



Annex to the EEG letter on the exclusion of groups of people in vulnerable situations in the context of migration and provision of services

Legal Framework: EU instruments and obligations

The European Expert Group on Transition from Institutional to Community-based Care (EEG)¹ is aware that migrants, asylum seekers and refugees may be entitled to different immigration statuses - including refugee status - which can entail different rights and benefits according to different applicable frameworks. The 1951 Convention relating to the Status of Refugees is the primary standard in terms of the rights of refugees at international level. The Convention states that refugees should enjoy access to most services equivalent to that of the host population and in the case of some services, including housing, refugees should be accorded treatment which is as favourable as possible. Similarly, Article 18 of the EU Charter of Fundamental Rights states that “the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”

Under the Common European Asylum System, there are a number of Directives which create special protections for asylum seekers and beneficiaries of international protection, which have provisions requiring Member States to take into account the specific needs of persons in vulnerable situations. The EEG is troubled by [reports](#) of failure to identify and recognise persons in vulnerable situations, particularly persons with less visible disabilities such as intellectual and psychosocial disabilities. In order for these Directives to be fully adhered to, Member States and the European Union (EU) must ensure that there are proper identification and recognition processes which allow for persons in vulnerable situations and their needs to be identified and recognised.

Situation for specific groups

a) Children and young people

The EEG is concerned about the accommodation conditions offered to unaccompanied migrant and refugee children as well as to those children accompanied by their parents. All European countries have ratified the United Nations Convention on the Rights of the Child (UNCRC) which requires States to take all the appropriate measures to ensure, for all children without any discrimination of any kind,

¹ The EEG is a broad coalition of organisations representing people with care or support needs (including children, persons with disabilities, homeless persons and people experiencing mental health problems) and their families, as well as service providers, public authorities and intergovernmental organisations

temporarily or permanently deprived of their family environment, special protection and alternative care, always taking into account the best interests of the child.

In addition, the [Committee on the Rights of the Child \(CRC\) CRC General Comment No 6\(2005\)](#) on the treatment of unaccompanied and separated children outside their country of origin as well as the [UN Guidelines on Alternative Care for Children](#) clearly state that children should not be discriminated against due to their migration status and that they should enjoy the same level of protection and care as national children in the State concerned. In the last decades, research has also proven the detrimental effects of institutions to children's cognitive, emotional and physical development.²

Nonetheless, migrant and refugee children across Europe are still being discriminated against as they are often being treated on the basis of their migrant status and given differential treatment from national children deprived of parental care that grow up in the country's care system. Migrant children and undocumented migrants are at risk of being detained for an indefinite period of time and grow up in harmful, segregated accommodation facilities (i.e. shelters or institutional settings) with little access to information, no access to mainstream services and without the capacity to participate in decisions which affect their lives.³ Besides having a negative impact in their adult life, growing up in these segregating settings puts children at particular risk of exploitation, sexual abuse and violence, as well as results in them dropping out of the child protection system or leaving the reception centre to turn to illegal smuggling networks and go missing.⁴

Reports also show that the mental health of migrant children has been impacted during the last year, specifically since the adoption of the EU-Turkey deal with depression and self-harm rising among children in camps in Greece.⁵ Migrant and refugee children as well as adults have experienced trauma or distress either in their country of origin, in transit or in their host country. Beyond the psychosocial support they may require, children who have experienced trauma or distress need safe and stable environments such as in quality family or community based settings and trained caregivers that can give them support in an individualised manner.

