

Children's rights and safeguards under the EU Migration and Asylum Pact

27 May 2025 | ENOC Spring Seminar 2025

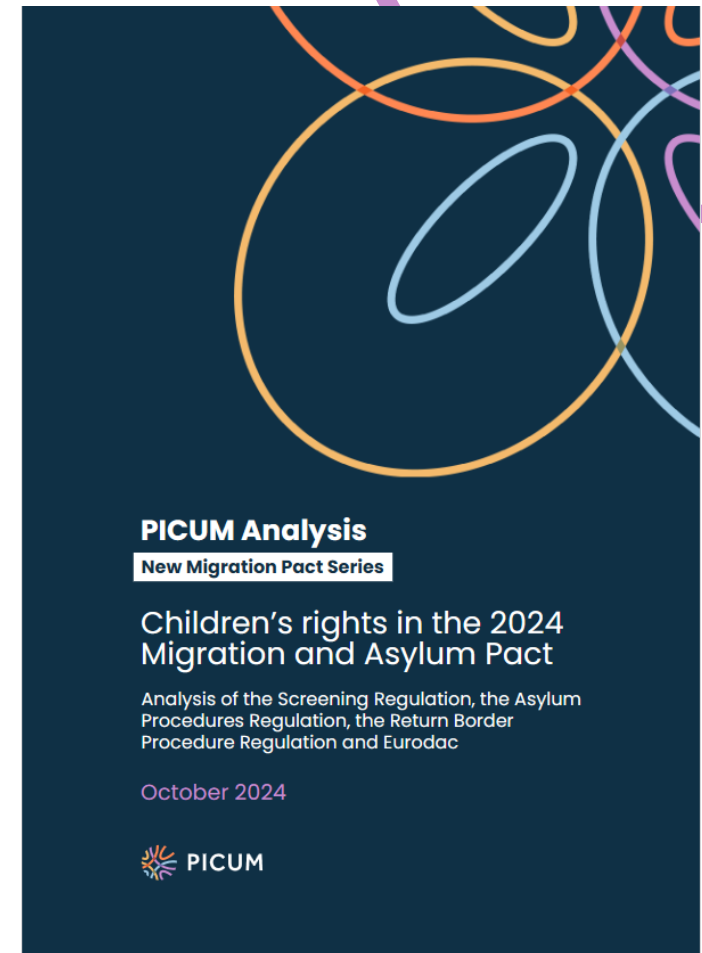
Laetitia Van der Vennet | PICUM

Who are we?

We are a network of organisations working to ensure social justice and human rights for undocumented migrants.

What I will cover today

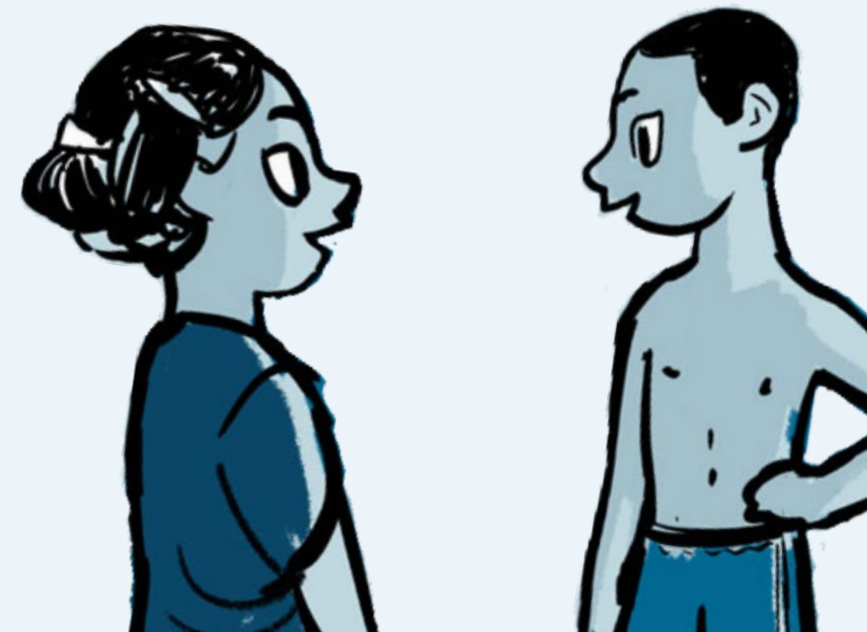
1. Which and how many children will be affected?
2. The EU Migration Pact and its implications for (undocumented) children
Screening, APR, RBPR & Eurodac
3. What can children's ombudspersons do?



