PICUM Analysis

New Migration Pact Series

Children's rights in the 2024 Migration and Asylum Pact

Analysis of the Screening Regulation, the Asylum Procedures Regulation, the Return Border Procedure Regulation and Eurodac

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PICUM

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Introduction

PICUM represents a network of 160 organisations across 30 countries working to ensure social justice and human rights for undocumented migrants.

PICUM has been following the EU Pact on Migration and Asylum in recent years through various consultations prior to its launch by the European Commission in September 2020, during the past four years of negotiations at the EU level, and now subsequent to its official adoption in May 2024. PICUM has published a broad range of analyses, statements, and recommendations, often jointly with civil society partners and with our members across EU.

Despite our collective recommendations and warnings on the harmful impact of the proposed reforms on migrants' fundamental rights, the final text of the Pact will normalise the arbitrary use of immigration detention, including for children and families, increase racial profiling, use "crisis" procedures to enable pushbacks, and return individuals to so called "safe third countries" where they are at risk of violence, torture, and arbitrary imprisonment.

It also betrays the spirit of existing EU policies, such as the EU Action Plan on Integration and the EU Action Plan Against Racism which recognises the intersectional impacts of racism and the specific vulnerability of migrants and refugees. The Pact, as it stands, risks perpetuating discriminatory practices within the very structures meant to uphold justice and protection for all.

This briefing is part of a series of PICUM analyses of how several legislative measures in the Pact on Migration and Asylum impact undocumented migrants. The series includes an analysis of the Screening Regulation, the Asylum Procedures Regulation, of how the access to residence permits on grounds other than international protection is limited, and of child rights safeguards in the Screening, Asylum Procedures Regulation, Return Border Procedure Regulation and Eurodac regulation.

This brief focusses on children's protection from harm, their access to a secure residence permit and child-specific safeguards within the Pact. Family reunification, resettlement and relocation are not included in this brief.

How many children will be affected by the Pact on Migration and Asylum?

It is difficult to say how many children exactly will be affected by the Migration and Asylum Pact. This is because no comprehensive data of the number of children in migration procedures is reported and published for the entirety of the EU. We cannot predict the future, either.

However, existing data concerning asylum seeking, undocumented and resettled children in the EU indicate that most likely **hundreds of thousands of children will be affected each year**, when we know that:

- 271,515 asylum applications involved children in 2023.[1]
- 20,000+ unaccompanied children crossed into the EU irregularly in 2023.[2]
- 103,235+ undocumented children came into contact with police or other enforcement authorities in 2023.[3]
- 6,650 children were resettled in 2023.[4]

We do not know how many children were refused entry into the EU in 2023, as Eurostat's data on refusals of entry does not allow disaggregation based on age.[5] This is in itself problematic, as it means that the EU cannot predict and thus cannot adequately prepare for the number of children who will need assistance in the Screening procedure, for instance.

1 Eurostat, Asylum applicants by type, citizenship, age and sex - annual aggregated data (migr_asyappctza) [checked on 16 April 2024]

2 Frontex, 26 January 2024, Significant rise in irregular border crossings in 2023, highest since 2016 [checked on 16 April 2023]

3 Eurostat, Third country nationals found to be illegally present - annual data (rounded) (migr_eipre) [checked on 7 August 2024]

4 Eurostat, Resettled persons by age, sex and citizenship - annual data (migr_asyresa) [checked on 16 April 2024]

5 In Eurostat, Third country nationals refused entry at the external borders - annual data (rounded) (migr_eirfs) [checked on 30 August 2024]

Glossary

The various EU regulations use the following definitions:

'Minor' means a third-country national or stateless person below the age of 18 years (art 2(9), Screening Regulation; art 3(6) APR).*

"'Unaccompanied minor' means a minor who arrives on the territory of the Member State unaccompanied by an adult responsible for him or her, whether by law or practice of the Member State concerned, and for as long as such minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after entering the territory of a Member State;" (art 2(11) Screening Regulation; art 3(7) APR)*

"'[R]epresentative' means a natural person or an organisation, including a public authority, appointed by the competent authorities, with the necessary skills and expertise, including with regard to the treatment and specific needs of minors, to represent, assist and act on behalf of an unaccompanied minor, as applicable, in order to safeguard the best interests and general well-being of that unaccompanied minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations provided for in this Directive." (art 2(13) Reception Conditions Directive (RCD))

'Undocumented child' is any person who is younger than 18 years old and who does not have valid authorization to stay in the country they reside in. They may be accompanied by their parent(s) or unaccompanied. They may have been born to (an) undocumented parent(s) or have become undocumented when they or their parents lost an authorization to stay, for instance due to the expiration of their visa, residence or work permit, the rejection of an application for international protection or residence status on other grounds, or irregular entry.

* The internationally recognized definition of a person under the age of 18 is a "child", according to the UN Convention on the Rights of the Child. Consequently, PICUM uses the term 'child' rather than 'minor'.

List of acronyms of legal instruments	
Screening Regulation	SR
Reception Conditions Regulation	RCD
Asylum Procedures Regulation	APR
Return Directive	RD
Return Border Procedure Regulation	RBPR
Asylum and Migration Management Regulation	RAMM
Qualification Regulation	QR

Table 1: List of acronyms of legal instruments

Children's rights in the Screening Regulation

The Screening Regulation (SR) will start to apply from 12 June 2026, 24 months after its entry into force (art. 25). The Commission will report on the implementation of the Screening Regulation in 2028, two years after its entry into application, and will evaluate it every five years with the first evaluation set for 2031.

The Screening Regulation applies to the Schengen area, including the Schengen associates (Iceland, Norway, Switzerland and Liechtenstein). It is not automatically applicable to Ireland and Denmark, which have 6 months from entry into force to decide whether to implement it.

What the Regulation sets up

The Screening Regulation **introduces a mandatory screening procedure** that will **apply to all third country nationals, including children**, who are in one of the following situations:[6]

- Applied for international protection during border checks;
- Disembarked from a search and rescue operation;
- Are already in the EU territory but cannot prove that they have already been subject to controls at external borders, for instance because they do not have with them a travel document with an entry stamp at the moment of apprehension (art. 1, recital 18);[7] or
- Crossed an external border in an unauthorised manner, without fulfilling the entry conditions, except if they are directly sent back or if they are detained for the whole duration of their stay in the EU, which should be less than 72 hours (art. 5(1)a SR and art. 22(1) and (4) Eurodac).

The people who are being screened must remain at the disposal of the government instances for the entire duration of the screening – either maximum seven[8] or three[9] days. During that time, the government must do health, vulnerability and safety checks, verify the person's identity, take their biometric data, fill out a 'screening form', and – ultimately – refer them to "the appropriate procedure" / next step.

Persons in the screening procedure are not authorised to enter the territory (art. 6).[10] Member states need to ensure that they "remain available" to the government in the 'screening locations' under national law (art. 6, 7 and 9). This can take place in or at proximity to the external border, or on the territory (art. 8).

If people apply for asylum, the rules on detention of the Reception Conditions Directive apply, while those under the Return Directive apply for people who don't apply for asylum (respectively art. 4(1)(B) and art. 8(7)). (Note that article 8(8) of the Screening regulation requires Member States to ensure that "all persons subject to the screening are accorded a standard of living which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter.")

6 The screening procedure does not apply to third country nationals who hold a residence permit or a long-stay visa in another EU MS towards which they are transiting, or to whom a visa (other than asylum applicant) is issued at the border (art 3, rec. 14. art. 6(5) Regulation (EU) 2016/399 (Schengen Borders Code)).

