



Written Submission ahead of the Regional Review of the Global Compact for Safe, Orderly and Regular Migration (GCM) in the UNECE region: the implementation of the GCM in the European Union

October 2020

*This submission is made by the **Initiative for Child Rights in the Global Compacts** - a multi-stakeholder partnership bringing together over 30 civil society, trade union, UN and philanthropic organisations around a shared agenda - to create a continuum of care, protection and support for refugee and migrant children and to ensure that children's rights are at the heart of the Global Compact on Refugees and the Global Compact for Safe, Regular and Orderly Migration. Many of our members are actively participating in the High Commissioner's Dialogue.*

Introduction

The Global Compact for Safe, Orderly and Regular Migration (GCM) represents a milestone in the history of the global dialogue on international migration and expresses the collective commitment of the UN member states that have adopted it to improve cooperation on international migration. The Initiative believes that the UNECE Regional Review of the GCM is a crucial moment to recall the commitments made to children in the GCM, commitments which have become all the more urgent to meet in the context of the current pandemic.

In the European context, the European Commission recently presented the new [European Pact on Migration and Asylum](#) (the Pact), setting out its long-term EU migration policy. The Pact has the potential to prioritize children in EU migration and asylum law, policy and practice, address systemic weaknesses and strengthen safeguards and child protection systems in Europe and along migratory routes.

The UNECE GCM Regional Review provides a key opportunity to highlight the child-sensitive guiding principle of the GCM and to assess the alignment of the Pact as well as national policies and practices with the principles, objectives and policy options included in the Compact.

From a child-rights perspective, this submission aims to highlight some of the priorities to focus on because of their impact on the situation and protection of girls and boys in migration looking at the Pact on Migration and Asylum and the internationally agreed upon standards and safeguards outlined in the GCM. This submission also outlines challenges faced by children in migration during the COVID-

19 pandemic and how the GCM can be a useful tool to guide EU Member States in their responses to them.

This submission will focus on 4 key priority areas:

1. Best Interests of the Child: the importance of including the necessary safeguards to operationalize the best interests of the child principle within the Pact
2. Child Immigration Detention: concern that the Pact might lead to more immigration detention of children, against what is stated in the GCM.
3. Family Reunification: its importance for children and families, the welcome developments in the Pact and the importance of increasing opportunities for and eliminating barriers to family reunification.
4. The impact of COVID 19 on migrant children and how to ensure children and families in migration access appropriate support.

1. Best Interests of the Child

The overarching principle of the best interests of the child is an obligation under the [Convention on the Rights of the Child](#) (CRC). Abiding to this principle requires that any migration decision is made in accordance with child rights as prescribed in the CRC.

The best interests of the child is a cornerstone of the CGM's child sensitive guiding principle and applies to any situation concerning children in the context of international migration. The GCM refers to specific situations where a determination of the best interests of the child is paramount in guiding decisions.

The GCM emphasizes the need for an effective national child protection system to ensure that all immigration related procedures and decisions, as well as other immigration policies and programmes, are established with the best interests of the child at their core. Hereby, special attention should be paid to unaccompanied and separated children at all stage of migration (**objective 7 (e,f)**). Both **objective 7(e)** and **objective 11(e)** emphasize that the involvement of child protection authorities is essential in this context. The GCM also confirms that best interests of the child considerations are particularly important in policies and procedures regarding border management (**objective 11(e)**), (alternatives to) immigration detention (**objective 13(h)**) as well as safe and dignified return (**objective 21(g)**). Additionally, the views of children and youth should be duly heard and considered throughout immigration processes, to empower and reduce the vulnerability of children and youth (**objective 7(f)**) and of young women and girls in particular (**objective 2(b)**).

In the context of return (**objective 21(g)**), a [best interests of the child procedure](#) should be carried out to determine whether return is indeed in the child's best interest. This requires specific procedures to be implemented in every decision-making process that could lead to the return of a child, before a return decision is issued. The child's individual situation needs to be assessed, thereby considering the right to reside in the country on the basis of human rights law or other regularization pathways. Such a [procedure](#) needs to include safeguards to ensure due process, as well as implementation through voluntary departure with appropriate and child-specific reintegration assistance.

At the EU level, the explicit reference in the new [European Pact on Migration and Asylum](#) to the best interests of children as the primary consideration in any decision concerning a child – whether in the context of asylum, relocation, family unification or returns – is an important signal reaffirming the EU’s strong commitment to child rights. However, the Pact does not sufficiently address **the necessary safeguards** to ensure that every migration decision in any EU Member State has the best interests of the child as its primary consideration.

The proposed [asylum and return border procedures](#) seems to be based on a binary approach in which everyone who is likely to be denied asylum should be immediately returned. This could deprive people of the possibility of accessing pathways for other forms of international protection or regularization under other grounds according to Member States’ national legislation, especially if important safeguards related to non-refoulement, best interests of the child and protection of family and private life are not explicit.

