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eurochild



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UNDOCUMENTED MIGRANTS



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Save the Children

Terre des Hommes
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Mr. José Manuel Barroso
President of the European Commission
1049 Brussels, Belgium

- cc. Secretary-General of the European Commission, Ms. Catherine Day
- cc. Commissioner for Home Affairs, Ms. Cecilia Malmstrom
- cc. Commissioner for Justice, Fundamental Rights and Citizenship, Ms. Viviane Reding
- cc. Commissioner for Employment, Social Affairs and Inclusion, Mr. László Andor
- cc. Commissioner for Health, Mr. Tonio Borg
- cc. Commissioner for Education, Culture, Multilingualism and Youth, Ms. Androulla Vassiliou
- cc. Ms. Clara Martinez Alberola, Adviser, Cabinet of Mr. Barroso
- cc. Commission Coordinator for the Rights of the Child, Ms. Margaret Tuite

Brussels, 18 February 2014

Dear President Barroso,

As the European Commission is finalising its Communications on the future of Justice and Home Affairs policies post-Stockholm **we, the undersigned migrants' rights and children's rights organisations, are writing to urge you for a more coherent and rights-based policy approach towards migrant children.** Specifically we ask you to ensure future Home Affairs policy addresses existing shortcomings in meeting the EU's legal obligations towards migrant children, and that children's rights become a strategic and actionable priority for EU Home Affairs policy in the coming years.

Children migrate for a variety of reasons and their migration, residence and citizenship statuses may vary during their migration project. While children have different and particular protection needs, which must be taken into account, there should be no hierarchy of protection of rights - every child involved in international migration should be regarded, first and foremost, as a child.

The Stockholm Programme contributed to widespread recognition of the importance of securing child rights in EU action and greater mainstreaming of children's rights. Substantial legislative progress was made in both Home Affairs and Justice on EU measures involving children, in particular within the field of trafficking, sexual exploitation and rights of victims, as well as some safeguards developed for asylum seeking and unaccompanied children.

However, despite a clear legal framework obliging the European Union and all EU Member States to guarantee rights to all children under their jurisdiction, key institutional bodies – including the EU's Fundamental Rights Agency, the Council of Europe Parliamentary Assembly, the European Committee of Social Rights, the European Court of Human Rights, the European Court of Justice, and the European Network of Ombudspersons for Children - have underlined systematic violations of migrant children's rights in the European Union. These reports and rulings have determined that migrant children face limited access to justice and essential services including education and health care, and are subjected to apprehension, administrative detention and deportation, due to their or their parents' migration status.

The shortcomings stem from a lack of explicit focus on ensuring the rights of *all* migrant children in Home Affairs policy and practice, limited monitoring of implementation, and a lack of policy coherence and coordination in the treatment of migrant children. While the appointment of a Child Rights Coordinator within DG Justice has been a welcome step, it currently lacks the mandate and resources to ensure that children's rights and the EU's policy objectives regarding child well-being are integrated throughout DG Home policy and action as well as to ensure that the rights of migrant children are addressed in other relevant policy areas in coordination with other DGs (including EMPL, EAC, SANCO, DEVCO and EEAS).

We thus ask the European Commission to:

1. Develop and adopt a Home Affairs Child Rights Action Plan, in consultation with key stakeholders.

The end of the Stockholm programme coincides with the end of the Action Plan on Unaccompanied Minors. This should be replaced by a Home Affairs Child Rights Action Plan, to meaningfully integrate child rights throughout home affairs policy and practice, which would:

- Reiterate the political commitment of the EU to upholding the rights of all migrant children – both unaccompanied children and children who are accompanied by their parents or other caregivers.
- Include structural mechanisms to ensure that the rights of every child are protected throughout EU Home Affairs policies, including mandatory child rights impacts assessments carried out by child rights experts.
- Strengthen the child protection safeguards developed for unaccompanied children and child victims of trafficking and adapt them to protect all children, including those who are accompanied by their parents or other caregivers.
- Develop measures to ensure better protection of migrant children turning 18, during their transition to adulthood.
- Ensure that the Strategic Guidelines adopt and promote an integrated approach to child protection, and explicitly recognise the EU's role and potential to support Member States in strengthening their national child protection systems, such as legislation, policy, awareness and resources.
- Operationalise existing legal safeguards in EU and national legislation, as well as relevant jurisprudence from the courts and relevant bodies (ECJ, ECtHR, ECSR, CRC), providing practical support for implementation.
- Including measures for robust monitoring and evaluation, and make full use of available tools such as infringement proceedings to ensure compliance with child rights obligations.
- Ending the immigration detention of children in the EU should therefore be a concrete goal within the next strategic guidelines. The Committee on the Rights of the Child has reiterated that detention for immigration purposes is always a child rights violation. Together with Member States, the EU must develop alternatives to detention both for unaccompanied children as well as undocumented children accompanied by their families.

2. Improve policy coherence by situating the Home Affairs Child Rights Action Plan within a wider, comprehensive EU Framework on Children's Rights.

The end of the Stockholm Programme also coincides with the end of the EU Agenda on the Rights of Child and the development of EU guidelines on child protection systems. A future strategic Framework on child rights should develop an integrated and holistic approach to children's rights. This should include:

- Improved structural coordination across the European Commission and with stakeholders, including civil society organisation, to effectively mainstream children's rights in all EU processes. The mandate and resources of the Child Rights Coordinator should be strengthened to concretely integrate the rights, well-being and development of every child through EU legislative and non-legislative action and address the underlying causes of children's rights violations. The rights of migrant children, including those with irregular residence status, should be explicitly addressed.
- Specific time-bound and well-resourced actions with ambitious and measurable objectives, including measures to promote non-discriminatory access to mainstream services, protection and justice for all children, regardless of their or their parent's migration status. This should include promoting a separation between access to services, protection and justice and immigration enforcement, to safeguard access for children and their families, by implementing the [EU Fundamental Rights Agency's \(FRA\) guidelines on apprehension practices](#).
- Ensure dedicated resources to tackle issues affecting all children through specific budgetary commitments and promoting better accountability in the use of funds for fulfilling the rights of children, including through applying the partnership principle in the deployment of EU funds to support national implementation.

Migrant children are being made vulnerable by our laws and policies on migration. Some migrant children, particularly undocumented children, both accompanied by their families and alone, are falling through the gaps in the existing policy framework. This is creating an urgent situation on the ground, where migrant children's health, well-being and development is being harmed in the short and long term. The future of the young is the future of Europe. Migrant children cannot be left behind.

The developments in Home Affairs policy present a vital opportunity for the European Union to collectively address the shortcomings concerning migrant children and to meet the EU's legal obligations to every child in its jurisdiction. Children's rights should be a strategic and actionable priority for EU Home Affairs policy in the coming years. We respectfully urge the President to ensure that the forthcoming European Commission Communication reflects this.

We thank you in advance for the consideration of our proposals.

Sincerely,

Defence for Children International - Belgium
Eurochild
European Public Health Alliance
FEANTSA
International Falcon Movement - Socialist Education International
PICUM – Platform for International Cooperation on Undocumented Migrants
Save the Children
SOS Children's Villages International
Terre des Hommes International Federation
World Vision