Taking this into account, the EEG was alarmed to see that the newly launched Transnational Referral Mechanism Model (TRM) considers specialised shelters as an option for placement of unaccompanied minors, in line with their "best interest assessment and determination". Specialised shelters can however create institutional settings, thus cannot be considered a solution for the best interest of the child. In addition, migrant and refugee children should be the main responsibility of child protection agencies and not of migration authorities to ensure that they are not being treated on the basis of their migrant status, but on the basis of their best interest and of their views and wishes.

b) Persons with disabilities

The EU signed and ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2010. In September 2015, the EU's record on the rights of persons with disabilities was reviewed by a UN treaty body for the first time. In their Concluding Observations, the Committee on the Rights of Persons with Disabilities expressed its deep concern for the precarious situation of persons with disabilities in the context of migration and provision of services. The EEG is aware of several reports that the needs of persons with disabilities and persons in vulnerable situations are not being properly assessed on the

² For more information, please see K. Browne, *The Risk of Harm to Young Children in Institutional Care*, Save the Children, 2009, pp. 9 – 17; and J. Williamson, A. Greenberg, *Families, Not Orphanages*, Better Care Network Working Paper, 2010, pp. 5 – 6.

³ For more information, see:

<https://www.hrw.org/report/2016/09/08/why-are-you-keeping-me-here/unaccompanied-children-detained-greece>;
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21026&LangID=E>;
<http://www.eurochild.org/news/news-details/article/migrant-status-should-not-lead-to-institutionalisation-of-children-brussels-event->

⁴ For more information, see: <http://missingchildreneurope.eu/whychildrengomissing>.

⁵ For more information see here:

<http://www.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGlp4E&b=9506655&ct=14987883¬oc=1>.

ground and that conditions in reception centres, hotspots and camps are not accessible or inclusive and may not fully respond to the needs of migrants and refugees with disabilities.⁶ In particular, encampment accentuates the risks of physical and sexual violence, health problems and trauma for persons with disabilities. The EU and its Member States are therefore called to respond to this situation with a human rights-based approach that puts people first and complies with the CRPD's provisions. The EU should also ensure safe passage to people with physical disabilities who are in wheelchair and facilitate their travel.

c) Homeless people

Migration and the provision of services undeniably presents important challenges for the homelessness sector, these challenges have led to an emergency situation because of lack of coordination between Member States, inadequate asylum policies and structural problems with regards to the provision of services and access to housing.

A set of material reception conditions should be implemented in order to prevent asylum seekers from living in inadequate housing and sleeping rough. Accommodation must not only be available but must be coupled with an adequate standard of living, which should be provided in specific premises for asylum seekers. However, in several EU Member States there are not enough places in specific premises for asylum seekers. As a consequence, public authorities often rely on homeless services, which unfortunately are not adapted to asylum seekers' specific needs and do not have the capacity to satisfy and cannot satisfy the demand. The lack of places in specific premises and in general homeless services leads many asylum seekers to be accommodated in hotels where they do not receive adequate support or, even worse, to a life in camps or on the streets. In 2014, in France, there were 23,000 asylum seekers sleeping rough.⁷

Even once recognized as beneficiaries of international protection there is still a risk of homelessness for many of them. Besides the structural lack of adequate housing, beneficiaries of international protection generally have to leave accommodation provided within a short time after the asylum application procedure comes to an end and are vulnerable to homelessness due to insufficient resources to pay a rental guarantee and discrimination in the private rental market. Those who have had their asylum application refused can often end up residing irregularly with low threshold services being their only solution when national legislation allows access to these services.

The supply of accommodation and support, which cannot meet the huge and increasing demand, regardless of the administrative status of the homeless people concerned, inevitably puts pressure on housing and homelessness sectors. These challenges have not been taken into account by the European Commission and the asylum packages do not foresee any measure to help Member States strengthen the capacity and resources of reception services.

For an inclusive approach to accommodation and reception, please see [the position of the European Federation of National Organisations Working with the Homeless \(FEANTSA\)](#).

The way forward

The EU has been a leader and positive force for change in the transition from institutional to family and community-based care. One of the biggest successes in this regard was the inclusion of the ex-ante conditionality on social inclusion with an investment priority on de-institutionalisation in the

⁶ "The implementation of the hotspots in Italy and Greece: A study", available at: <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>. Please also see the Human Rights Watch's report highlighting that stricter measures are being applied to recognise asylum seekers as "vulnerable":

<https://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable>. See also the Greek Ombudsman's special report on "Migration flows and refugee protection – Administrative challenges and human rights issues" at page 20 and 21.