7 The procedure for the screening within the territory would also apply to people apprehended in connection with irregular internal border crossings, when internal border controls have not yet been lifted (rec. 20).

8 The rule (article 8(3)).

9 For people found on the territory, option 3 in the list above (art 8(4)).

10 For more on the 'fiction of non-entry', see section on 'Continuing the fiction of non-entry' on p. 30.

After the screening is completed, or after the maximum length of three or seven days is met, people will be referred to either asylum[11] or return procedures (art. 18). People's access to residence permits on other grounds (e.g., trafficking, humanitarian grounds, children's rights etc) will be highly difficult, as the Regulation does not clarify that people may apply for these while being screened. Instead, it puts the onus on Member States by referring to article 6(5) of the Schengen Borders Code which allows Member States to let people enter the territory "on humanitarian grounds, grounds of international interest or because of international obligations" (art 18(1)).

What the regulation means for children

The Screening Regulation **applies to children and adults alike**. There are no exceptions.

In this section, we address general provisions regarding children, the involvement of child protection actors, the risk of detention, unaccompanied children's access to a guardian, age assessments, interviews and access to permits on other grounds than international protection.

General provisions regarding children

As mentioned, the Screening Regulation applies to children and adults alike. Some standard safeguarding provisions are included in the Regulation, either in article 13 ('guarantees for minors') or elsewhere. These include:

- That a child's best interests "shall always be a primary consideration" (rec 25, art 13(1)).
- Information given to child must be given in a child-friendly and age appropriate manner and "with the involvement of the representative or person referred to in art 13(2) and (3) (art. 11(3)).
- "Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health in adequate facilities. In the case of minors, support shall be given in a child-friendly manner by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities." (art 12(4), preliminary health checks and vulnerabilities)
- Recital 26 states that "[w]hen applying this Regulation, the Member States should ensure the respect for human dignity and should not discriminate against persons on grounds of sex, racial, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, disability, age or sexual orientation."
- The Fundamental Rights Charter applies, of course, and is mentioned specifically in recital 25 with regards to the best interests of the child. Article 1 SR clarifies that the independent monitoring mechanism it puts in place shall monitor the implementation's compliance with the Charter of Fundamental Rights of the European Union.

! The Operational (implementation) Checklist requires member states to review or develop processes, procedures and/or SOPs to carry out the assessment of the best interests of the child and ensure it is prioritised in all procedures and in reception.[12]

11 Or, where relevant, relocation or other solidarity mechanisms.

12 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p 22

Involvement of child protection actors

The Screening Regulation was an opportunity to strengthen the involvement of and collaboration between migration and child protection authorities, as well as the presence of the latter in all migration spaces where children are present (borders, detention, reception, return facilities, etc). With that in mind, the final text of the Screening Regulation could have included stronger requirements for member states to ensure this link is made.

- Article 12(4) on preliminary health checks and vulnerabilities does state that support to children "shall be given (...) in cooperation with child protection authorities." Recital 25 states that "[c]hild protection authorities should, wherever necessary, be closely involved in the screening to ensure that the best interests of the child are duly taken into account throughout the screening."
- Recital 24 and article 8(9) mention national child protection authorities too: "National child protection authorities and national authorities in charge of detecting and identifying victims of trafficking in human beings or equivalent mechanisms shall also be involved in [the preliminary health and vulnerability] checks, where appropriate.

The main issue is that the Screening Regulation does not *require* child protection authorities to be present in screening locations, but rather than they are called in / contacted by migration authorities if the latter deem it necessary. This conditionally may reduce the likelihood that child protection needs are detected and children placed into child protection when necessary.

! Note that the European Commission's Common Implementation Plan explicitly underlines that "in the implementation of the Pact, Member States always have to ensure the centrality of child protection" in line with the 2024 Commission Recommendation on integrated child protection systems.[13]

The Common Implementation Plan also instructs Member States to "review or put in place workflows, protocols and processes to ensure the best interests of the child are individually assessed and prioritised at all stages of the procedure" and "to ensure an integrated case management system in synergy with national child protection services, international and civil society organisations, particularly in operational support and monitoring processes; to ensure that all relevant proceedings and reception systems are adapted to take into account children's age, needs and vulnerabilities as a priority."[14] The 2024 Recommendation on integrated child protection systems includes, amongst others, the recommendation to build well-resourced national integrated child protection systems that can face the diversity of situations children in migration find themselves in.[15]

! The Operational Checklist, annex to the Common Implementation Plan, lists child protection officers as necessary personnel to recruit for the border procedures.[16] It also requires member states to "[c]onsider integrated case management system in synergy with national child protection services, partnerships with international and civil society organisations."[17]

13 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 35

14 Ibid., p. 38

15 European Commission, 2024, Commission Recommendation of 23.4.2024 on developing and strengthening integrated child protection systems in the best interests of the child

16 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p. 5

17 Ibid, p. 22

Likely detention

The Screening Regulation allows the detention of children, both when they (or their parents) have applied for asylum and when they have not, because they must "remain available" to the Screening authorities (art. 6, 7, 9). **The conditions that must be met depend on whether they've applied for asylum or not. If they have, the Reception Conditions Directive applies** (art 4(1)b). **If they have not, the Return Directive applies** (art 8(7)). Both instruments allow for children to be detained.

> The UN Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families **deem child immigration detention to be in violation of the UN Convention on the Rights of the Child**.[18]
>
> However, **the EU allows for immigration detention of children and thus does not meet these international standards**.
>
> The listing of conditions that should be met before or when detaining children in this briefing should not be understood as condoning the detention in itself.

Detention conditions

The Reception Conditions Directive (RCD) states that children and families should "as a rule" not be detained (art. 13(2)), but instead placed in "suitable accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements" (rec 40). However, it is possible to detain them in exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests.

The RCD lists two circumstances under which a child can be detained: "(a) in the case of accompanied minors, where the minor's parent or primary care-giver is detained; or (b) in the case of unaccompanied minors, where detention safeguards the minor"[19] if it is assessed to be in their best interests (art. 13(2)). Recital 40 clarifies that "the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them" (see also art 13(2)).

The RCD also includes conditions that detention facilities must meet. These include access to an open-air space (art 12(2)), access to education (art 16) and leisure and play activities (art 13(2)). Families with children must be given separate accommodation that guarantees privacy in "detention facilities adapted to the needs of minors" (art 13(3)). Article 26 and 27 list other safeguards that apply to children or unaccompanied children, including access to rehabilitation services and mental health care for child victims[20] (art 26(4)). *However*, the RCD also allows the derogation from these requirements at border posts of in transit zones "in duly justified cases and for a reasonable period of time, that shall be as short as possible" (art 13(6)).

Under the Return Directive (RD), detention can only be applied if no other less coercive measures are possible (art. 15). Unaccompanied children and families with children can only be detained as a measure of last resort and for the "shortest appropriate period of time" (art. 17(1)). As with adults, their detention must be ordered and argued in writing (art. 15(2)). And they must be released immediately if there is no prospect of return (art. 15(4)). This means that **children with families who do not apply for asylum can only be placed in detention if it is necessary to achieve the specific goal: return. If return is not possible, they cannot be placed in detention (including an alternative to detention)**.

18 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 2017, Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles

19 Art 11(5) RCD requires the detention to be reviewed *ex officio* at "reasonable intervals" or at the request of the detainee; the same article requires more regular, *ex officio*, reviews when unaccompanied children are detained.

