and decisions that affect the rights of children in the context of international migration."* It will be necessary to provide a practical and comprehensive structural link between the screening process and the child protection system, both for the purposes of the screening procedure itself and any onward referral. Inter-agency cooperation between border, migration and child protection agencies will be necessary to ensure that a multidisciplinary approach is taken to the screening process and accompanying assistance and support. Onward referral mechanisms will ensure that screening is a first step of an effective case management system which is integrated into both child protection and migration processes.

At a glance: general recommendations for mandatory EU screening procedures

- ✓ Screening procedures involving children must be explicitly shaped and guided by the best interests principle.
- ✓ As a starting point, this requires an obligation **to assess the individual circumstances of all children**, whether they cross the border alone or within families, regardless of their migration status or whether they make a claim for international protection. EU guidance on how this can be achieved should be developed to assist Member States in this regard.

- ✓ As well as meeting migration management responsibilities, **screening procedures should serve as an element of an integrated child protection system**. EU measures should expressly acknowledge the child protection responsibilities implicated by the arrival of children at the border.
 - ✓ EU law should ensure that an appropriate range of professionals are involved in the screening process to guarantee that initial screening procedures are conducted in a manner which meets an individual child's various needs. This should include the involvement of child protection officials at the border, alongside border agents.
 - ✓ EU measures should promote and facilitate **inter-agency coordination**, including through onward referral mechanisms.
 - ✓ At the border, EU measures should promote a **multi-disciplinary approach** to screening procedures, akin to the approach taken as regards individual assessments in the [Child Procedural Safeguards Directive](#) (Article 7).
 - ✓ EU measures should promote joint training (including through EU funding dedicated to this purpose or EU agency training).
 - ✓ To support Member States, the EU should develop guidance on ensuring the best interests of the child are a primary consideration in screening procedures.
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2.3. Screening procedures must include specific safeguards for children in screening procedures

EU screening procedures must contain a range of specific safeguards, including as regards the provision of information, independent support and assistance to children, identifying whether an individual is a child, identifying whether a child is accompanied by a parent, legal guardian or customary caregiver, undertaking health checks and identification of medical risks, identifying additional vulnerabilities, identification and referral of suspected child victims of trafficking, identification of risks to national security and public order, the debriefing process and prohibition of detention and deprivation of liberty. We address each of these in turn below.

Provision of information, independent support and assistance

Many children may find it difficult to understand what particular information is needed if they are given no indication of which of their many past experiences may be relevant to the situation they find themselves in. This will be even more the case during the proposed screening process where complex evidence and information is required of and about them, such as the information that may arise in a national security and public order screening or in a debriefing procedure. Yet, it is not proposed to provide the child with a lawyer, who could provide them with child-appropriate legal advice, nor to provide them with a guardian, who could assist them with information and support in order to better comprehend and negotiate an unfamiliar and challenging process.

A child's age and/or existing vulnerabilities may have a direct impact on their ability to provide an accurate account of their history and entitlements during seemingly practical checks relating to health, security and public order and during the de-briefing process. Any difficulties faced by the child will only be fully mitigated by the presence of a lawyer, who is able to explain the nature of the screening procedures, as well as a guardian, who can provide the child with the necessary support to enable him or her to have sufficient trust in the processes to disclose as much evidence as possible.

A lawyer and a guardian may also be needed to ensure that, if an individual's age is disputed, they are referred into an appropriate age assessment process within the national child protection system.

The consequences of a failure to provide a child with the assistance of these essential and complementary professionals may have very serious consequences for the child. For example, an unaccompanied child interviewed without a guardian or lawyer may give the mistaken impression that they have voluntarily taken part in actions that may give rise to a risk to national security or public order, due to past service as a child soldier or as a member of a criminal network, despite the fact that they did not have the capacity to give informed consent and had been exploited and abused by adults.

The Amended Proposal for a recast Asylum Procedures Regulation also proposes that the information collected during the screening procedure will be taken into account when subsequently examining a person's asylum application. But both unaccompanied and accompanied children may not have the capacity, understanding or language to articulate a claim for international or national protection during the screening process without the assistance of a lawyer and guardian. Furthermore, children may fear or be unable to trust the authority interviewing them.

For further discussion on the importance of legal assistance in border procedures, we refer you to the KIND Child Circle report on [Advancing Protection for Unaccompanied Children in Europe by Strengthening Legal Assistance](#).