Hundreds of thousands of children will be affected each year

In 2023:

- ◆ 271,515 asylum applications involved children
- ◆ 20,000+ unaccompanied children entered the EU irregularly
- ◆ 103,235+ undocumented children came into contact with the police
- ◆ 6,650 children were resettled



Essential safeguards and protections are missing

- ◆ Lack of sufficient procedural safeguards (interviewing, legal aid, right to suspensive appeal,...) that endangers quality of decision making
- ◆ Focus on 'asylum or return' – difficult access to permits on other grounds
- ◆ Risk of detention and *de facto* detention
- ◆ Overall, fewer safeguards for children in families than for unaccompanied children

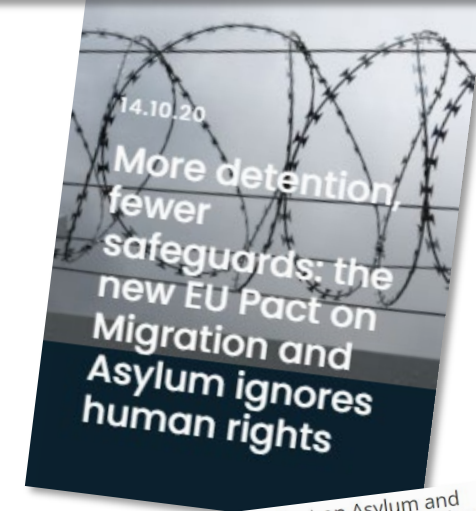


The EU Migration Pact and its implications for (undocumented) children



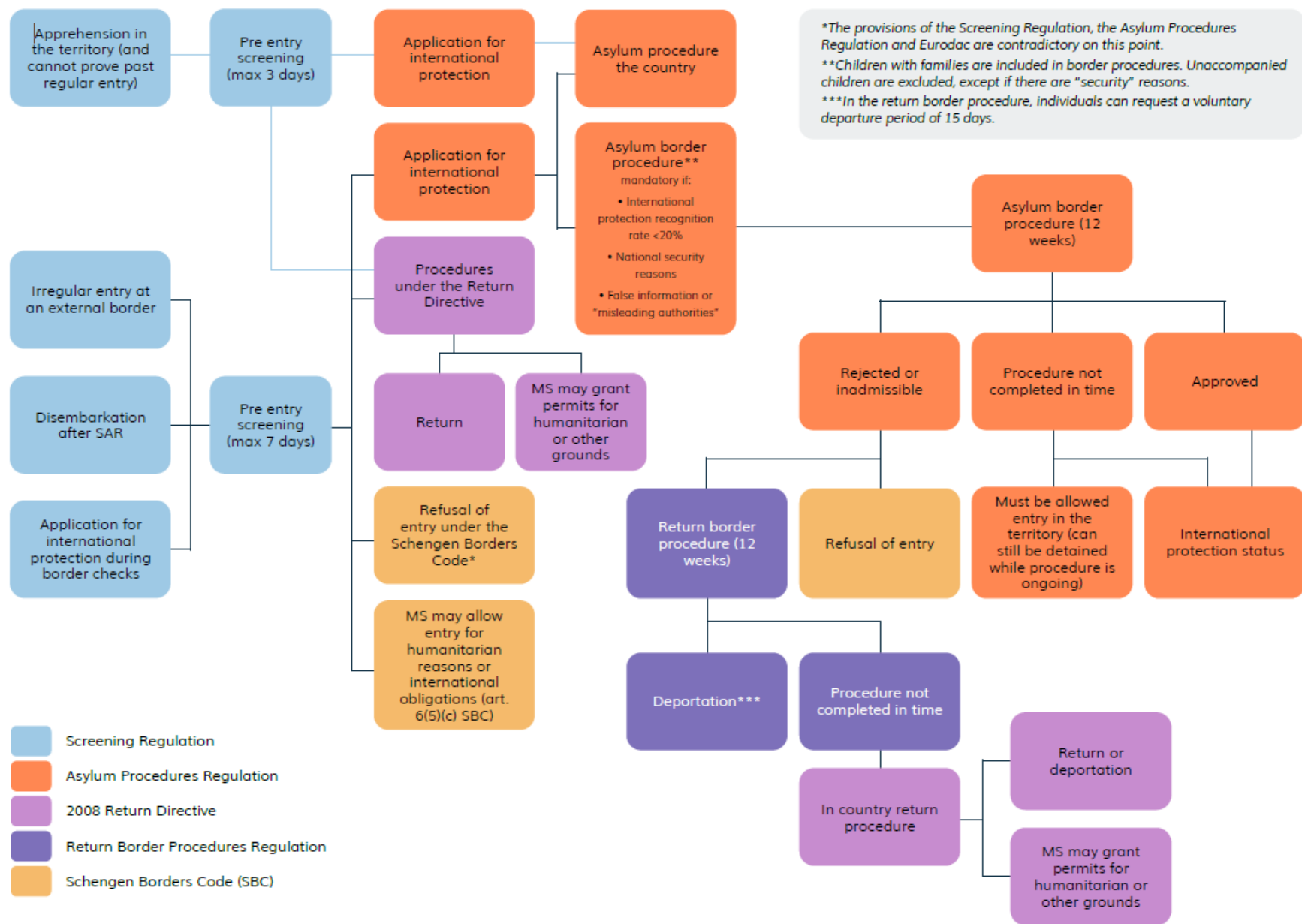
The EU Pact on Migration and Asylum

- ◆ Proposed by the European Commission in 2020 and adopted in May 2024, it will fully enter into force in **2026**.
- ◆ What is known as the 'Migration' Pact, mainly regulates procedures for **asylum** and **returns**.
- ◆ It includes 9 legislative files, that regulate different steps of people's migration journey: from identification after crossing a border, to asylum and return procedures.



Screening Regulation	Creates a new mandatory pre-entry screening at the EU external borders and within EU territory.
Asylum Procedures Regulation (APR)	Reform of the current rules on applications for international protection. Includes new 'border procedures'
Return Border Procedure Regulation	Originally part of the APR, it creates a procedure to allow for swifter deportations at the borders .
Regulation on Asylum and Migration Management (RAMM)	Replaces the 'Dublin' regulation. Focuses on responsibility sharing for asylum applications between member states.
Crisis Regulation	Specific derogations in 'crisis' , 'force majeure' and 'instrumentalisation' situations.
Recast Reception Conditions Directive	Sets conditions for reception and detention of applicants for international protection.
Eurodac Regulation	Reinforce and expand fingerprinting and collection of migrants' biometric data .
Qualification Regulation	Sets protection standards in the EU to ensure uniform standards for protection and rights granted to refugees .
Resettlement Framework Regulation	Creates a common EU framework for EU Member States to resettle refugees from outside EU territory.