20 "Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided where needed." (art 26(4))

While in detention, children should be able to access the basic education system pending return (art 14§1c RD). Article 17 of the Return Directive further limits detention of children to detention in separate accommodation guaranteeing privacy, where children can engage in leisure activities and, depending on the length of their detention, access to education. Unaccompanied children must be accommodated in institutions where both staff and the facilities take into account their age-related needs.

! Note that the European Commission's Common Implementation Plan wrongly states that screening facilities "for irregular migrants" should meet the conditions of the Return Directive.[21] However, the Screening Regulation clearly states that the conditions of the facilities do not depend on the person's past, but on their choice to apply for asylum or not while in screening.

Risk of de facto detention

Despite the fact that the RCD and RD include clear criteria to be met before detaining someone, especially children, the fact that Member States must ensure that people in Screening remain available creates serious concerns that they will resort to a widespread use of *de facto* detention (i.e., a measure which in practice amounts to deprivation of liberty but which states do not formally qualify as such, and where safeguards are not applied). The hotspots in the Greek Aegean islands, which the screening procedure resembles,[22] has for example blurred the lines between the restriction on and deprivation of liberty and led to de facto detention practices, despite the fact that the law merely mentions restrictions of liberty, not detention.

! Note that the European Commission's Common Implementation Plan confirms both our concerns about the risk of de facto detention and an ever-expanding use of alternatives to detention where detention may not be warranted (and thus, an ATD is not either). The implementation plan states that "Member States will have to take the appropriate actions to ensure that migrants remain available to authorities during the screening and the border procedures (and are prevented from an unauthorised entry and limited from moving in an unauthorised manner). These actions could include protocols covering an assessment of measures to limit the risk of absconding, including alternatives to detention (which should be defined by law), notably for families with children, and possible use of detention."[23]

Appointment of a guardian – or not

Unaccompanied children may not be appointed their guardian[24] ('representative')[25] during the Screening procedure, even though they are in a critical phase in their migration process. Article 13(3) does require member states to designate a guardian (representative) "as soon as possible."[26]

21 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 12

22 Refugee Support Aegean, HIAS, Greek Council for Refugees, Legal Center Lesvos, Danish Refugee Council, Fenix, Actionaid and Mobile Info Team, 2021, The Workings of the Screening Regulation Juxtaposing proposed EU rules with the Greek reception and identification procedure

23 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 12

24 The Screening Regulation does not use the term 'guardian', but 'representative'. Only the Asylum Qualifications Regulation (AQR) uses the term guardian, who is appointed after the unaccompanied child has been given international protection (i.e., recognized refugee or given subsidiary protection) (art 33 AQR). This person can be same person as the representative appointed under the APR who can be the same person appointed during Screening).

25 While people usually talk about 'a guardian', different terms are used in EU law (see text box on page 23). A guardian is "an independent person appointed to act on behalf of a child, in the absence of (both) parents or the adult responsible for the child by law or by practice, who safeguards the best interests of the child (BIC) and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do." (Source: European Commission, Glossary 'guardian' [checked on 16 April 2024]

26 Note that the guardian/representative should be the same as the guardian/representative appointed in accordance with the Reception Conditions Directive.

However, it does not include a deadline by when this should be done – in defiance of international recommendations[27] and the EU's own best practices.[28]

The Regulation does cover what must be done in the interim. Article 13(3) states that, "where a representative has not been designated," member states can designate "a person trained to safeguard the best interests of the minor and his or her general wellbeing" to "provisionally act" as a guardian (art 13(3)).

Similar provisions are included in the Asylum Procedures Regulation and the Reception Conditions Directive,[29] thus institutionalizing a practice already carried out in at least 12 Member States. In those twelve Member States, unaccompanied children at borders are provided "a person of support" instead of the guardian.[30] In the remaining 15 member states of the EU 27, the Pact is thus creating a new role never seen before, while at the same time establishing common minimum requirements for those 12 Member States where it is already practice.

Quality requirements

Article 13(3) includes certain requirements the person must meet, notably: being "**trained** to safeguard the best interests and general wellbeing of the minor [to accompany and assist] the unaccompanied minor during the screening in a child-friendly and age-appropriate manner and in a language that he or she understands" (art 13(3). Article 13(4) continues: "The person in charge of accompanying and assisting an unaccompanied minor [where a guardian/representative has not been appointed] **shall not be a person responsible for any elements of the screening, shall act independently and shall not receive orders either from persons responsible for the screening or from the screening authorities**. Such persons shall perform their duties in accordance with the principle of the best interests of the child and shall have the necessary expertise and training to that end. In order to ensure the well-being and social development of the minor, that person shall be changed only when necessary."

The guardian/representative, then, "shall have the necessary skills and expertise, including regarding the treatment and specific needs of minors. The representative shall act in order to safeguard the best interests and general well-being of the minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations under this Regulation" (art 13(3).

Note on separated children

The Screening Regulation, like other EU law, does not differentiate between unaccompanied and separated children. **Separated children should be treated as unaccompanied children as they are without a person holding parental authority**.

Article 13(3) states that "[d]uring screening, the minor shall be accompanied by, where present, an adult family member." The article does not refer to a child's parents, so we must understand this to mean that separated children should be assisted throughout the Screening procedure by both the guardian or 'trained person' *and* at least one of the adult family members they are accompanied by but who are not their legal guardian.

27 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, 2017, Joint general comment No. 4 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, §17 (i) and (j).

28 Fundamental Rights Agency & European Commission, 2015, Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking

29 Recital 45 of the Reception Conditions Directive states that the interim person "might (…) for example [be] an employee of an accommodation centre, of a child-care facility, of social services, or of another relevant organisation designated to carry out the tasks of a representative." While pointing out that they should not carry any conflict of interest. This differs from the text in the Screening Regulation.

30 These are (in March 2021): Belgium (in urgent cases), Bulgaria, Czechia, Germany, Denmark, France, Hungary, Ireland, Lithuania, Netherlands, Romania and Slovenia. It is also done in accession countries North Macedonia and Serbia. Fundamental Rights Agency, 2022, Guardianship systems for unaccompanied children in the European Union. Developments since 2014, p. 47.

Up to thirty unaccompanied children per guardian

Both guardians and the 'trained person' **can be supporting up to 30 unaccompanied children at one time** (article 13(5)).

While it is good that a cap is included in the Regulation, it is much higher than the current maxima in certain member states. For instance, Finland allows just 10 children per guardian in the initial (reception) phase. Italy[31] and Slovenia[32] allow just three children per guardian.[33] So, while 30 is an improvement for countries like Germany[34] (and doesn't change anything for Hungary), it means a three- to ten-fold increase in the number of children a guardian supports for several countries.

Thirty children are a lot of children to support. It is doubtful that guardians or the 'trained person' that is designated ad interim can assist so many children well or do their job in line with the requirements set out in the Regulation or the principles of the European Guardianship Network.[35]

Age assessments and the benefit of the doubt

The Screening Regulation includes **no references or provisions regarding age assessments or the principle of the benefit of the doubt**. Logically speaking, this omission in combination with the fact that the Regulation must be implemented in the best interests of the child and the Charter (respectively art 13 and 3), should be understood to mean that **authorities cannot cast doubts on a person's age during the Screening procedure. Authorities must, in other words, assume all people saying they are children are children and apply the safeguards enshrined in the Regulation to them** (regarding detention conditions, adapted information provision, appointment of a guardian, etc).

Children will be interviewed

Given the purpose of the screening regulation, it is to be expected that unaccompanied[36] children will be interviewed for screening purposes. Article 13(2) shows that children in families will or could also be interviewed, as the article states that children shall be screened in the presence of an adult family member, if one is present. This assumption is further strengthened by recital 33, which covers the content of the screening form. The information contained in the screening form should be "made available" to the person concerned, and "provided to the adult or adults responsible for the child. In the case of unaccompanied minors, the information contained in the screening form should be provided to the representative of the child or the person trained to safeguard the best interests and general well-being of the minor." This confirms that children in families will likely be interviewed too.

