

Brussels, June 11, 2008

Re: Forthcoming Plenary Vote on the Proposal for a Directive on Common Standards and Procedures for Returning Illegally Staying Third Country Nationals

Dear Members of the European Parliament,

Save the Children is an international child rights' NGO working in over one hundred countries worldwide. The Save the Children Europe Group represents organisations in eleven European countries and has an EU office in Brussels. The Save the Children Europe Group and the Separated Children in Europe Programme (SCEP) have closely followed and contributed to the policy debate surrounding the proposed EU Directive on Common Standards and Procedures for Returning Illegally Staying Third Country Nationals (the "Returns Directive"). We have focussed, in particular, on the situation of children under the proposed Returns Directive.

Introduction

The European Parliament is now poised to vote in plenary on a 'compromise' text discussed between Council and Parliament representatives. Save the Children Europe Group acknowledges that reaching consensus on such a sensitive instrument is difficult. Save the Children Europe Group applauds the attempts to date of the Parliament to guarantee that safeguards are in place to ensure that returns take place in a manner and under conditions that fully respect human rights. A fundamental question currently confronting the European Parliament before voting is: *are the safeguards in the current compromise text sufficient?*

Save the Children Europe Group draws your attention to submissions made by ECRE, Amnesty International and CCME on a number of critical issues in the consensus text. We share the majority of their perspectives in relation to detention provisions, re-entry bans and the period for voluntary return. We will not repeat their observations here. However, more specifically in relation to children, we wish to draw the attention of MEPs to a number of key concerns.

Key Child Right Concerns

Although the attention in the consensus text to unaccompanied or separated children is welcome (as is the overall obligation of Member States to take due account of the best interest of the child), certain fundamental issues are not clearly addressed:

- Even though the proposed Directive contains specific guarantees in relation to unaccompanied children, a significant number of unaccompanied or separated children may not benefit from those guarantees at all. Unaccompanied or separated children frequently arrive in the EU through irregular routes and indeed sometimes have been trafficked into the EU without regular documents. In spite of this, under Article 2(2) of the compromise text, Member States may decide to deny the guarantees set out in the Directive to, *inter alia*, "third-country nationals who have been apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State."

- Even where the Directive will apply to unaccompanied or separated children, there is no express guarantee that the decision to return an unaccompanied or separated child will be based on a properly identified and assessed risk of abuse or exploitation which might be faced by a child in a third country. The compromise text does not make express provision for an appropriate procedure to establish the best interests of unaccompanied or separated children before return.
- Indeed, unaccompanied or separated children may be returned to third countries (and not necessarily their country of origin¹), even where they have no parent or guardian there, as long as there are “adequate reception facilities”. There is no definition of the term ‘adequate’ in the compromise text and consequently no clear guarantee that such facilities will be supported by proper care and custodial arrangements. For example, is a camp in a country through which a child has travelled on his or her way to the EU to be considered an adequate reception facility?
- Although they may benefit from ‘assistance by appropriate bodies other than the authorities enforcing return’ under the compromise text, unaccompanied or separated children are not expressly guaranteed access to basic legal representation in the EU before being returned to third countries. Such access is critical to the protection of their rights.
- Under the compromise text, families with children and unaccompanied or separated children may be detained as a measure of last resort and for the shortest possible period. Save the Children believe that, as a general rule, children should not be held in detention for administrative reasons. Where families with children and unaccompanied children are detained in exceptional circumstances, under the compromise text, this could extend to up to 18 months which we consider to be excessive and disproportionate. Moreover, the compromise text does not require that such families - or even unaccompanied or separated children – have access to legal assistance in seeking a review of their detention order.

Obligations under the UN Convention on the Rights of the Child

Under the UN Convention on the Rights of the Child which all Member States have ratified, the fundamental obligation upon Member States is to afford unaccompanied or separated children special protection and assistance while present in the EU. The UN Committee on the Rights of the Child has stressed that, in the case of the return of unaccompanied or separated children, general migration control considerations cannot override their best interests. Any EU law on returns should ensure that such international legal obligations are complied with, through clearly articulated obligations in the Directive and further guidance to Member States on proper implementation.

We urge MEPs to bear the above considerations in mind.

Yours sincerely,



Britta Öström
Chair of the Save the Children Europe Group

¹ See Article 3(c) definition of return which includes “the process of going back to....a country of transit in accordance with Community of bilateral readmission agreements or other arrangements.”