Recommendation:

EU law should ensure that, during the screening process, children must be provided with a lawyer and a guardian before anything more than basic biometric and health checks are conducted. If possible, these professionals will continue to represent the child once they have been referred into the child protection system. If this is not possible, they will act in a temporary capacity but liaise with any more permanent lawyers and guardians to ensure consistency and a continuation of any trust they may have been able to establish with the child.

Identifying whether an individual is a child

Although there may be a small minority of individuals who pose as children on arrival, the harm that could be caused to unaccompanied children wrongfully thought to be adults in the proposed border procedures could be significant. They will become subject to detention in adult facilities and deprived of the appropriate procedures and the assistance of a guardian. This in turn may lead to them being referred into the border asylum and return procedures and to them being refouled. Furthermore, children often view their chronological age as a defining part of their identity and an erroneous age assessment may lead to them losing all trust in the asylum and migration system and their failure to disclose the basis on which they are entitled to international or national protection.

In addition, it is widely acknowledged that it is a challenge to accurately assess an individual's age. This is because their past health, diet and experiences can have a significant impact on their appearance and medical assessments of age identify maturity, as opposed to chronological age. As a consequence, EASO has recommended that an age assessment is best undertaken by a multi-disciplinary assessment process, which brings together a range of professionals with experience of working with children. It is unlikely that this would be possible as part of the proposed screening procedure, due to the very limited timeframe and the lack of the necessary range of trained professionals at the border. It would be possible if the individual was referred into the Member State's child protection system and the Member State had adopted the necessary Standard Operating Procedure to undertake a multidisciplinary age assessment.

Referring an age-disputed individual away from the border at the earliest opportunity would also be in compliance with the recognition, elsewhere in the Pact, that a substantial number of children arriving at the border may have been trafficked into the EU, and in line with Article 13.2 of the EU Trafficking Directive that requires when age is uncertain and there are reasons to believe that the person is a child, that the person is presumed to be a child in order to receive immediate access to assistance, support and protection.

In addition, the proposals contained in the Pact create not only a watershed between exclusion from later border procedures at 18 for unaccompanied children but also include a watershed at 12 for accompanied children. This is likely to pose additional challenges and child rights violations as migrant children may often lack documentation proving their age and there are no scientifically proven methods to distinguish a 12-year-old from a 13-year-old child.

Recommendation:

EU law should provide that, when there is reasonable doubt in relation to an individual's correct chronological age, the individual shall be given the benefit of the doubt and treated as a child until a multi-disciplinary age assessment process can be arranged within the State's child protection system, away from the border, and with assistance from a guardian and a lawyer.

Identifying whether a child is accompanied by a parent, legal guardian or customary care-giver

It may be the case that a child on the move has been unofficially adopted by a family during their flight from their country of origin or on their journey to Europe for humanitarian reasons and that their inclusion in the family is in their best interests and amounts to a de facto adoption or [kafala](#) (see further ISS publication [here](#)). But there may be other children who have been brought from their country of origin or been “adopted” by adults on their journey for the purpose of exploitation or abuse on the journey or in the country of destination.

Identifying the true intention of the adults concerned will require the involvement of those with an expert knowledge of both child protection and child trafficking. The child concerned will also need the assistance of a guardian with an understanding of child trafficking, as their fear or even their misplaced attachment to the family may mean that they are unwilling to disclose treatment they may have experienced prior to arriving at the border. This may mean that they adhere to a “legend” or story provided to them by their trafficker for a period of time.

It may also be the case that the child has no understanding of the fate that may befall them if they remain with the adults concerned. Records may disclose that the adult has a history of crossing borders with other children.

Recommendation:

If there are reasonable grounds to suspect that a child is not travelling with a parent, legal guardian or customary care-giver, the adults should be interviewed on their own by professionals with knowledge of both child protection and child trafficking. Meanwhile, the child should be provided with a guardian and interviewed in the presence of that guardian. It should be acknowledged that it may take time for the child to be prepared to disclose any past abuse and that the adult only intended to exploit the child once they had crossed the border.