The Regulation does not include minimum standards, safeguards or references regarding child-friendly interviewing or collection or interpretation of information to be included in the Screening Form. The legislators contented themselves with including a reference to the best interests of the child as "a primary consideration" during screening, which would sensibly include the interviewing itself (art 13).[37]

Precarious access to a secure residence permit

As mentioned above, a fundamental problem of the Screening Regulation is the difficulties it creates for people to access a residence permit on any other grounds than asylum – including for children. The Screening Regulation formally mentions asylum and return as the two possible outcomes of the screening procedure. However, **in light of the applicability of article 6(5) the Schengen Borders Code, article 6(4)**

31 It concerns voluntary guardians in Italy.

32 Or maximum five if no other guardian can be appointed.

33 EU Fundamental Rights Agency, 2022, Guardianship systems for unaccompanied children in the European Union: Developments since 2014, pp. 30-31.

34 Maximum 50 per guardian.

35 European Guardianship Network, n.d., 7 Standards of guardianship. Key principles guiding the provision of guardianship for unaccompanied and separated children in the EU

36 And separated.

37 Until minimum safeguards and standards are in place, Frontex' VEGA handbook: Children at land borders. Children at risk on the move. Guidelines for border guards (2019) should be required reading.

of the Return Directive and EU and international standards,[38] it should be inferred that individuals submitted to it should have access to a broader range of permits as regulated under EU and national law, including for humanitarian, family and health reasons, to protect the best interests of the child, and for work reasons.[39] Failure to assess these permits could lead to violations of international and European law,[40] including the principle of *non-refoulement*.[41]

38 PICUM, 2022, Barriers to return: Protection in international, EU and national frameworks

39 See PICUM's various resources on regularisation and access to a secure residence status for overviews of grounds for stay.

40 PICUM, 2021, Why is the Commission's push to link asylum and return procedures problematic and harmful?

41 PICUM, 2023, FAQ Non-refoulement in the context of the EU Pact on Migration and Asylum

Children's rights in the Asylum Procedures Regulation and the Return Border Procedure Regulation

After the screening is concluded, and people apply for asylum, the content of the Asylum Procedures Regulation (APR) applies. The Return Border Procedure Regulation (RBPR) complements the existing Return Directive (RD), creating a specific procedure for people whose asylum application has been rejected, or who received a refusal of entry, in the context of border procedures (see below) .[42]

The APR wants to harmonise procedures for granting and withdrawing international protection, with the aim of limiting secondary movements of applicants "where such movements would be caused by differences in legal frameworks" (rec 7 APR). It applies to all applications for international protection made in the territory, at external borders, on the territorial sea and in transit zones of Member States, including unaccompanied children and families with children of all ages (art 2 APR). The RBPR also applies to all children.

We will not cover the entirety of the system that the APR and RBPR put in place, as much of it falls outside of PICUM's areas of focus.[43] We focus here on those elements that are relevant for children, especially children who were undocumented and entered screening, or who risk becoming undocumented.

As with the other regulations that make up the Pact, Member States will have to create a national implementation plan by 12 December 2024, and implement it by 1 July 2026 (art 75 APR). The regulation shall apply from 12 June 2025 (art 79).

Note on geographical application: the Asylum Procedures regulation is applicable to all EU member states, except for Denmark. Ireland, not bound by the previous Asylum Procedures Directive, confirmed its decision to opt in. The Return Border Procedure Regulation, unlike the APR, will also apply to Denmark and Schengen associated countries (Iceland, Norway, Switzerland and Liechtenstein).

What the regulations set up

As the preambles of the APR and RBPR explain, "after the screening, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure, or refused entry" (rec 6 RBPR, rec 57 APR). If the person makes an asylum claim during the screening phase, then they can be assigned to different asylum procedures: the 'regular' procedure, as well as special procedures, i.e. accelerated and border procedures. Whether they are assigned to special procedures depends on

42 Note that the content of the Return Border Procedure Regulation was part of the Commission' APR proposal, but was split off into a separate instrument near the end of the negotiations. They are tightly connected, which is why we are covering them together.

43 See for instance ECRE, 2024, Comments on the Asylum Procedure Regulation for an analysis of areas PICUM does not work on.

a series of conditions to be met[44] and the Member States' assessment of a series of factors (described below).[45]

The asylum border procedure "should be as short as possible", but can take up to 12 weeks[46] (rec 68, art 51 APR). If their border asylum application is unsuccessful,[47] then they are fed into a return border procedure, which is regulated by the Return Border Procedure Regulation (art 1(1) RBPR) and provisions of the Return Directive (notably safeguarding provisions, rec 8, art 4(3) RBPR).[48] If the person is not returned within 12 weeks, the return procedure continues but this time under the rules of the Return Directive (rec 10, art 4(4) RBPR).

The fiction of non-entry[49] applies to the asylum border procedure and the return border procedure, unless the procedures cannot be wrapped up within the 12 week deadlines (see further). After that time, people "should be authorised to enter" the territory of the Member States to continue their asylum application or their return, whichever the case being (art 51(2) APR, art 4 RBPR).

What the regulations mean for children

The Asylum Procedures Regulation and the Return Border Procedure Regulation **apply to children and adults alike**, although some unaccompanied children are excluded (see further).

We cover the general provisions, the involvement of child protection actors, procedural guarantees that affect children, children's rights in the accelerated and border asylum procedures, children's physical integrity, unaccompanied children's access to a guardian, age assessments, access to permits on other grounds than international protection, detention and voluntary departure under the RBPR in this section.

44 Article 43 lists three conditions that must be fulfilled (that the screening process has taken place, that the person has not been authorised to enter the territory, and that the person does not fulfil the conditions of entry under the Schengen Borders Code (SBC)). If these are met, Member States can apply the asylum border procedure when the person applied for asylum at the border or in a transit zone, following "apprehension in connection with an unauthorised crossing" of an external border, following disembarkation after a search and rescue, or following relocation (ie, RAMM). In other words, the undocumented people who were put into screening, because they could not prove their regular entry into the territory upon their apprehension on the territory should not be put into a border procedure, but should see their possible asylum procedure treated 'on the territory'.

45 Article 53 lists situations when the Member State must not or must cease to apply an asylum borders procedure. These are: when it concerns an unaccompanied child (unless they're a risk to public order, see further), where "(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable; (b) the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with Chapter IV of [Reception Conditions Directive], at the locations referred to in Article 54; (c) the necessary support cannot be provided to applicants in need of special procedural guarantees at the locations referred to in Article 54; (d) there are relevant medical reasons for not applying the border procedure, including mental health reasons; (e) the guarantees and conditions for detention laid down in Articles 10 to 13 of [the Reception Conditions Directive] are not met or no longer met and the border procedure cannot be applied to the applicant without the use of detention. In the cases set out in the first subparagraph of this paragraph, the competent authority shall authorise the applicant to enter the territory of the Member State and apply the appropriate procedure provided for in Chapter III." In other words: a lot depends on the vulnerability check done as part of the screening.

46 12 weeks starting counting from the registration of the asylum application, which is the second step in a three-step process: making, registering and lodging of an application (rec 27 to 29 APR, art. 26 to 28 APR) and including the decision on appeal (rec 68 APR, art 51 APR). The 12 weeks can be extended to 16 weeks if the applicant is transferred pursuant the RAMM.