Screening Regulation	Creates a new mandatory pre-entry screening at the EU external borders and within EU territory.
Asylum Procedures Regulation (APR)	Reform of the current rules on applications for international protection. Includes new ' border procedures '
Return Border Procedure Regulation	Originally part of the APR, it creates a procedure to allow for swifter deportations at the borders .
Regulation on Asylum and Migration Management (RAMM)	Replaces the 'Dublin' regulation. Focuses on responsibility sharing for asylum applications between member states.
Crisis Regulation	Specific derogations in 'crisis' , 'force majeure' and 'instrumentalisation' situations.
Recast Reception Conditions Directive	Sets conditions for reception and detention of applicants for international protection.
Eurodac Regulation	Reinforce and expand fingerprinting and collection of migrants' biometric data .
Qualification Regulation	Sets protection standards in the EU to ensure uniform standards for protection and rights granted to refugees .
Resettlement Framework Regulation	Creates a common EU framework for EU Member States to resettle refugees from outside EU territory.



Screening Regulation

Sets up a **mandatory screening procedures that applies to all third country nationals, including children** who:

- ✦ Applied for international protection during border checks **7 days**
- ✦ Disembark from a SAR operation **7 days**
- ✦ Crossed an external border irregularly without fulfilling entry conditions (unless sent back immediately) **7 days**
- ✦ Are on EU territory but cannot prove they already went through border controls **3 days**

All children, no exceptions.

Screening Regulation

During those 7 or 3 days, the government must do **health, vulnerability and safety checks, verify the person's identity, take biometric data, fill out a 'screening form' and refer the person to 'the appropriate procedure': asylum or return.**

- ✦ **Basic safeguards** (BIC, child-friendly and age-appropriate info, non-discrimination)
- ✦ Child has a **right to child-friendly support** by trained and qualified personnel **in cooperation with child protection authorities** (art 12(4) on preliminary health checks and vulnerabilities)

Child protection actors not required by SR to be present at borders by SR, but it is recommended by Common Implementation Plan & Operational Checklist

Note: no minimum standards or safeguards re child-friendly interviewing or collection or interpretation of info given by the child to be included in the screening form

Screening Regulation

Detention is allowed, although the conditions vary:

However: people must “remain available” (art 6, 7, 9) → **risk of de facto detention**

Apply for asylum
→ **Reception Conditions Directive**

- Children and families not detained ‘as a rule’
- Detention possible in exceptional circumstances, as a measure of last resort, if in BIC and if clear that less coercive measures would be ineffective
- Lists 2 possible situations in which to detain:
 - If child’s parent / primary caregiver is detained
 - If detention safeguards the UAC

Don’t apply for asylum
→ **Return Directive**

- Only possible if less coercive measures are not possible
- Detention (incl ATD) of UAC & CiF only possible as a last resort, for as short as possible, and only as long as there is a prospect of return

Screening Regulation

The Screening Regulation includes **specific provisions for UAC**:

- ◆ Guardian (representative) **to be appointed asap but no deadline given** *even though the child is in a critical phase*
- ◆ **Up to 30 UAC** at a time
- ◆ Until guardian is appointed: **a trained person** to safeguard the BIC & act as guardian in the interim
→ Institutionalises new practice for 15 MS

Note: No mention of age assessments or benefit of the doubt in the SR



Conclusion of the Screening Regulation

Screening phase results in either:

- ◆ Apply for international protection (asylum) (APR)
- ◆ Return (RD)
- ◆ Refused entry (SBC)
- ◆ Access to the territory for humanitarian reasons or international obligations (SBC)

Importance of access to permits on other grounds

Considering SBC, RD and EU and international HR standards, people **should have access to roader range of permits** regulated under EU and national law, incl. for humanitarian, family, health or work reasons, to protect the BIC.

But practice is likely to be very different.

Asylum Procedures Regulation & Return Border Procedure Regulation

Applies to those who apply for asylum during screening, **children and adults alike**.

People are channelled into regular, accelerated or border asylum procedures.