Health checks and identification of medical risks

The proposed screening procedure includes a preliminary health check. No information is provided about whether such health checks will be carried out by independent and professionally qualified medical staff or merely by border guards. The extent of the proposed checks is also unclear. Screening for infectious diseases, such as Tuberculosis and COVID-19, would clearly be in the interests of both the child and anyone else with whom they may subsequently come into contact and could be undertaken by simple blood or other tests by appropriately qualified medical staff at the border. In such cases, a positive result may result in a short period of quarantine, but does not warrant exclusion from entry into the territory and procedures. It may also be in the best interests of a specific child for blood or other tests to be carried out to ascertain whether a child is suffering from conditions, such as diabetes or sickle-cell anaemia, which may place them at risk, if not treated as a matter of urgency.

It is also possible that even an initial health check would suggest that a child has been subjected to the type of abuse or exploitation associated with child trafficking, torture or sexual assault or being recruited as a child soldier and necessitate a swift referral to a place of safety away from the border.

However, a short medical examination at a border is unlikely to be able to identify the range of additional vulnerabilities which a child may have, including physical, mental or cognitive disabilities. It is also the case that more intrusive examinations may retraumatise a child who has already been abused or exploited by adults in the past. Therefore, these should only take place after the child has been referred into the child protection system and assisted to provide informed consent in the presence of an appointed guardian.

Recommendation:

EU measures should specify that medical screening at the border should be restricted to that needed to identify viruses, infectious diseases and serious illness or abuse and must be carried out by independent and appropriately qualified medical staff.

Identification of additional vulnerabilities

The proposed Screening Regulation also fails to identify the nature of any additional vulnerabilities to be considered within the screening process or acknowledge that these vulnerabilities will impact on any future decision to grant the child international or subsidiary protection or relocate them to another Member State, subject them to a return sponsorship procedure or return them to a third country. In addition, although it is said that during the screening process the child's rights and vulnerabilities will be taken into account by providing them with support by personnel who are trained and qualified to work with children, it is not suggested that these will be trained child protection officers. Instead, they may be officials concerned with border management, such as those from the European Border and Coast Guard Agency. It is unlikely that such officials will be sufficiently trained to identify additional vulnerabilities, such as a physical or cognitive disability or a psychiatric or psychological disorder. In addition, even if they were able to identify such additional vulnerabilities, it is unlikely that there would be the necessary human or financial resources available at the border to provide the child with the necessary assistance in the form of a sign language interpreter, a mental health interpreter, a support assistant or a cultural mediator. This is one more reason for ensuring that a child is referred into the national child protection system after any initial identity, medical and security checks, so that the extent of their need for special procedural supports can be properly explored and ensured.

There are also difficulties which accompanied children might encounter as part of the screening process. In particular, within a short procedure conducted at the border, it would not be possible to ascertain whether being accompanied provides the child with the necessary protection from risks of being abused, exploited or trafficked or whether the child had additional vulnerabilities to those of any head of their family such as being stateless or having their own grounds for claiming asylum.

Recommendation:

EU law should specify that the process for screening children for additional vulnerabilities should be undertaken by appropriately qualified child protection officers in the presence of the child's guardian.

Identification and referral of suspected child victims of trafficking

The EU Security Union Strategy includes, as a specific theme, the need for the early identification of non-EU victims of human trafficking and yet, although the proposed Screening Regulation makes a general reference to EU law and the Charter of Fundamental Rights, it does not address the challenges posed by the variety and complexities of the phenomena of child trafficking. Merely, relying on border officers to identify whether a child has been trafficked, as part of a short and generalised screening process, does not adequately address the issue. Furthermore, no attempt is made in the Pact to create links with the screening process within National Referral Mechanisms for trafficking, which have already been established in many Member States.

Given the limited time and resources provided for the screening process, professionals at the border will be able to go no further than to decide whether there are reasonable grounds for believing that a child may have been trafficked. It will be necessary to ensure that all border guards and other border professionals have the necessary competence to undertake this initial task and also to effectively distinguish between human trafficking and human smuggling. Then it will be necessary to refer the child into the appropriate National Referral Mechanism away from the border.

Recommendation:

EU measures should ensure that border and other professionals should be trained to identify whether there are reasonable grounds for believing that a child may have been trafficked and to distinguish between human trafficking and human smuggling. If it is found that there are reasonable grounds for believing that a child has been trafficked, they must be referred into the appropriate National Referral Mechanism and to a place of safety away from the border without delay. The European Commission must take into account the fact that the 2020-2024 EU Security Union Strategy recognises the extent of trafficking into and within the EU and, therefore, consult with its Anti-Trafficking Co-ordinator, the EU Civil Society Platform against trafficking in human beings and the EU National Rapporteurs or equivalent mechanisms to ensure that the screening and border proposals meet the needs of children who may have been trafficked into or within Europe.