⁷ S. Le Floch (FNARS), *Asylum Reform in France and its Impact on Homelessness Services*, in *Homeless in Europe*, Winter 2015/2016, p. 4, FEANTSA http://www.feantsa.org/download/winter_2015-20167991224989479384648.pdf

regulations for the current programming period for the European Social Fund (ESF) and the European Regional Development Fund (ERDF). This means that the transition from institutional to family and community-based services should be prioritised in their use. Furthermore, the European Commission recently released guidelines on ensuring respect for the European Charter of Fundamental Rights, when implementing the European Structural and Investment Funds (ESIF) Regulations. The Regulations clearly state, that the Member States must also ensure compliance with the Charter, which enshrines the principle of integration of persons with disabilities, the rights of the child and the elderly, and the right to social and housing assistance, at certain stages of the implementation of the ESIF.

In contrast to the demonstrable actions, taken by the EU to ensure that its internal funds are used to support the development and set up of community-based care services instead of institutional setting, the EEG is concerned that the EU external funds, used in the context of migration and provision of services both within and outside the EU, are being invested in institutions as a long-term response.⁸ Adequate reception services for new arrivals are of paramount importance for the inclusion of all migrants and asylum seekers. However longer-term solutions in the community must be developed which will go beyond the provision of basic services in camps as they tend to become increasingly long-stay.

Alternative solutions

Over the years, longer-term solutions in the community have been developed across the EU. The EEG has collected some promising practices to assist the EU and its Member States in the provision of inclusive, alternative solutions to camps, reception centres and detention.

The Platform for International Cooperation on Undocumented Migrants (PICUM) collected good practices on laws, policies and projects in the report on "[The Sexual and Reproductive Health Rights of Undocumented Migrants](#)" and the report "[Cities of Rights: Ensuring Health Care for Undocumented Residents.](#)" In particular, reports highlight good practices in the provision of entitlements to health services to all types of migrants and refugees including undocumented migrants in Sweden, Netherlands, France and Belgium.⁹ Reports also illustrate the case of Malta where, despite there is no legal entitlement to healthcare, there are good practices in the use and training of cultural mediators.¹⁰ Reports also highlight how in some German cities local authorities have been working to go beyond the minimum legal standard.¹¹

The EU Agency for Fundamental Rights (FRA) collected information on alternative solution to provide accommodations for asylum seekers and refugees, with good practices from Germany, Austria and Sweden. More information can be found in [FRA's thematic focus: Impact of the asylum crisis on local communities](#). More information on accommodation of asylum seekers in Sweden can be also found in the [website of the Swedish Migration Agency](#).

With regards to alternative solutions to detentions of asylum seekers, please see FRA's report on "[Alternatives to detention for asylum seekers and people in return procedures](#)", the [good practices](#)

⁸ Two concrete examples of such concerns are [this accommodation facility for unaccompanied minors located in Paiania](#) and [this hospitality centre for unaccompanied minors to operate in Cyprus](#).

⁹ For more information, see page 12-18 in the report "The Sexual and Reproductive Health Rights of Undocumented Migrants."

¹⁰ For more information, see page 17 in the report "The Sexual and Reproductive Health Rights of Undocumented Migrants."

¹¹ For more information, see pages 18-20 in the report "Cities of Rights: Ensuring Health Care for Undocumented Residents."

[collected by the International Detention Coalition](#) and the [“Ensuring the right to liberty for child migrants”](#) handout provided by the End immigration Detention of children.

Further information can be found in the UNICEF report [“A home away from home for refugee and migrant children”](#), which calls for dignified living conditions for all children in Europe regardless of their migration status. Please also see UNHCR report [“alternative care for children”](#) calling for suitable alternative care solutions according to each child’s best interests.

The [Alfaca](#) project is co-funded by the European Commission and provides training to professionals with the aim to reduce institutional care and increase family based care for children in migration. Finally, the [Inter-Agency Guiding Principles on unaccompanied and separated children](#) provide information for all stages of care for children, from prevention to long term solutions for unaccompanied, separated children.