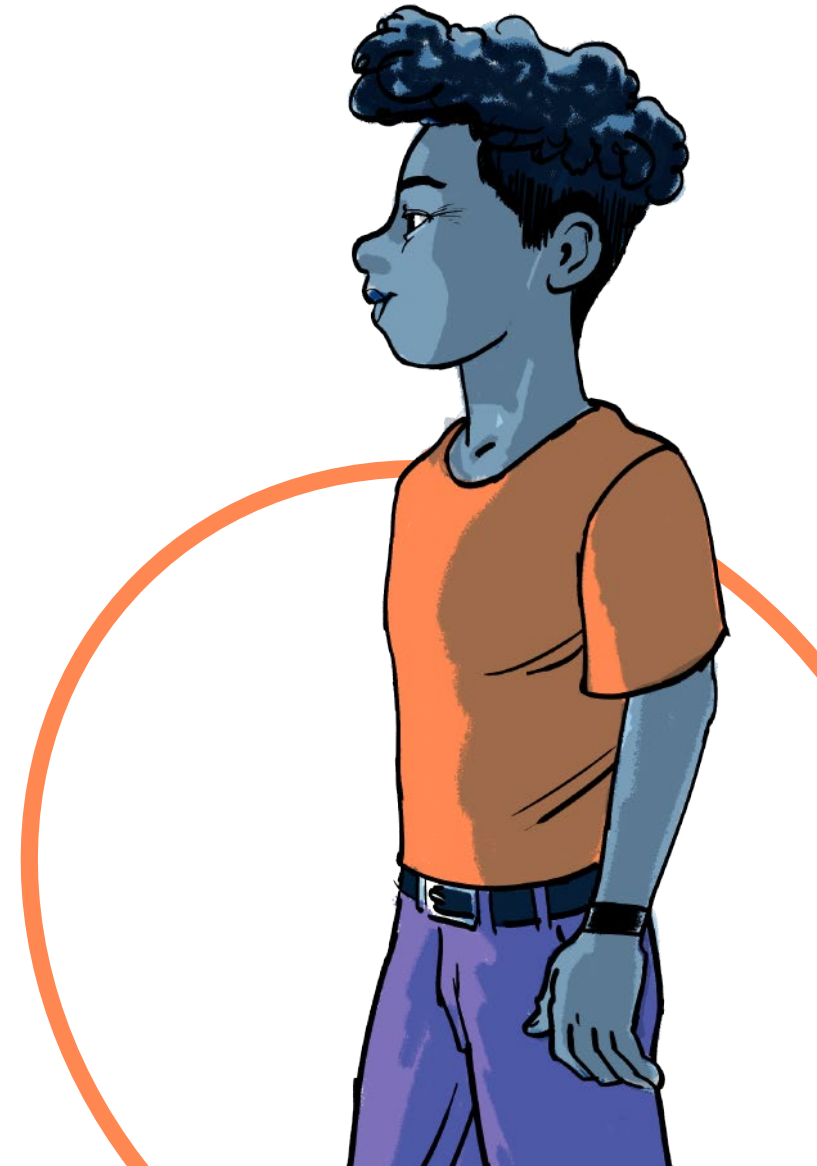
- ◆ **BIC** applies & **must be assessed by the determining authority** (i.e., asylum authority)
- ◆ **Child protection actors not mentioned in regulations**, but encouraged by Common Implementation Plan & Operational Checklist



Asylum Procedures Regulation & Return Border Procedure Regulation

UAC must be represented & assisted in a way that allows them to comply with and benefit from APR

- ◆ This support includes identification of a representative (guardian)
- ◆ Guardian to be identified within 15 working days, until then a 'trained person' can assist them
 - ◆ MS can allow interim person to assist the child in lodging their asylum claim but not interview etc
- ◆ Max 30 UAC – max 50 when crisis / force majeure



Asylum Procedures Regulation

Different types of asylum procedures:

- ◆ **‘Normal’ asylum procedure** – decision on the merits within 6 months of lodging the application – person on the territory
- ◆ **Accelerated asylum procedure** – decision on the merits within 3m of application – person on the territory
- ◆ **Asylum border procedure** – decision on the merits within 12 weeks, max 16 weeks – fiction of non-entry & detention

WHOSE ASYLUM PROCEDURE CAN BE ACCELERATED?

