

LOGOS

**Joint open letter to the European Council calling for
European commitments on children's rights to be prioritised
in future common migration and asylum policies**

Brussels, 14 May 2014

Mr. Herman Van Rompuy
President of the European Council
B-1048 Brussels

cc. Permanent Representative of Greece, Ambassador Théodoros N. Sotiropoulos
cc. First Counsellor, Permanent Representation of Greece, Mr. Spyridon Vouldgaris
cc. Permanent Representative of Italy, Ambassador Stefano Sannino
cc. Deputy Permanent Representative, Ambassador Marco Peronaci
cc. Attaché to the Permanent Representation of Italy, Mr. Gennaro Capo
cc. All Permanent Representatives to the European Union
cc. Member of the Cabinet of Mr Van Rompuy, Ms. Sarah Nelen
cc. Commissioner for Home Affairs, Ms. Cecilia Malmström
cc. Commissioner for Justice, Fundamental Rights and Citizenship, Ms Viviane Reding

Dear Mr. Van Rompuy

In view of the upcoming June European Council, where strategic guidelines will be adopted outlining future EU Home Affairs policies, **we, the undersigned organisations and children's ombudspersons of Europe,ⁱ are writing to urge member states to build on previous commitments to children and make child rights a priority.**

Of the estimated 232 million international migrants worldwide, 35 million (15 per cent) are children and youth under the age of 20.ⁱⁱ There are no reliable estimates for the number of child migrants in the European Union. Children migrate for a variety of reasons and their migration, residence and citizenship statuses may vary during their experiences of migration. 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. As the Council has noted, 'the EU Charter for Fundamental Rights and the United Nations Convention on the Rights of the Child, establish that children should be treated as such regardless of their migratory status, nationality or background'.ⁱⁱⁱ

The Stockholm Programme contributed to widespread recognition of the importance of securing child rights across all EU action, committing to systematically and strategically take child rights into account with a view to ensuring an integrated approach. Specifically, it calls for children in particularly vulnerable situations to receive

special attention, and stresses that 'all forms of discrimination remain unacceptable'.^{iv} Substantial legislative progress was made in this regard, in both Home Affairs and Justice, in particular within the fields of trafficking, sexual exploitation and rights of victims, as well as some safeguards developed for asylum seeking and unaccompanied children.

Nonetheless, many migrant children in vulnerable situations^v are falling through the gaps in the current common protection framework. Despite the clear legal framework obliging the European Union and all EU Member States to guarantee rights to all children under their jurisdiction, key institutional bodies^{vi} have underlined severe and systematic violations of migrant children's rights in the European Union, including the right to life. 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, as well as collective expulsions, push-backs and border control practices that endanger their lives when trying to enter EU territory, due to their or their parents' migration status. In the context of migration, children are placed in situations of heightened risk.^{vii} The impacts of our laws, policies and practices on migrant children's rights, safety, health, well-being and development are not being systematically nor strategically taken into account. There is an urgent need for common European responses to meet this common challenge and the EU and its member states' legal obligations and political commitments to every child in their jurisdiction.

The European Commission Communication on the future of EU Home Affairs policies,^{viii} recommends that vulnerable migrants, including women, young migrants and unaccompanied children receive targeted support, and that a 'best interests of the child' approach is practically applied in accordance with the UN Convention on the Rights of the Child.

We ask the head of States and Governments to build upon these European commitments in the Council Conclusions and:

1. **Reiterate the EU and its member states' commitments to uphold the rights of EVERY child in the context of migration in accordance with the UN Convention on the Rights of the Child (UN CRC), the Treaty on the European Union, EU Charter on Fundamental Rights (the Charter) and other relevant EU legislation.** This implies that every child will be treated as a child (and holder of rights), first and foremost, regardless of their or their parents' migration or residence status, whether they are documented or undocumented, accompanied or unaccompanied. This includes respecting the best interests of the child, a principle aimed at ensuring that every child can enjoy all the rights recognised in the UN CRC and the holistic development of the child.

