



Save the Children

SAVE THE CHILDREN'S COMMENTS ON THE COMMISSION'S PROPOSAL FOR THE REVISION OF THE RECEPTION DIRECTIVE

Introduction

Save the Children Europe Group (hereafter Save the Children) welcomes the significant and necessary improvements in promoting the rights of children and ensuring their protection, contained in the Commission's proposal for the revision of the Reception Directive.

Save the Children encourages the European Parliament and the Member States *both* fully to support these revisions *and* to achieve some further progress necessary in key areas. We refer to our detailed comments on the revision of the Reception Directive published before the adoption of the proposal which can be found at http://www.savethechildren.net/alliance/europegroup/europegrp_pubs.html

Here we focus on a number of core key issues, including:

- (a) the definition of family members;
- (b) obligations in relation to guardianship and legal assistance;
- (c) the avoidance of detention for children within families; bolstering the provisions requiring Member States to consider alternatives; more safeguards in relation to detention; and
- (d) removing the ability to place unaccompanied minors aged 16 or over in accommodation for adult asylum seekers.

1. Support for Improvements in the Commission's Proposal

As a preliminary point, Save the Children very much welcomes the fact that the Commission Proposal significantly improves the child specific provisions of the Reception Directive, including through the following:

- the UN Convention on the Rights of the Child (UN CRC) and the EU Charter of Fundamental Rights are referenced;
- specific "guarantees for minors" are established, including the obligation that the best interests of the child shall be a primary consideration for Member States with respect to all procedures under the directive, detailing factors to be taken into consideration as regards best interests, as well as a recognition of the right to be heard;
- a definition of a "minor" as a person below the age of 18 is included;
- there is some extension of the definition of "family members";
- there is a clearer recognition of the principle of family unity;
- there are some extensions to the provision of education;
- more rapid access to the labour market is established, an important factor in improving the situation for families with children;

- children involved in asylum process can access the same health services as citizen children;
- detention of unaccompanied minors is prohibited, with detention of other minors taking place only if it is in their best interests;
- free legal assistance for review of detention is provided;
- Member States must put in place family tracing procedures.

2. Priorities for Further Amendments

Key outstanding issues for the European Parliament and Council to address in relation to child rights are as follows:

(a) Definition of Family Members

Article 2: the limitation of “family members” by the term “insofar as the family already existed in the country of origin” means that children born in countries of transit or in countries of destination are simply not identified as family members and therefore Member States are not obliged to treat them as family members. Equally, children born of couples formed outside the country of origin may not be recognised as family members of minor applicants.

It is not clear what legitimate justification exists for depriving a child of the right to have its relationship with its family recognised and respected. We recommend deletion of the limitation.

(b) Appointment of guardian and legal representative

Article 19: Save the Children believes that every separated child who arrives in the EU should be appointed an independent guardian who has powers to represent the child’s best interests in order to ensure that their welfare and protection needs are properly safeguarded within the context of the asylum determination and immigration process and that their support and care needs are met by all responsible agencies. This is a crucial safeguard to ensuring that the State’s child protection system reaches out to these children.

We believe the Reception Directive should include a definition of qualifications and role of a guardian based on General Comment No. 6 and the SCEP Statement of Good Practice in the following terms:

“A guardian should be appointed to advise and protect the separated child immediately upon identification, to ensure that all decisions are taken in the child’s best interests and to exercise legal capacity for the child where necessary. The guardian should be consulted and informed regarding all actions taken in relation to the child.

A guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered.

Organisations or individuals whose interests could potentially be in conflict with those of the child should not be eligible for guardianship.

Where an organisation is responsible for the guardianship system within a Member State, it should ensure that an individual is appointed to act as a guardian for each child.”

We recommend deletion of 19.1.

As well as the appointment of a guardian, a qualified legal representative should be appointed to advise the child on his or her rights and the procedures associated with those rights, including asylum procedures, any other protection procedures and return procedures under national law. Such representative should have the necessary knowledge of the special needs of minors. Such legal assistance should in general be provided free of charge. This may appear in the revision of the Procedures Directive.

(c) Detention

We very much welcome the proposed prohibition on detention of unaccompanied minors. We would also welcome a statement that “detention of families with children is, as a general rule, prohibited.” In the alternative, the Directive might indicate that “detention of families with children should be avoided”.

If the option of detaining children within families is retained, we would suggest inclusion of a bolstered reference to the ongoing consideration of alternatives in Article 11 (5): “*where persons with special needs are detained Member States shall ensure regular monitoring and adequate support, as well as ongoing consideration of alternatives to detention*”. In this scenario, we also welcome the inclusion in the draft Report of a reference to “open-air activities”. We would suggest that this be bolstered by the inclusion of “*daily open-air activities.*” We would also recommend express reference in Article 11(2) to “*the availability of education outside the detention facilities, save in exceptional circumstances*” and right of access to adequate medical services. On Article 10(2), given the narrow definition of family members, we suggest this should include visitation rights with ... “*family members and relatives*”.

(d) Accommodation for Unaccompanied Minors

Article 23 (2) Save the Children recommends removing the possibility for Member States to place unaccompanied minors aged 16 or over in accommodation centres for adults. Such children are recognized as being in a vulnerable situation and should not be placed in situations that may increase this vulnerability.

Contact Person:
Rebecca O'Donnell
Save the Children Brussels Office
Asylum, Migration and Trafficking
rebecca.odonnell@savethechildren.be