CHILDREN IN FAMILIES (art 42(1))	UNACCOMPANIED CHILDREN (art 42(3))
Member States <u>must</u> apply if:	Member states <u>may</u> apply if:
✓ No relevant elements raised ✓ ‘Clearly inconsistent, contradictory or false’ info / story ✓ ‘intentionally misled’ authorities (incl. the destruction of identity or travel documents ‘in bad faith’) ✓ An application ‘merely to delay, frustrate or prevent the enforcement’ of a deportation ✓ They are from a safe third country ✓ can be considered a danger to national security or public order ✓ Admissible subsequent asylum claim ✓ Irregular entry or stay in the country & not claiming asylum “as soon as possible” ✓ Regular entry and not having a “good reason” not to have applied for asylum as soon as possible ✓ From a country with an EU-wide recognition rate of 20% or lower	✓ ‘intentionally misled’ authorities (incl. the destruction of identity or travel documents ‘in bad faith’) ✓ They are from a safe third country ✓ ‘reasonable grounds’ that they are a danger to national security or public order ✓ Admissible subsequent asylum claim ✓ National of country with an EU-wide recognition rate of 20% or lower

WHOSE ASYLUM PROCEDURE CAN BE ACCELERATED?

CHILDREN IN FAMILIES (art 42(1))	UNACCOMPANIED CHILDREN (art 42(3))
Member States <u>must apply</u> if:	Member states <u>may apply</u> if:
✓ No relevant elements raised ✓ ‘Clearly inconsistent, contradictory or false’ info / story ✓ ‘intentionally misled’ authorities (incl. the destruction of identity or travel documents ‘in bad faith’) ✓ An application ‘merely to delay, frustrate or	✓ ‘intentionally misled’ authorities (incl. the destruction of identity or travel documents ‘in bad faith’)
However, Member States can only subject children in families or UAC to accelerated asylum procedures if they also provide them with “the necessary support” that “create the conditions necessary for the genuine and effective access to procedures.” (rec 20, art 21(1) APR)	
✓ Admissible subsequent asylum claim ✓ Irregular entry or stay in the country & not claiming asylum “as soon as possible” ✓ Regular entry and not having a “good reason” not to have applied for asylum as soon as possible ✓ From a country with an EU-wide recognition rate of 20% or lower	✓ Admissible subsequent asylum claim ✓ National of country with an EU-wide recognition rate of 20% or lower

Asylum Procedures Regulation & Return Border Procedure Regulation

Asylum and return **border procedures** can only apply to people who do not fulfil entry conditions, plus:

- ◆ Asylum application at the border
- ◆ Apprehension in connection to unauthorised external border crossing
- ◆ Disembarkation after SAR
- ◆ Relocation in accordance to RAMM (ex Dublin proc)

! Undocumented people apprehended on the territory cannot be put into border procedures after screening