Within the EU, at the national level, child friendly information is still too often absent, asylum and return decisions are made with little to no involvement of social services or child welfare agencies and proper reintegration plans are often lacking¹. Clearer language stating that no child should be returned unless this has been determined to be a sustainable solution in her or his best interests would ensure that said safeguards can less easily be omitted by EU Member States.

2. Child Immigration Detention

With the adoption of the GCM, governments across the world committed to use alternatives to detention and to take a human rights-based approach to the detention of migrants. Governments also agreed to work towards ending child detention and promoting community-based care arrangements, to assist migrants in situations of vulnerabilities and to review existing policies with a view not to create or exacerbate vulnerabilities (**objective 13(a, b, h)**).

Despite committing to “providing effective alternatives to detention” for children,² the new Pact may lead to increased and longer detention, including for children and families. It states that during the [pre-entry screening](#), everyone crossing an external border irregularly, or disembarked after search and rescue (SAR) operations, will not be authorized to enter the territory. This implies that children and families with children could be detained in designated facilities for up to ten days. After this period, people will be channeled into the return or asylum procedures, which, for certain groups, will take place in the same border facilities. The same screening procedures will also apply to people already on EU territory, regardless of how long they have been living in Europe, if there is no indication that they have entered regularly. In this case, people can be detained in specialized facilities for up to three days.

In some EU Member States, detention could become the norm for the whole duration of the asylum and return border procedures, which may last up to six or even ten months in cases of [“exceptional mass influx” or risk of it](#), contravening [international principles](#) of necessity and proportionality.

¹ Save the Children, *Protection Beyond Reach – State of Play of refugee and migrant children’s rights in Europe*, 2020, pp. 24-25 (see [here](#)).

² Communication on a New Pact on Migration and Asylum, section 2.4 on “Supporting Children and the Vulnerable”, page 7, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN>

Children in families who are under 12 are exempted from these procedures, as well as children who are unaccompanied. However, **children aged 12-18** who are accompanied by their parents or other caregivers are required to undertake the border procedures, which could translate into detention and lack of access to regular pathways beyond asylum. The exemption from the border procedure for children under 12 does not apply in case of "[security concerns](#)".

The term "security concerns" raises questions with regards to its meaning and scope, leaving the right to exemption from the border procedure for children under 12 open to interpretation. Therefore, all children under 18 should be exempted from the border procedure, to uphold the definition of children as per the Convention on the Rights of the Child, which all EU Member States have ratified, and to ensure internationally agreed upon safeguards and standards for children in the context of migration.

Despite the [internationally](#) recognized definition of children being every person until the age of 18, this proposal draws a new line in the middle of adolescence, imposing the new regime on children above the age of 11, and potentially allowing their detention for up to 10 months, as far as they are with their family.

This provision, as well as the possibility to still detain younger children and unaccompanied children for national security reasons, ignores international and regional [standards](#) that clearly consider child immigration detention as a violation of the rights of the child and an emerging global consensus on the need to end this practice that numerous EU Member States have been at the forefront of. It is also against the spirit of the GCM's **objective 13 and 13(h)** which recommends states to protect and respect the rights and best interests of the child at all times, regardless of their migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, and to work to end the practice of child detention in the context of international migration.

The absence of explicit safeguards against child immigration detention not only disregards solid evidence of the devastating effect of detention on a child's mental health, well-being and development – even when it is for a short period of time and in well-appointed facilities – but also increasing [evidence](#) of the effectiveness of community-based alternatives to detention, as well as previous [recommendations](#) by the European Commission to support and expand alternatives. For example, the independent [evaluation](#) of two-year engagement-based alternatives to immigration detention pilot projects in Bulgaria, Cyprus and Poland demonstrated that [case management](#) has a positive impact on individuals' ability and capacity to work towards case resolution and can help them to stay engaged in migration processes. Of the more than 120 individuals who benefitted from case management, 99% reported improved ability to participate in informed decision making and 96% had improved ability to engage with the immigration procedures over time.

That's why explicit safeguards aiming at having no child detention based on migration status in the EU border procedures are key. as well as a more explicit reference to the obligation for all Member States to prioritize alternatives to detention for all children under the age of 18, whether traveling alone or with their families.

3. Family Reunification

The GCM identifies family reunification as a key safe and regular pathways open to children and families.

In the Pact, the European Commission [identifies](#) the need to strengthen the right to family reunification by putting in place accelerated procedures and prioritizing unaccompanied children. Evidence requirements for family reunification under the 'Asylum and Migration Management Regulation' are also made more flexible and siblings and families formed in transit will now also be covered by the definition of 'family'. These are welcome developments. Administrative barriers such as complicated and costly procedures to prove a family relation (e.g. required DNA testing), as well as high income requirements and short deadlines to apply often mean that children and families struggle to access family reunification, which is a key safe and regular route for them.