47 Note that return decisions will be issued as part of, or at the same time as, the negative decision on the asylum claim (rec 40, art 37 APR). The same goes for refusals of entry, should the person be 'at the border.'

48 A 15 day period for voluntary departure is possible, but not automatically granted. Voluntary departure is only granted upon request, and does not "confer a right to" enter the territory (rec. 9, art 4 RBPR)

49 People in the border procedures are not allowed to enter the territory and, thus, remain 'at the border' – even if they may be physically on the Member States' territory. This is called the 'fiction of non-entry'; a legal fiction states use to "claim to possess no obligation to provide rights to incoming migrants that they usually would provide once the migrant has legally arrived in the state." (see further, quote taken from Soderstrom K., 2022, An analysis of the fiction of non-entry as appears in the Screening Regulation, ECRE Commentary, p. 2)

General provisions regarding children

Some standard safeguarding provisions are included, either in article 22 APR ('Guarantees for minors') or elsewhere. These include:

- The best interests of the child as a primary consideration in the application of the APR (rec 23, rec 67, article 22(1) APR). Recital 67 APR expands it to implementation to application that "possibly" affects children. Article 22(2) APR states that the determining authority shall assess the best interests of the child in accordance to article 26 RCD.[50] And "[i]n assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background" (rec 23 APR).
- The best interests of the child as a primary consideration in the application of the RBPR (rec 5). Art 4(3) RBPR also states that article 5 Return Directive applies. Article 5 RD requires Member States to "take account of" the best interests of the child, family life, the principle of non-refoulement, and the state of health of the third country national concerned.
- Member States are bound by their obligations under international law (rec 4 RPBR, rec 10 APR), including the UN Convention on the Rights of the Child (rec 23 APR) and the EU Charter for Fundamental Rights (rec 25 RBPR, rec 23, rec 71 APR).

! The Operational Checklist, annex to the Common Implementation Plan, requires member states to review or develop processes, procedures and/or SOPs to carry out the assessment of the best interests of the child and ensure it is prioritised in all procedures and in reception.[51]

No ensured involvement of child protection actors

Neither the APR, nor the RBPR mention child protection actors or in any way strengthen a presence of child protection actors during border procedures, including the spaces where children will be held. *However*, the Common Implementation Plan and its accompanying Implementation Checklist do make that connection. It is thus crucial that member states follow this guidance.

! Note that the European Commission's Common Implementation Plan instructs Member States to "review or put in place workflows, protocols and processes to ensure the best interests of the child are individually assessed and prioritised at all stages of the procedure." They must, when doing this, consider the 2024 Commission Recommendation on integrated child protection systems, especially where it refers to children in migration, "to ensure an integrated case management system in synergy with national child protection services, international and civil society organisations, particularly in operational support and monitoring processes; to ensure that all relevant proceedings and reception systems are adapted to take into account children's age, needs and vulnerabilities as a priority." [52]

! Positively, the Operational Checklist, annex to the Common Implementation Plan, lists child protection officers as necessary personnel to recruit for the border procedures.[53] It also requires member states to "[c]onsider integrated case management system in synergy

50 Article 26(2) RCD states: "In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background and the need for stability and continuity in care;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence or exploitation, including trafficking in human beings;

(d) the views of the minor in accordance with his or her age and maturity."

51 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p 22

52 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, pp. 38-39

53 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p. 5

with national child protection services, partnerships with international and civil society organisations."[54]

Procedural guarantees

The Regulations include child-specific guarantees or guarantees that also apply to children, including 'special procedural guarantees', the right to legal aid, to information and to be heard in a child-friendly way.

Special procedural guarantees

> *"In order to ensure that the processing of applications for international protection are carried out with due regard to the rights of the child, specific child-sensitive procedural safeguards and special reception conditions are to be provided to minors."* (recital 36 APR)

The APR **requires Member States to assess whether applicants (both adults and children) need special procedural guarantees** (art 20). They may need these due to, amongst others, their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders, including when these are a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence (rec 17 APR). Recital 36 repeats that "specific child-sensitive procedural safeguards (...) are to be provided to minors."

This **individual needs assessment** must happen/start as early as possible after an asylum claim is made,[55] based on "visible signs, the applicant's statements or behaviour, or any relevant documents" (art 20(2)). In the case of children, "statements of the parents, of the adult responsible for him or her whether by the law or practice of the Member State concerned or of the representative of the applicant shall also be taken into account." The needs assessments[56] cannot take more than 30 days,[57] counting from the moment the person has mentioned they want to claim asylum / have protection needs, which may happen during Screening.

People who need special procedural guarantees "shall be provided with the necessary support" to allow them to both benefit from the rights and comply with the obligations of the APR, and this during the entire procedure (art 21(1) APR). **Where the Member State finds that the support these people need cannot be provided in an accelerated or an border procedure, then the person cannot be subjected to them** (see further also). The article requires Member States to pay particular attention here to victims of torture, rape and "other serious forms of psychological, physical, sexual violence or gender-based violence" (art 21(2) APR).

Right to legal aid

Section III of the APR covers the right to (free) legal counselling and assistance and representation. In short: asylum applicants have the right to "consult, in an effective manner, a legal advisor or other counsellor" at all stages of the procedure. Support is not given automatically, however. It must be explicitly requested. During the asylum claim, applicants can ***request* free legal counselling, while they can ask for free legal assistance and representation in appeal procedures**, with some exceptions(art 15(2), see further).

The free *legal counselling* during the asylum ('administrative') procedure is detailed in article 16. It includes 'guidance on' and explanation of the procedure(s) and assistance in lodging an asylum claim, and may be limited to the first claim. The legal counselling people "should, as soon as possible after an application for international protection has been registered, upon [the applicant's] request, be provided," according to recital 16 APR. This implies that asylum claims will be registered without people truly knowing what it means, what the consequences are, etc.

Article 17 details the content of *free legal assistance*

54 Ibid, p. 22

55 I.e., the first phase of the three-phase process of making, registering and lodging of an application (rec 27 to 29 APR).

56 Which can involve, with the applicant's consent, medical practitioners, psychologists and other professionals who can advice on the person's need for special procedural guarantees (art 20(4) APR).

57 Note here that "a period expressed in days, weeks or months shall be calculated from the time an event occurs or an action takes place; the day on which that event occurs or that action takes place shall not itself be counted as falling within the period in question." But also that "time limits shall include Saturdays, Sundays and official holidays in the Member State concerned; where a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as the last day of the time limit" (art 73).

and representation in appeal procedures, which includes the preparation of procedural documents, participating in hearings, etc. However, it may not be free at this stage if "it is considered that the appeal has no tangible prospect of success or is abusive." These articles apply to adults and children alike.

This means, in other words, that **the APR does not ensure free legal assistance and representation during the asylum procedure – nor does the RBPR do so during the return border procedure**.

Regardless, **we urge member states to extend the application of free legal assistance to all applicants, including during the asylum application**, ('the administrative stage, to use the Regulation's wording). Ensuring proper assistance and representation would contribute to quality decisions, improve the fairness and efficiency of the system.

Moreover, it is crucial that information and counselling provided to applicants does not cover only international protection, but also provides information on residence permits available on other grounds under national law.[58]

> ! Note that the European Commission's Common Implementation Plan requires Member States "to establish capacity for free legal counselling across procedures, be it directly or through service arrangements with qualified third parties." [59]

Right to information

Article 8(2) APR lists the information that should be given to asylum applicants, in a language they understand or "are reasonably supposed to understand." This info includes the right to lodge an individual (asylum) application, the time limits and stages of the procedure that will be followed, the person's rights and obligations and the consequences of not complying with them (in particular that it may mean the application is withdrawn), their right to legal counsel/assistance (see above), how they can submit proof substantiating their claim. Recital 31 APR underlines that people should be informed "properly" and in a timely manner, in writing and orally "if necessary."