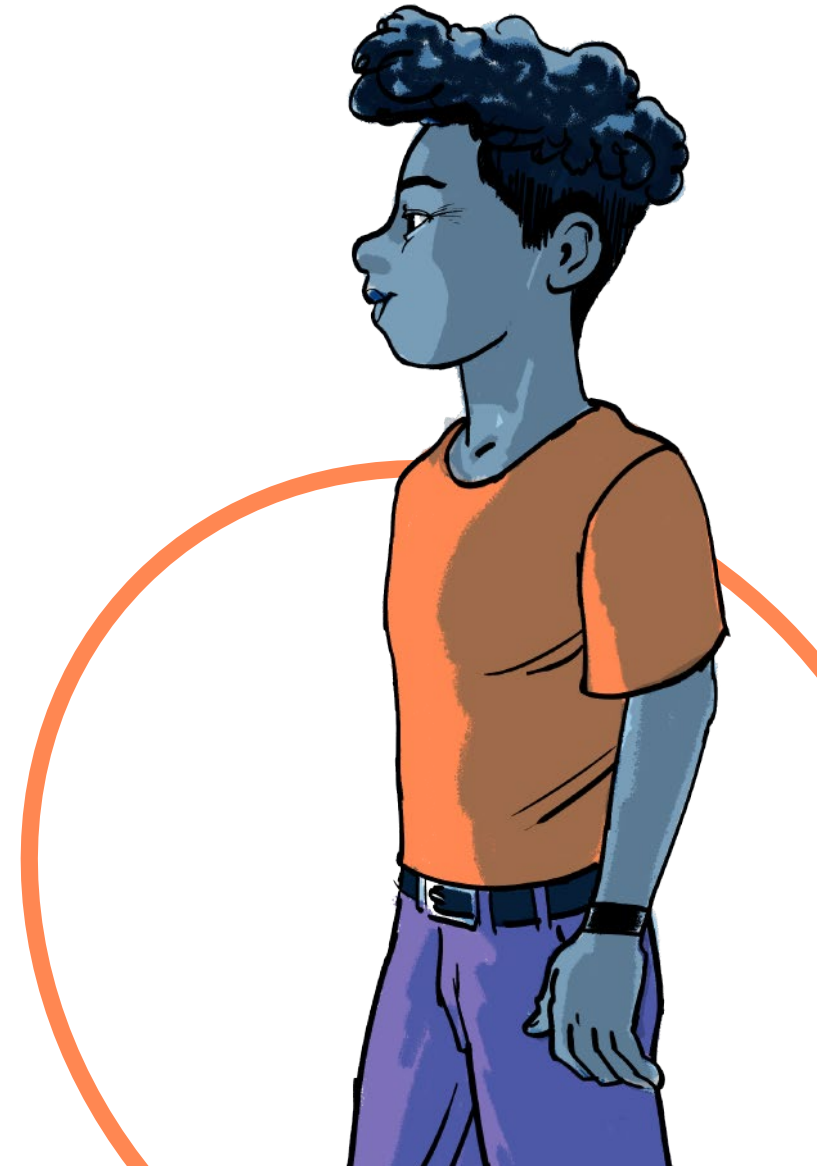


Asylum Procedures Regulation & Return Border Procedure Regulation

Unaccompanied children are excluded from the border procedures
except if they are a danger to public order or national security

Problematic because:

- ◆ They remain children and need additional support & safeguards against harm
- ◆ ‘Being violent’ can be grounds for being flagged as a security threat (Eurodac)
- ◆ UAC often victims of exploitation/trafficking by criminal organisations, but not identified or protected as such



Asylum Procedures Regulation & Return Border Procedure Regulation

Asylum border procedure and return border procedure **can only be applied to children in families if MS can meet the families' "special reception needs"** (art 53 APR)