Following from this:

2. **Commit to ending discrimination in access to services, protection and justice** on the basis of migration or residence status. There are promising examples of law, policy and practice from across the EU in improving access to services, protection and justice for all children, regardless of migration or residence status. Cooperation at EU level should foster exchange, adaption and multiplication of such practices.
3. **Commit to end the immigration detention of children.** The Committee on the Rights of the Child has made clear that the detention of a child because of their or their parents' migration or residence status is always a child rights violation, and can never be in the best interests of the child. Several member states have taken steps to end the immigration detention of children, and adopt alternatives to detention that respect child rights, including their right to family unity, and limit children and their parents' mobility as little

as possible, when it has been found necessary to do so at all. Building on these developments, ending the immigration detention of children in the EU should be a concrete goal within the next strategic guidelines.

4. **Commit to operationalise and make child rights a reality for every child.** Improve implementation of existing legal safeguards in EU and national legislation, and in particular the principle of the best interests of the child. The Charter reiterates the commitment to ensure that 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'. In order to meet this commitment, we ask that the Council give political and institutional support to the European Commission to develop a Home Affairs Child Rights Action Plan, in consultation with key stakeholders. This would enable the appropriate integration and consistent application of the child's best interests at all stages of home affairs policy and practice, and especially in all implementation measures (whether within the EU, at the borders or in cooperation with third countries), and administrative and judicial proceedings which directly or indirectly impact on children.^{ix} It would also support effective use of available tools at EU level, including mechanisms for monitoring, evaluation and infringement proceedings, to ensure compliance with child rights obligations by all EU member states.

The EU and its member states are champions of children's rights throughout the globe. On national level, several member states have pioneered advancements in the protection of migrant children, demonstrating that respect for migrant children's rights is not only a legal necessity, but also practically possible, and beneficial to achieve policy objectives in the areas of education, health, anti-poverty, child protection, justice, development and migration management. Building on these positive developments, as well as those achieved thus far through European cooperation, there is clear added value of coordinated action at European level. A coherent and integrated common European approach to protecting and promoting the rights of all migrant children is needed, within a wider framework of EU action on child rights. The developments in Home Affairs policy present a vital opportunity for the European Union to advance on its achievements and commitments to every child, including migrant children in vulnerable situations, by making children's rights a strategic and actionable priority for Home Affairs policy in the coming years.

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

Sincerely,

ⁱ This letter is being sent by PICUM - the Platform for International for International Cooperation on Undocumented Migrants on behalf of the undersigned organisations. For follow up, please contact PICUM.

ⁱⁱ United Nations *Youth and Migration*, United Nations World Youth Report 2013, p.19.

ⁱⁱⁱ Council conclusions on unaccompanied minors, 3018th Justice and Home Affairs Council meeting, Luxembourg, 3 June 2010, para c.

^{iv} The Stockholm Programme- An open and secure Europe serving and protecting citizens, 2010/C 115/01, para. 2.3.2-2.3.3

^v In this letter, the term 'migrant children' is understood to include all third country-national children in the EU or at its borders (including those seeking international protection and victims of human trafficking). The rights of EU national children exercising their right to free movement within the EU, unaccompanied and with their families, are also a concern. However, recognising that these children do not fall within the competence of EU Home Affairs policy, they are not addressed at this time.

^{vi} Including the EU's Fundamental Rights Agency, the Council of Europe Parliamentary Assembly, the European Committee on Social Rights, the European Court of Human Rights, the European Court of Justice, the European Network of Ombudspersons for Children and the European Commission itself.

^{vii} Also with reference to UNHCR ExCom Conclusion No. 107 (LVIII) – 2007, 'Conclusion on Children at Risk', 5 October 2007.

^{viii} "An open and secure Europe: making it happen" COM(2014) 154 final, Brussels, 11.3.2014, page 4.

^{ix} As specified by the UN Committee on the Rights of the Child, when clarifying state obligations in its General Comment no.14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, para. 14.