Recital 31 APR also underlines that people must be duly informed of the consequences of refusing to cooperate with national authorities, for instance, by not providing necessary information or by refusing to have their biometric data recorded. The consequence of non-compliance stated in APR is that the asylum claim is rejected or understood to be implicitly withdrawn. – *However*, article 14 of the Eurodac Regulation requires that the person who takes children's biometric data looks into possible child protection needs when they notice that a child, and particularly an unaccompanied child, refuses to have their biometric data taken and involve child protection authorities if they notice a protection or safeguarding need (see chapter on Eurodac).

Article 8(2) clarifies that this information shall be given to children in a child-friendly way, and with the involvement of the guardian/interim guardian. The Member States may use standardised leaflets, drafted by the EUAA, to convey this information (art 8(7)).

Applicants should also be given written notice of the decision on their claim. However, "where a representative or legal adviser legally represents the applicant, the determining authority may give notice of the decision to that representative or legal adviser instead of to the applicant" (art 8(5)). This would, logically, mean that a guardian or the interim guardian may be informed instead of the unaccompanied child.

"It is particularly important to ensure that minors are provided with information in a child-friendly manner," reminds recital 30 APR.

Right to be heard & interview safeguards

Children will/can be interviewed with at least two purposes in mind: to assess their best interests, and to assess the asylum claim. They may also be interviewed to assess their need for special procedures, although one should hope that this is done as part of the best interests assessment.

58 For more on this see PICUM, *forthcoming*, Preserving access to permits beyond asylum under the EU Migration Pact

59 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 39

To assess the best interests of the child

Member States have **to assess the best interest of individual children** in accordance with article 26 of the RCD (art 22(2) APR).[60] "In assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child's right to be heard, the **determining authority should provide a minor with the possibility of a personal interview**, unless this is not in the best interests of the child. The determining authority should organise a personal interview for a minor taking into account in particular his or her age and maturity" (recital 23 APR).

To assess the asylum claim

Children, especially unaccompanied children, who apply for asylum are likely to be heard, either as part of an admissibility or a substantive interview (art 11, 12 APR). In fact, Member States must give children "the opportunity of an interview, including where an application is made on his or her own behalf" (art 22(3) APR). If they find that interviewing would not be in the child's best interest, the government is required to argue why this is so (same article).

Note that the APR states that, while in-person interviews are preferred (rec 15), remote interviews are possible "where duly justified by the circumstances" (art 13(10)). "Legitimate grounds" for remote interviews include the applicant being in detention. However, recital 15 APR continues, "remote interviews may not be suitable for all asylum applicants due to their young age, (...) the state of their mental health." The same recital immediately refers to the best interests of the child, **which we interpret to mean that remote interviews should not be used to interview children**.

Interview-related safeguards

The general requirements for personal interviews in the framework of an asylum claim (listed in article 13) apply to children too. This includes privacy and confidentiality during the interviews, having their legal advisor present, etc. The interviewer should work for the Member States' asylum agency and "be competent to take account of" the interviewee's age, vulnerability and special procedural needs, amongst others (art 13). They must also have the necessary knowledge of the rights and needs of children, conduct the interview in a child-sensitive and context-appropriate manner, and take into consideration the child's age and maturity (art 22(3)).

Article 8(3) APR ensures that asylum applicants (including children) shall be provided with an interpreter free of charge[61] when registering and/or lodging an asylum claim as well as the personal interview "whenever appropriate communication cannot be otherwise ensured."

A child's or family's legal adviser must be present when children in families are interviewed (art 22(4) APR).

When children in families are interviewed, "an adult responsible for [the child] whether by the law or practice of the Member State concerned" must be present. However, "on justified grounds and only where it is in the best interests of the child, the determining authority may interview the minor without the presence of an adult responsible, provided that it ensures that the minor is assisted during the interview by a person with necessary skills and expertise in order to safeguard his or her best interests." These stipulations in art 22(4) APR may help children explain potential protection needs which parents may not be aware of, or are the cause of.

When an unaccompanied child is interviewed, then they must be assisted by their guardian/representative, who must be present at the interview and must have informed and prepared them beforehand (art 23(8) APR). "In the personal interview, the representative and the legal adviser [of the unaccompanied child] shall have an opportunity

60 Article 26(2) RCD states: "In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background and the need for stability and continuity in care;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence or exploitation, including trafficking in human beings;

(d) the views of the minor in accordance with his or her age and maturity."

61 As they shall be paid for from public funds. Same article.

to ask questions or make comments within the framework set by the person conducting the interview" (art 23(8) APR).

Children's rights in specific procedures

The APR describes different types of (asylum) procedures, all of which can apply to children. We focus here on accelerated (asylum) procedures and on asylum border procedures.

Accelerated procedures

The APR allows **'accelerated asylum procedures'** for certain groups of people, **meaning that an asylum application should be examined on the merits and decided upon within three months of lodging it** (art 35(3)).

Article 42 lists the groups of people who can be subjected to these. The table below shows the clearly different regime for children in families and unaccompanied children.

Children in families (art 42(1)) *Treated the same as adults*	**Unaccompanied children (art 42(3))** *Treated differently, notably:*
Member States **must apply** an accelerated examination, if:	Member states **may apply** an accelerated examination, if:
• No relevant elements raised	
• 'Clearly inconsistent or contradictory or clearly false or obviously improbable representations or representations which contradict relevant and available country of origin information'	
• Applicant is considered to have 'intentionally misled' authorities (including the destruction of identity or travel documents 'in bad faith')	• They are considered to have 'intentionally misled' authorities (including the destruction of identity or travel documents 'in bad faith')
• An application 'merely to delay, frustrate or prevent the enforcement' of a deportation	
• An applicant from a safe third country	• They are from a safe third country
• The applicant can be considered a danger to national security or public order	• There are 'reasonable grounds' that they are a danger to national security or public order, or they have been forcibly expelled for these reasons before
• Admissible subsequent asylum claim	• Admissible subsequent asylum claim
• Irregular entry or stay in the country, while also not presenting themselves to the authorities or claiming asylum "as soon as possible"	
• Regular entry and not having a "good reason" not to have applied for asylum as soon as possible	
• National of country[62] with an EU-wide recognition rate of 20% or lower	• National of country[63] with an EU-wide recognition rate of 20% or lower

Table 2: Comparative overview of groups of children who can be subjected to accelerated asylum examination procedures

62 Or, in the case of a stateless person, country where they habitually resided.
63 Or, in the case of a stateless person, country where they habitually resided.

However: where a Member State finds that the required, special procedural guarantees of people cannot be provided in an accelerated procedure, then they cannot be subjected to the acceleration (art 21(2)). In other words: **children in families and unaccompanied children cannot be subjected to an accelerated examination on the merits *unless* they are provided with "the necessary support" that "create the conditions necessary for the genuine and effective access to procedures"** (rec 20 APR) and allows people to both benefit from the rights and comply with the obligations of the APR, and this during the entire procedure (art 21(1) APR).

However, **this is a much weaker safeguard than a blanket exclusion of children and people with vulnerabilities** – people who need additional support because of who they are or what they've been through.

