



Joint open letter to the Commissioner for Migration and Home Affairs, 2014-2019 about migrant children's rights

November 2014

Mr. Dimitris Avramopoulos
Commissioner for Migration and Home Affairs
B-1049 Brussels

cc. Mr. Frans Timmermans, First Vice-President of the European Commission, Better Regulation, Inter-institutional Relations, the Rule of Law and the Charter of Fundamental Rights
cc. Ms. Věra Jourová, Commissioner for Justice, Consumers and Gender Equality
cc. Ms. Diane Schmitt, Head of Cabinet, Commissioner for Migration and Home Affairs
cc. Mr. Matthias Ruete, Director-General, Home Affairs
cc. Ms. Margaret Tuite, Commission coordinator for the rights of the child

Dear Mr. Avramopoulos

The EU and its Member States are champions of children's rights throughout the world. Migrant children are children, first and foremost, and must be treated as such whatever administrative category they may fall in at one time or another during their childhood. 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'.¹

The undersigned organisations² would like to welcome you in your new position as Commissioner for Migration and Home Affairs. We commend you for underlining to Members of the European Parliament that the protection of children is a legal and political obligation in your hearing as Commissioner-designate, and urge you to take the opportunity in your new role as Commissioner for Migration and Home Affairs to make a difference to the lives of migrant children. This year marks twenty-five years since the Convention on the Rights of the Child was adopted. A universal framework protecting every child's rights everywhere and signed by all EU Member States, this anniversary further highlights the urgency of action to make this legal commitment a reality for all migrant children. We ask you to personally commit, in your role as Commissioner, to take measures to realise the rights of every child affected by migration, regardless of their or their parents' migration status, and to address all violations of their rights, as a priority within your mandate.

Earlier this year, as the European Council was defining its priorities for future EU Home Affairs policy, 38 leading organisations in the fields of human rights, health, education and social inclusion - including the UN Committee on the Rights of the Child, UNICEF, OHCHR and the European Network for Ombudspersons - urged the European Council to use the opportunity to advance on its achievements and commitments to every child,

¹ Council conclusions on unaccompanied minors, 3018th Justice and Home Affairs Council, Luxembourg, 3 June 2010, para c.

² The Confederation of Family Organisations (COFACE), the European Anti-Poverty Network (EAPN), the European Federation for Street Children (EFSC), the European Network Against Racism (ENAR), the End Child Detention Campaign, the European Network of Ombudspersons for Children, the European Network of Migrant Women, Eurochild, Eurodiaconia, FEANTSA, the International Detention Coalition, the Platform for International Cooperation on Undocumented Migrants (PICUM), Save the Children, SOS Children's Villages, Terre des Hommes International Federation and World Vision (Brussels and EU Representation).

Commented [LK1]: LOGOs from the questions to the Commissioner – to be confirmed for use here & others invited to join

Already confirmed:

ENAR
ENOC
ENoMW
Eurochild
PICUM
Save
(TdH)
World Vision

Commented [LK2]: We will also share with relevant the Unit heads as well as other Commissioners

including migrant children in vulnerable situations, by making children's rights a strategic and actionable priority for Home Affairs policy in the coming years. Please find the letter, dated 22 May 2014, attached. As Commissioner for Migration and Home Affairs, your role in the realisation of this objective through the work of the European Commission, is critical.

Concretely, we ask that you pioneer, in your role as Commissioner:

- **To extend the existing EU frameworks protecting specific groups of migrant children to ensure every child affected by migration (including those who are accompanied by their parents or other caregivers) has their rights upheld in policy and practice.**

In your confirmation hearing in the European Parliament, you committed to renewing the Action Plan on Unaccompanied Minors. While continued efforts to improve the protection of unaccompanied children are imperative, we ask that this work is integrated within a comprehensive set of measures to ensure the rights of all children affected by EU Home Affairs policy and practice are protected.