Identification of risks to national security and public order

An unaccompanied or accompanied child may be denied entry to the migration and asylum procedure at the screening stage, if they or a parent, in the case of an accompanied child, are deemed to be a risk to national security or public order. The possible repercussions of an incorrect decision as to such a risk are immense and potentially place the child at risk of refoulement. Yet, an unaccompanied child may not have the necessary capacity to understand the possible consequences of basic information provided at the border. A parent may be deemed a risk to national security, but their child may actually hold political or religious views, which are in conflict with their parent and may have an individual right to international protection from the very group with which the parent is thought to be affiliated. In the alternative, it may be the case that a child has been trafficked and the adult with whom they are travelling is denied entry on public order grounds and the child is then returned to another State to be exploited and abused there.

Recommendation:

EU law should provide that a child should not be denied entry on national security or public order grounds without a more detailed interview away from the border for which they are able to prepare with the assistance of a guardian and a lawyer. They must also be provided with the opportunity to bring a legal challenge against any decision to exclude them from a substantive migration and asylum process. Pending the outcome of any such appeal, they should be referred into the national child protection system, which may provide them with secure accommodation if this is deemed necessary.

The de-briefing process

The de-briefing form, which is annexed to the proposed Screening Regulation, contains standard biometric questions, but it also includes a section relating to the child's journey to the EU and the funding for such a journey. Children may struggle when initially screened on arrival to give a full explanation of their journey, due to a mere lack of experience of international travel. They may also have been instructed by a parent or smuggler to give a false account of their journey in order to disguise the adult's involvement in the process. A child may continue to give such false accounts in the de-briefing process and, therefore, further damage the credibility of their account. In the alternative, when a child is asked similar questions during the de-briefing process, they may presume that their earlier answers were not acceptable and may create an alternative account to please their interviewer.

The Amended Proposal for a recast Asylum Procedures Regulation accepts that the information collected during the screening procedure will be taken into account when subsequently examining a person's asylum application. Therefore, the information contained in the "comments and other relevant information" section of the de-briefing form may have a significant effect on the outcome of a child's claim for international or national protection.

Furthermore, no specific questions are asked to ascertain whether a child may be entitled to international or national protection for reasons, which are not contained in the Refugee Convention, but are provided for in the European Convention on the Protection of Human Rights and Fundamental Freedoms, the UNCRC, the International Covenant for Civil and Political Rights, the Convention on the Status of Stateless Persons, the Convention on the Reduction of Statelessness, the Convention against Torture, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence, the Convention on the Rights of Persons with Disabilities or the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

Recommendation:

EU measures must acknowledge that non biometric information collected at the border may impact adversely on later decisions concerning a child and, therefore, must ensure that such information is not be collected from a child without a guardian and lawyer being present.

Prohibition of detention and deprivation of liberty

Experience in Greece and other arrival locations indicates that it is not generally possible to provide accommodation for unaccompanied children at the border, which is capable of meeting the international standards contained in the [UN Guidelines on Alternative Care](#). In addition, the United Nations Global Compact has advised that children in families should be provided with community-based and non-custodial accommodation, where they can access education and health facilities and where their right to family life and family unity can be maintained.

The complexities of the proposed screening process, when a child is involved, indicate that detaining them at the border whilst the proposed procedures are completed will be for a matter of weeks, and not the days provided for in the proposed Screening Regulation. Even the proposed five to ten-day screening timeframe would necessitate a very large increase in personnel and resources, which may well be beyond the capacity of a number of EU Member States and which may very well lead to delays of much longer than ten days at the screening stage of the process. In response to the new Pact, UNHCR has stated that detention of adult asylum-seekers should not be used by default or mandatorily for all arrivals, but rather remain the exception. In particular, it is its view that minimal periods of detention are only permissible at the outset to carry out initial identity and security checks in cases where identity is undetermined or disputed, or there are indications of security risk.