Border procedures – special reception conditions and deprioritising children

Article 43(1) APR clarifies that the (asylum, and thus return) border procedure can only be applied to people who do not fulfil the conditions for entry to the territory, and can take place after any of four events:

- Asylum application made at an external border crossing point or transit zone
- Apprehension in connection with an unauthorised crossing of an external border
- Disembarkation in a Member State after a search and rescue operation
- Relocation in accordance to RAMM (ex-Dublin mechanism)

In other words, **undocumented people, including children, who were apprehended on the territory and were led into screening because they could not prove their regular entry into the territory cannot be subjected to the border procedure**.

However, the children in families and unaccompanied children who meet these criteria are treated differently when it comes to the asylum border procedure.

The asylum border procedure cannot be applied to unaccompanied children – unless they can be considered a danger to national security or public order (art 53(1)). While excluding the vast majority of unaccompanied children is, of course, a good thing, we stress that this potentially benign seeming inclusion of 'dangerous' unaccompanied children is, in reality, highly problematic. First of all: they remain children, with specific protection needs and a right to support.

Secondly, "being violent" can cause an unaccompanied child to be flagged as a security threat (art. 17, 22, 23 Eurodac, see further). And while Eurodac's recitals[64] explains that Member States should only flag someone if they cause physical harm to someone "that would amount to a criminal offence under national law" – that definition is not included in the articles and leaves Member States the ability to understand it more broadly.

Thirdly, we must stress that unaccompanied children, especially those who are homeless and/or undocumented, are highly vulnerable to exploitation and becoming the victims of trafficking by organised crime groups.[65] They should be treated as victims of trafficking first, not perpetrators of crime. The risk is that children are misclassified as a security risk and placed in accelerated or border procedures with limited safeguards. For example, the European Data Protection Supervisor (EDPS) found several instances of children, including children younger than 15, marked as 'suspects' part of an organised crime group in Europol's database for minor infractions like shoplifting and pickpocketing.[66]

> ! Note that the European Commission's Common Implementation Plan instructs Member States to have "the necessary administrative processes (...) in place to exclude unaccompanied minors from the border procedure."[67]

64 Recital 8 Eurodac Regulation.

65 The Guardian, 11 June 2024, Revealed: drug cartels force migrant children to work as foot soldiers in Europe's booming cocaine trade [checked on 23 August 2024]

66 European Data Protection Supervisor, Audit report on the European Union Agency for Law Enforcement Cooperation (EUROPOL) The Hague, 16 December 2022 - EDPS Case number 2022-0382

67 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 39

! The Operational Checklist, annex to the Common Implementation Plan, requires them to define the workflows and procedures "to ensure that the procedure is not applied/ends where specific needs cannot be met and to prioritise/deprioritise children in families as appropriate and exclude unaccompanied children from border procedures."[68]

The asylum border procedure can be applied to children in families *if* Member States can meet their 'special reception needs' (art 53(2)b APR). Article 54 APR requires that families with children are kept in "facilities appropriate to their needs after assessing the best interests of the child, and shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development, in full respect of Chapter IV of the [RCD)." If they cannot, the Member State must stop applying the border procedure and let the person enter the territory (thus ending the fiction of non-entry) (art 53(2) APR).

Recital 67 APR explains the role the Commission and EUAA monitoring must play here too: "Given that protecting children is of primary importance, where the information obtained through the monitoring done [by the EUAA] indicates failure by a Member State to comply with the reception requirements for minors and their family members, the Commission should recommend that the application of the border procedure to families with minors be suspended, and the Member State concerned should inform the Commission of the measures taken to address any shortcomings contained in the recommendation of the Commission. The recommendation should be made public."

When a Member States reaches their 'adequate capacity',[69] then they are no longer required to apply border procedures (art 47(2)), although they can continue to do so. Recital 67 encourages Member States to deprioritise children and their family members for border procedures when this happens "in light of the best interests of the child."

! Note that the European Commission's Common Implementation Plan instructs Member States to ensure that reception facilities in border procedures are "appropriate" to the needs of children in border procedures "after assessing the best interests of the child, and that [the facilities] meet a standard of living adequate for the minor's physical, mental, spiritual, moral and social development, in full respect of the requirements of recast Reception Conditions Directive." [70]

Physical integrity

Children may be subjected to searches

Art 9(5) APR allows asylum authorities to search asylum applicants and their items/belongings "in accordance with national law." The article allows for searches for security reasons and searches "where it is necessary and duly justified for the examination of an application." Recital 22 reminds that "any such search should be carried out in a way that respects fundamental rights and the principle of proportionality." There do not seem to be explicit limitations for children.

Medical examinations

If a medical examination is deemed relevant for the examination of an asylum claim by/for a child, then the consent of the child's parent, their customary guardian,[71] their representative/guardian or the person designated to them ad interim is required. Where national law allows or requires it, the child must give consent themselves (art 24(2)).

The child, their parents, their representative/guardian, the person designated to them ad interim must also consent to any medical examination to assess the child's age (art 25(5)). The article also includes the possibility that a person who, by custom or law of the Member State concerned, is responsible for the child can also consent to the medical examination. This

68 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p. 22

69 Each Member State is required to have capacity to screen all irregular arrivals and to host a certain number of people in border procedures (in adequate conditions). This 'adequate capacity' at the border is set at 30 000 at Union level, with Member States' individual number of places calculated every three years.

70 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 39

71 Notably a person who, by law or custom of the Member State concerned is responsible for the child. See next paragraph.

can only, reasonably, refer to adults who accompany a child they do not have formal parental authority over (a so-called 'separated child').

Any medical examination done to assess a child's age (see section on 'age assessment and benefit of the doubt' further in this briefing) must be the least invasive possible, and carried out by medical professionals with experience and expertise in age estimation and performed "with full respect for the individual's dignity" (art 25(2)).

The child, their parents, their legal representative/ guardian, ad interim person and 'person responsible for the child by custom or by law' should, before an asylum claim is submitted, be informed of the possibility that their age might be assessed by means of a medical examination. That information must include the method of examination, "possible consequences which the result of the medical examination might have for the examination of the application, and on the possibility and consequences of a refusal on the part of the applicant to undergo the medical examination" (art 25(4)) APR). It thus seems that the APR connects the age of a child, or the willingness to subject a child to medical examinations, with the truthfulness of an asylum claim.

standards for guardians is not helpful and can actively create confusion with policy makers and administrations.

The overviews in this analysis of the different criteria and duties of the guardian according to the SR and APR are a clear example of this. They could also, quite worryingly, be used by Member States to argue that EU law allows them to treat unaccompanied children differently based on where they find themselves in migration system.

This is of course not true. **All children without parental care, including unaccompanied children, are entitled to a competent guardian**. The right to a guardian derives from a combination of human rights instruments, including article 4 of the UN Convention on the Rights of the Child,[72] article 17(1)c of the revised European Social Charter[73] and article 24 of the EU Charter of Fundamental Rights.[74] UN guidance develops it further, including the UN Guidelines on Alternative Care and General Comment number 6 of the UN Committee on the Rights of the Child on unaccompanied children.[75]

Access to a guardian – or not

The APR does not use the term 'guardian', but 'representative'. Only the Asylum Qualifications Regulation (AQR) mentions the guardian, who is appointed after the unaccompanied child has been given international protection (i.e., recognized refugee or given subsidiary protection; art 33 AQR). This person can be the same person as the representative appointed under the APR, who can be the same person appointed 'ad interim' under the Screening Regulation.

The fact that EU legislation, including the Screening Regulation (SR), Asylum Procedures Regulation (APR) and Asylum Qualifications Regulation (AQR), use different terminology and minimum

Article 23 APR lists guarantees for unaccompanied children, specifically. It includes the requirement that they are "represented and assisted" in a way that allows them to comply with and benefit from the APR, the RAMM, the RCD and Eurodac (art 23(1)). While this entitles the unaccompanied child to broader support than 'merely' the identification and designation of a guardian, the designation of a guardian is crucial.