The legislative and political developments in recent years promoting child rights across all EU action, and specifically in protecting specific groups of migrant children in specific circumstances are very positive. However, the current status-based protection framework remains fragmented and uneven, and many migrant children in vulnerable situations are falling through the gaps, particularly when they are undocumented.

There is an urgent need for a more rights-based approach within the Directorate-General that extends the existing safeguards with concrete actions, policy and legislative initiatives to improve the protection of every child affected by EU migration and home affairs policy and practice, including those in families. This should, among other things, enable appropriate integration and consistent application of the child's best interests at all stages of home affairs policy and practice, and across the work of all Directorates of the Directorate-General.³ It should 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.

These measures should be firmly anchored within, and form an integral part, of a future EU child rights strategic framework. While the Commissioner and Directorate-General's activities will address areas of the DG's mandate and activities, in line with the integrated approach promoted in the Stockholm Programme, migrant children's rights should be mainstreamed across all policy areas. Coordination and cooperation with other Commissioners, in particular in the areas of justice, health, social affairs and inclusion, education, and development, is essential to ensure a coherent European response to meet this common challenge and the EU and its member states' legal obligations and political commitments to every child in their jurisdiction without discrimination.

- **Targeted actions to support member states to end the immigration detention of children and family separation through detention across the EU.**

In your confirmation hearing in the European Parliament, you recognised the importance of ending the

³ The UN Committee on the Rights of the Child has specified that the child's best interests must be appropriately integrated and consistently applied, in particular, 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 (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).

detention of children, particularly with adults that are not their family members. We appreciate your prioritisation of this particular child rights violation, and urge a broad approach to end immigration detention of children, addressing the various institutions and situations in which migrant children are deprived of their liberty, though they may not be called 'detention', as well as the separation of children from their parents in order to detain the parent and not the child. 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.⁴ Adding to the increasing body of international and regional guidance,⁵ the Parliamentary Assembly of the Council of Europe has also recently issued a landmark resolution calling on Member States to prohibit the immigration detention of children and ensure its full implementation in practice.⁶

As the Commission reported earlier this year in its Communication on EU return policy⁷, approximately one-third of member states report that they do not detain children and several are implementing or developing alternatives to detention that respect child rights, including their right to family unity. Building on these developments, and two major global civil society campaigns,⁸ ending the immigration detention of children and family separation through detention in the EU should be a concrete goal.

This goal should be made explicit by the European Commission, with affirmation that the legal guidance from international and regional bodies on the best interests of the child impacts the interpretation and implementation of the Returns Directive. The European Commission should support Member States' efforts to develop and implement non-custodial alternatives to detention, including by setting funding priorities in that regard and developing the evidence base.

We look forward to working with you and your team on these issues for the coming five years, and thank you in advance for the consideration of our proposals. We would greatly appreciate the opportunity to meet with you to further discuss, at your earliest convenience.

Sincerely,

⁴ UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, "The rights of all children in the context of international migration": <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>

⁵ The Inter-American Court of Human Rights (IACtHR) also issued an advisory opinion on 19 August 2014, reaffirming the principle of liberty for migrant children and stating that detention is never in their best interests.

⁶ Council of Europe Parliamentary Assembly Resolution 2020 (2014) on 'The alternatives to immigration detention of children'.

⁷ "Seventeen Member States detain — at least sometimes — unaccompanied minors and nineteen Member States detain — at least sometimes — families with children." COM(2014) 199 final, Brussels, 28.3.2014, p.19. Malta became the latest EU member state to pledge to end child detention, when the Prime Minister made a public statement on 30 March 2014.

⁸ The Global Campaign to End Child Detention (endchilddetention.org) and the Call for a global study on children deprived of their liberty (Members of the United Nations General Assembly are being urged to request the Secretary-General to conduct a global study on children deprived of liberty and to appoint an independent expert to conduct the study on his behalf) (<http://www.childrendeprivedofliberty.info>).