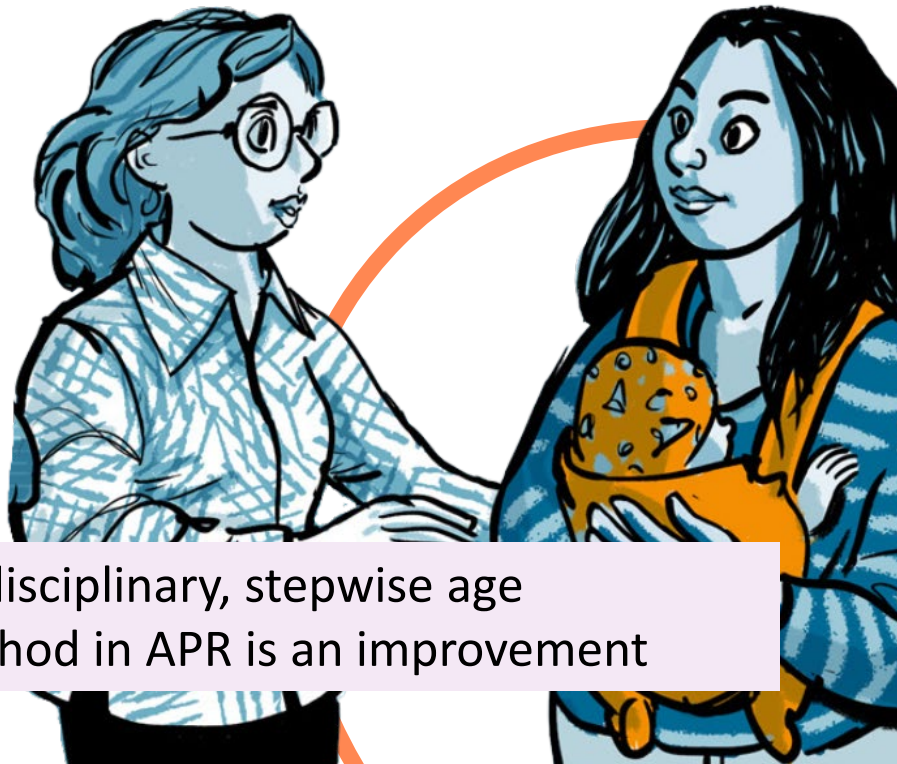
- ◆ Appropriate / adapted to children's needs identified during BIA
- ◆ Adequate standard of living in line with recast Reception Conditions Directive



Asylum Procedures Regulation & Return Border Procedure Regulation

Other child rights concerns :

- ◆ Children can be subjected to **searches of body & belongings**
- ◆ Access to free **legal aid not ensured** & complicated
 - ◆ Must be *requested after* asylum claim has been registered
 - ◆ No (free) legal assistance & representation during asylum (admin) procedure or return border procedures
- ◆ **No appeal against age assessment results**



Note: the multidisciplinary, stepwise age assessment method in APR is an improvement

Asylum Procedures Regulation & Return Border Procedure Regulation

Other child rights concerns :

- ◆ Risk of de jure **detention**

- ◆ APR allows detention to prevent people from entering the territory if detention conditions of RCD are met
- ◆ Further 12w detention under RBPR under RD conditions

- ◆ Risk of **de facto detention under APR**

- ◆ If RCD conditions cannot be met > MS must release people from border procedures but people must remain close to the border or in 'designated locations within the territory'



Asylum Procedures Regulation & Return Border Procedure Regulation

Texts restrict people's right to invoke grounds for stay available in national & EU law

- ◆ Fiction of non-entry continues throughout – *used to argue that another legal framework applies*
- ◆ MS retain right to issue permits on humanitarian and other grounds (RD) – *but no obligation to assess ex officio*
- ◆ MS must issue asylum rejection & return decisions together – *problematic*
- ◆ Suspensive appeal has to be requested within 5 calendar days – *huge barrier exacerbated by fact that legal assistance must be requested too*



Transition into adulthood

Dual aspect the abrupt ageing out of childhood at 18 and the broader, longer psychosocial and societal transition from childhood to adulthood.

The Common Implementation Plan

- ✦ recognizes guardians' key role in this transition, but mentions only refugee UAC
- ✦ States that services & support should be in place to ensure continuous support



What can children's ombudspersons do?

- ✦ Inform yourself of laws and procedures
- ✦ Exchange with CSOs and children who are affected (CiF and UAC)
- ✦ These are Regulations, but national law should fill in the (safeguarding) gaps
- ✦ The Commission's Implementation Plan & Operational Checklist require MS to review or develop processes, procedures and/or SOPs to carry out and prioritise BIA → monitor if not influence these
- ✦ Monitor the implementation
 - ◆ Each MS must create and independent monitoring mechanisms to ensure compliance with Fundamental Rights Charter, incl. BIC
 - ◆ Make use of your visiting rights

Thank you!

Laetitia Van der Vennet | Senior Advocacy Officer

>> laetitia.vandervennet@picum.org

Visit our website for all our publications on the EU
Migration and Asylum Pact

www.picum.org