Where children are involved, international opinion is very clear and agrees that children should never be detained for immigration-related purposes. Furthermore, [UNHCR's position](#) is that alternatives to detention of families should be explored and suitable alternative care arrangements provided to unaccompanied children as determined by the competent child-care authorities.

Yet the proposals will lead to children over the age of 12 being detained, albeit with their parents. It would appear that little research has been conducted into the rate at which children mature between the ages of 12 and 18 and whether this renders them more physically, psychologically and emotionally capable of withstanding potentially long periods of detention without suffering from various types of harm. It is also possible that some of these children may have been trafficked by the adults with whom they are travelling and may be at further risk of abuse and exploitation whilst detained.

It is also the case that creating such a sub-set of children, who are liable to detention, may encourage parents to send an older child through a border procedure alone to ensure that they are not detained and that the child may then be at risk of exploitation and abuse by other unrelated adults in the community or by being transferred to another Member State and permanently separated from their family.

Recommendation:

EU law should provide that children who arrive at the border must be referred into an appropriate child protection system or alternative family accommodation within 24 hours of their arrival at the border. Such systems should be required to liaise with actors in the migration management system, so that more complex screening processes can subsequently be completed and recorded.

After the checks and assessments that can be undertaken swiftly at the border are completed, unaccompanied children should be placed in suitable alternative care arrangements within the national child protection system and accompanied children should be accommodated with other family members in open accommodation, that meets their essential needs.

At a glance: specific safeguards for children in screening procedures

- ✓ EU screening procedures must contain a range of specific safeguards, including as regards the provision of information, independent support and assistance to children, identifying whether an individual is a child, identifying whether a child is accompanied by a parent, legal guardian or customary caregiver, undertaking health checks and identification of medical risks, identifying additional vulnerabilities, identification and referral of suspected child victims of trafficking, identification of risks to national security and public order, the debriefing process and prohibition of detention and deprivation of liberty.
- ✓ The EU screening proposal should be amended to include specific obligations as regards the **information, independent support and assistance to be provided to children throughout the screening process**. In particular, this will involve guardianship for unaccompanied children and free quality legal assistance for all children during the screening procedure and all subsequent procedures.

- ✓ Identification as a child: age assessment processes during the screening procedure should be confined **to assessing whether there is a reasonable doubt as to the age of an individual**, thereafter applying the benefit of the doubt and treating the individual as a presumed child, subject to a subsequent in-depth multi-disciplinary age assessment procedure away from the border.
- ✓ Identification of a child as accompanied or unaccompanied: if there are reasons to believe that a child is not accompanied by a parent, legal guardian or customary care-giver, they and the adult should be interviewed separately; with the child being assisted by a guardian. Such an interview should be conducted by child protection officers away from the border.
- ✓ EU measures should specify that health checks and identification of medical risks at the border should be restricted to those needed to identify viruses, infectious diseases and serious illness or abuse and must be carried out by independent and appropriately qualified medical staff.
- ✓ EU law should specify that the process for screening children for additional vulnerabilities should be undertaken by appropriately qualified child protection officers in the presence of the child's guardian.
- ✓ Identification of risk of child trafficking and referrals: if there are reasons to suspect that a child has been trafficked, they should be removed to a place of safety away from the border for a full assessment of their situation and best interests. In cases where there is reasonable doubt raised about the relationship between the child and accompanying adult or when there are indications of trafficking, it may be appropriate to interview the child separately, to assess the risk of trafficking as well as whether it is in their best interests to be separated from the accompanying adult.
- ✓ Identification of statelessness and referrals: if there are indications that a child or family member is stateless, they should be referred to a statelessness determination procedure away from the border. See further the [recommendations](#) from the European Network for Statelessness.
- ✓ The scope and purpose of debriefing procedures for children at the border should be limited. To the extent that information collected during the screening procedure, including the debriefing procedure, will be taken into account when subsequently examining a person's asylum application, **children must receive independent support and assistance, including free quality legal assistance**, before and during the debriefing procedure.
- ✓ EU measures should ensure that **particular safeguards for children are in place as regards national security and public order risk assessments**, including where their parents are assessed as risks to national security and public order.
- ✓ Detention of children for the purposes of the screening procedure should be prohibited.
- ✓ **Screening procedures involving children should in principle not exceed 24 hours.**
- ✓ In exceptional circumstances, such as instances of mass influx, and to the extent that screening procedures take longer, **adequate reception conditions, suitable for children, must be put in place at the border.**

2.4. Achieving transparency and accountability for procedures at the border will be vital to avoid violations of the rights of persons at the border.