Increasing access to family reunification by eliminating administrative barriers and obstacles is paramount for children and families, and we recommend that European states implement these policies in the best interests of the child as a matter of urgency.

The GCM can be a very useful framework to expand access to family reunification for children in migration. The Compact identifies family reunification as one of the key safe and regular pathways open to children and families (objective 5 (i) and 7 (f) and recommends increased availability of family reunification procedures, as well as an increase of favorable and expedited decisions of family reunification applications, which facilitate protection, inclusion and social cohesion in the host country (**objective 16 (c)**).

4. Impact of COVID-19 on children in migration

The particular context of the global pandemic in 2020 has greatly impacted migrant children in Europe and exacerbated many of the risks they face.

We welcome that [several EU member states](#) have put in place measures to (temporarily) regularize migrants' stay ([Italy](#) and [Portugal](#)) or grant safe access to healthcare regardless of status ([Ireland](#)). EU Member States have also [released migrants from detention](#), as alternatives to immigration detention have emerged as a viable solution to mitigate public health concerns while ensuring access to rights, protection and essential services for migrants.

However, despite ongoing efforts by many governments and their partners, in some cases migrant children and their parents have fallen through the cracks of response measures.

Many migrant parents lost jobs during periods of confinement and were ineligible for government financial support due to their irregular status. They turned to [civil society organizations](#) and to local authorities with requests for food to help them survive. For migrant children and families in situations of acute vulnerability, such as those who are homeless, living in encampments, reception centers, or in immigration detention, the risk of infection is great because of proximity and poor living conditions. It is even more difficult to contain the spread of the virus in such precarious, unsanitary and overcrowded settings.

The unprecedented disruption to education has made it even more difficult for children in migration to access learning opportunities and reliance on remote learning modalities have left many migrant

children behind. School closures across Europe have further exacerbated GBV risks and gender-based inequalities, making girls even more vulnerable. EU Member States must ensure that remote learning and school reopening plans are inclusive of all children, irrespective of status, gender, or disability, and include the specific needs of migrant children. The GCM can be useful in guiding this response.

Children are facing increased risks of violence, exploitation and abuse, and of separation from their caregivers. Just as these risks have increased, access to child protection and psychosocial services – a crucial lifeline for many migrant children – has decreased in many European countries. EU Member States must prioritise and ensure funding for child protection, GBV and psychosocial services, and ensure that the needs of all children, including migrant children, are addressed. The GCM outlines how to provide child protection support to vulnerable migrant children, including unaccompanied children (Objectives 7 and 12).

In order to avoid increased vulnerability and poverty of migrant children and youth, it is important that:

- Families and children are able to access and benefit from COVID 19 response and recovery programmes and measures without any discrimination based on residence or migration status.
- EU member states ensure flexible labour mobility schemes, facilitate enrolment in national education systems and recognize transnational qualifications and skills.
- EU member states ensure that there is accurate public health information accessible in various languages as well as access to health care irrespective of migration status.
- Any delays or suspensions of procedures, for example of family reunification applications, be avoided at all cost.

It is of utmost importance that EU member states develop an appropriate child- and gender- sensitive long-term response to the pandemic that addresses the protection of children and families in migration. The GCM should thereby be used as a leading document, to ensure that this challenge is dealt with in an appropriate manner in line with internationally agreed upon standards and safeguards.

Conclusions and Recommendations

The European regional review of the GCM is an important moment for European States and the Council and European Parliament to commit to ensure a rights-based approach in the further development of the new Asylum and Migration Pact and its alignment with the child-sensitive objectives and policy actions included in the GCM.

The GCM represents a global commitment to a set of safeguards and minimum standards in the context of international migration, that should be upheld regardless of European and national circumstances.

In the context of a global pandemic, the GCM can provide guidance to EU member states as well as the EU institutions to ensure a rights-based approach to one of the most vulnerable but most resilient groups in their society in order to unlock their talent and potential: children in migration.

The Initiative recommends that in developing the new Asylum and Migration Pact and in implementing national migration policies, European states ensure:

- Alignment of the European Migration Pact with the child-sensitivity guiding principle, and with all the objectives and policy actions included in the GCM
- Full implementation of best interests of the child safeguards;
- The exclusive use of alternatives to child immigration detention;
- Build on the positive developments in the Pact and further enhance access to and use of family reunification as a key regular pathway for children and families in migration.
- Develop an appropriate child- and gender- sensitive long-term response to the pandemic that addresses the protection of children and families in migration, using the framework of the GCM.

The GCM calls on a ‘whole of society approach’ in its implementation and this is an important opportunity to remember that children and young people are agents of change and key stakeholders and should be empowered to contribute to the GCM implementation as partners.

For more information, please contact:

Caroline Horne and Daniela Reale – Co-chairs of the Initiative for Child Rights in the Global Compacts

Caroline Horne caroline.horne@terredeshommes.org

Daniela Reale d.reale@savethechildren.org.uk