



Save the Children/Separated Children in Europe Programme (SCEP) response to

Proposed directive on common standards and procedures in Member States for returning illegally staying third-country nationals/EP Draft Report (Rapporteur: Weber)

Save the Children is an international children's rights NGO working in over one hundred countries worldwide. Together with partner NGOs in 30 countries and UNHCR¹ we have established the Separated Children in Europe Programme – a programme to realise the rights of separated children² within Europe.

The comments in this paper are based upon international standards and good practice as outlined in Save the Children and SCEP's joint "Position Paper on Returns and Separated Children" as well as the "Common Principles on Removal of Irregular Migrants and Rejected Asylum Seekers."

Save the Children and SCEP welcome the many positive amendments in the report, in particular:

- recognition of the principle of non-refoulement (amendment 5)
- emphasis that decisions need to be taken individually in each case (amendment 8)
- mention of giving perspective for useful occupation of time in custody or care (amendment 9)
- provision that Member States should provide material assistance and counselling following the decision (amendment 19)
- ensuring contact with family (amendment 40)
- placing children in the care of a child welfare agency (amendment 42)
- NGOs granted access to monitor custody conditions (amendment 43)
- future role of EP Ombudsman (amendment 45)

While recognising these as important steps towards protection of separated children, Save the Children/SCEP propose the following to ensure that the rights of separated children are fully taken into account by the Member States when implementing the directive:

Article 5

- Emphasise the **best interests of the child** by including a separate article or paragraph under article 5, e.g. *"When implementing this directive, the best interests of the child, in accordance with the 1989 UN Convention on the Rights of the Child, shall be a primary consideration of the Member States in all decisions concerning children under the age of 18"*
- Emphasise **family unity** by including a separate article or paragraph under article 5 stating that children should never be separated from their families or primary caregivers unless this is in the child's best interest.

¹ This document does not necessarily represent the views of UNHCR.

² Separated children are children under 18 year of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver.

- Emphasise the right of children, as set out in the UN Convention on the Rights of the Child, **not to be detained** on the basis of asylum and immigration claims, by including specific language in a separate article or paragraph under article 5 e.g. *“Separated children should never be detained for reasons related to their immigration status”*.
- Emphasise the complexity of returning separated children by including a separate article or paragraph under article five, **prohibiting forced removal of a separated child** e.g. *“A separated child should be returned only if return is considered to be in the best interests of the child. Forced removal of a separated child is prohibited. A separated child should never be returned to a country which is not their country of origin unless it has been determined to be in their best interests.”*

Article 8.2 c

Reference to postponement of forced removal of unaccompanied and separated children should be removed as the Directive should prohibit forced removal of a separated child.

It should be noted that separated children should never be repatriated without advance **assessment of the conditions, including both child welfare and security concerns**. ‘Handover’ to an official is not sufficient to ensure the child’s protection and development. In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without **advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin** (Committee on the Rights of the Child).

Article 15

- Emphasise children’s right to family life and contact with family by making specific references to separated children in Article 15, paragraph 1 a (new)
- Ensure protection of separated children by strengthening language in amendment 42 article 15, paragraph 3, e.g. *“Unaccompanied and separated children should be placed in the care of child welfare authorities”* [rather than “a children’s home”]. *They shall under no circumstances be detained.”*

Additional concerns

Save the Children/SCEP would also like to recommend that specific language is included to avoid that article 7, paragraph 1 is applied to children who have been associated with armed forces including child soldiers (who may or may not be under 18 at the time of application of the directive). Likewise, language should be added to protect young offenders from being discriminated against on the basis of article 5 paragraph 1 b.

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