Achieving transparency and accountability for procedures at the border will be vital to avoid violations of the rights of persons at the border, whether arising as a result of deliberate actions or from omissions, such as failure to put in place adequate resources. The proposed monitoring mechanisms need to be designed so as to take account of the specific needs of children as well as the safeguards that should be in place for them

The Pact's proposal that Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the pre-entry screening is a welcome proposal. Specifically, each Member State should establish an independent monitoring mechanism, to ensure that fundamental rights are observed throughout the screening process and that any allegations of the breach of fundamental rights are properly investigated. The monitoring mechanism should be part of the governance and monitoring of the migratory situation provided for in the new Regulation on Asylum and Migration Management. Therefore, EU Member States should integrate the results of their national monitoring mechanism into their future national strategies.

At a glance: our general recommendations for independent mechanisms monitoring of fundamental rights in pre-entry screening and at the border

- ✓ The purpose of monitoring should not only be to prevent and respond to human rights violations, but also to inform necessary interventions and actions such as policy reform, strengthening of interagency cooperation and targeted capacity building.
- ✓ As advocated for by [ECRE and partners](#), monitoring needs to be expanded beyond the screening procedure, be independent of national authorities, and involve independent organisations such as NGOs.
- ✓ Monitoring activities should examine procedures, safeguards, services and conditions, which may affect children. This includes age assessment procedures, identification as unaccompanied or under the responsibility of an adult, identification of children who may have been trafficked, any deprivation of liberty, provision of information, access to guardianship, measures as regards national security and public order, (non) assessment of circumstances of children within families, referral to child protection authorities and access to services.
- ✓ EU law and operational measures should ensure that complaints mechanisms are established, fully resourced, child-friendly and accessible.
- ✓ EU law should ensure that alleged victims of rights violations have access to services including legal assistance in order to seek justice and secure remedies. Children

must be able to access legal assistance providers who are competent to support them in relation to their specific rights and needs. Independent guardians should support unaccompanied children in seeking remedies.

- ✓ Monitoring should involve different actors including child protection actors.
- ✓ EU operational measures should enhance effective cooperation between EU and national authorities as well as with civil society actors and international monitoring bodies.
- ✓ A monitoring framework should also identify the mandates and roles of different actors, who may have monitoring of border procedures in their remit, with a view to ensuring all of their activities are properly considered in terms of recommendations for change. This includes specific monitoring mandates of actors such as GRETA and Children's Ombudsmen.
- ✓ EU law should require Member States to put in place adequate safeguards to guarantee the independence of national mechanisms

The Pact proposes that the Fundamental Rights Agency (FRA) issue general guidance for Member States on the setting up of such mechanisms and on its independent functioning. Furthermore, Member States may request the FRA to support them in developing their national monitoring mechanism, including safeguards for independence, as well as the monitoring methodology and appropriate training schemes.

At a glance: our recommendations for role of the Fundamental Rights Agency

- ✓ In line with the proposal, FRA should issue general guidance for Member States on the setting up of such mechanism and its independent functioning.
 - ✓ FRA guidance should specifically address how children's rights will be monitored (e.g. in procedures, conditions, safeguards and supports).
 - ✓ FRA should consult child rights and child protection experts (such as Ombudspersons for Children and specialised NGOs) when developing the guidance.
-

Conclusions

The stakes are high when putting in place measures at the EU external borders. We recommend that the measures proposed by the Commission should be remodelled so as to respect children's rights and to properly take into consideration the best interests of every child. Having a more child-centred and child-sensitive approach, with a focus on triage, vulnerability screening and onward referral at the border, ultimately will contribute to more efficient migration management within the EU.

Any EU measures at the border should also connect more fully with actions under the [Communication on the protection of children in migration](#), the upcoming EU Strategy on the Rights of the Child and EU anti-trafficking priorities.

Consequently, we urge all stakeholders to consider fully the implications for children at all stages of processes at the border. We also encourage national child protection authorities and agencies actively to consider these proposals and to provide input to their national governments in relation to the ongoing EU negotiations so as to ensure that child protection responsibilities are fully addressed in relation to all children on the territory of the EU.

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