The APR includes the possibility to designate someone other than a guardian, thereby continuing what the Screening Regulation has put in place (but also allowing this to happen on the territory). Article 23(2) APR states:

"Where an [asylum] application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she

72 Requiring states to take "all appropriate legislate, administrative and other measures" to implement the UNCRC.

73 Requiring states to take all appropriate and necessary measures designed to provide protection and special aid for children and young people temporarily or definitely deprived of their family's support.

74 Best interests of the child as a primary consideration.

75 UN Committee on the Rights of the Child, 2005, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, § 33–38

is a minor, who is unaccompanied,[76] the competent authorities shall:

(a) designate as soon as possible and in any case in a timely manner (…) a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interests and general well-being which enables the minor to benefit from the rights under this Regulation and, where applicable, act as a representative until a representative has been appointed;

(b) appoint a representative as soon as possible and no later than 15 working days from the date on which the application is made."[77]

Note that the article states that a guardian/representative must be appointed within 15 working days from the day the asylum application is *made*. Given terminology of the three-phase application (*making*, registering and lodging of an application explained in articles 27 to 29 APR)), this means that **the guardian must be appointed within 15 working days of the person first mentioning they might claim asylum or have protection needs**. This deadline to appoint the guardian/representative can be extended by 10 working days "in the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations" (art 23(3) APR)).

Although the inclusion of a deadline is good, it also means that unaccompanied children in asylum border procedures[78] may be without a guardian for the first three (of the twelve) weeks. This is problematic given that the guardian/representative plays a fundamental role in guiding the child and ensuring they are treated correctly.

In addition, the language of article 23(2)b **could be used by Member States to wrongly argue that unaccompanied children who do not apply for asylum do not have to be given a representative/guardian**.

Article 25(4) APR, which regulates age assessments, mentions yet a third possibility: an "adult responsible for [the child who's age is being assessed] whether by the law or practice of the Member State concerned." It is unclear who this person might be, and why they exist if the APR foresees a guardian and, in their absence, the designation of an interim one. The only possibility is that it refers to adults who accompany a so-called separated child, which is problematic as this person may not legally be able to consent for the child.

! Note that the European Commission's Common Implementation Plan does indeed make a distinction between representatives and "long-term guardians for unaccompanied minors who become beneficiaries of international protection."[79] From a child rights perspective, Member States should not designate guardians only to unaccompanied children who seek asylum – all unaccompanied children need a qualified guardian to support, guide and represent them legally.

! Note that the European Commission's Common Implementation Plan states that "[s]ervices for unaccompanied minors in transition to adulthood need to be in place to ensure continuous support and services, prepare the transition from the reception system and help with early integration measures."[80] Given that this is included in a section on guardianship, it is clear that the Commission sees them play a central role in this transition. For more on transition into adulthood, see PICUM's publications on young people.

76 They must be appointed when an "[asylum] applicant is found to be an unaccompanied minor *at any moment* during the asylum procedure" (rec 35 APR, emphasis added). The same recital stresses that "the fact that an unaccompanied minor lodges an application in his or her own name should not preclude him or her from being assigned a representative."

77 These two people may be the same person provided for in article 27 RCD.

78 Those who are considered a risk to national security or public order, see section 'Border procedures – special reception conditions and deprioritising children' on page 21.

79 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 40

80 Ibid, p. 40.

Comparative overview of the duties of the person who is designated ad interim and the guardian/representative

The APR mentions two people: a person who is designated to an unaccompanied child 'ad interim' and the child's representative. The two people's **duties** overlap and differ, as the table shows: (The below are all 'shall' clauses, unless otherwise indicated.)

Person who is designated ad interim	Representative (guardian)
Meet with the unaccompanied child and take into account the child's own views about their needs in accordance with the age and maturity of the child (art 23(2) APR)	Meet with the unaccompanied child and take into account the child's own views about their needs in accordance with the age and maturity of the child (art 23(2) APR)
Must be informed by the Member State "of the relevant facts, procedural steps and time limits pertaining to the application of the unaccompanied minor" (art 23(5)(c))	Must be informed by the Member State "of the relevant facts, procedural steps and time limits pertaining to the application of the unaccompanied minor" (art 23(5)(c))
"shall have access to the content of the relevant documents in the minor's file including the specific information material for unaccompanied minors." (art 23(5))	"shall have access to the content of the relevant documents in the minor's file including the specific information material for unaccompanied minors." (art 23(5))
Shall provide the child with the relevant information about the APR, and where applicable the relevant information about RAMM and Eurodac-related procedures (art 23(6)(a) and (c) APR).	Shall provide the child with the relevant information about the APR, and where applicable the relevant information about RAMM and Eurodac-related procedures (art 23(8)(a) and (f) APR)
Assist the child in the age assessment (art 23(6)(b)	Assist with the age-assessment procedure, the case being; (art 23(8)(b) APR)
Can be authorised by the Member State to assist the child with registering and lodging an asylum application, or with lodging one on the child's behalf (art 23(7) APR)	Assist with the registration and/or lodging of the asylum application, or lodge the application on behalf of the child (art 23(8)(c) and (d) APR)
	Assist with the preparation of and be present for the personal interview and inform the unaccompanied child about the purpose and possible consequences of the personal interview and about how to prepare for that interview (art 23(8)(e) APR)
	Must perform their duties in accordance with the principle of the best interests of the child (art 23(9) APR)
	Cannot have a criminal record, in particular any child-related crimes or offences (art 23(9) APR)
	Must have "the necessary qualifications, training and expertise." To do so, they must receive regular training "for the performance of their tasks." (art 23(9) APR)
	Cannot have (potential) conflicts of interests with those of the unaccompanied child (art 23(9) APR)

Table 3: Comparison of the duties of the person who is designated ad interim and the guardian/representative

Recital 35 APR explains that "the representative should assist and guide the minor through the procedure with a view to safeguarding the best interests of the child and should, in particular, assist with the lodging of the application and the personal interview. Where necessary, the representative should lodge the application on behalf of the minor." In other words, it is to be understood that the APR tries to support unaccompanied children's agency and independence when applying for asylum – supported by the guardian, of course.

> ! Note that the European Commission's Common Implementation Plan wrongly states that only unaccompanied children who *benefit from* international protection (i.e., are recognized refugees or benefit from subsidiary protection) benefit from the 'further safeguards' that apply to representatives.[81] (See also the textbox on p. 24)

Too many unaccompanied children per guardian

Although the APR states that the guardian and the 'provisional person' should be in charge of a proportionate and limited number of unaccompanied children, the maximum for both remains **30 unaccompanied children** (art 23(10)). This **can be increased to 50 unaccompanied children** per person (same article).

The same concern as mentioned under the Screening Regulation applies: While it is good that a cap is included in the APR, 30 is much higher than the current maxima included in certain member states. For instance, Finland allows just 10 children per guardian in the initial (reception) phase. Italy[82] and Slovenia[83] allow just three children per guardian.[84] So, while 30 is an improvement for countries like Germany[85] (and doesn't change anything for Hungary), it means a three- to ten-fold increase in the number of children a guardian supports for several countries. Thirty children are also, quite simply, a lot of children to support.

What is more, they may be in charge of 50 unaccompanied children "in the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations." This is highly worrying as those are the exact times when procedures and processes are even more harried, timelines shortened and the quality potentially not ensured. **Lowering the number of unaccompanied children per guardian in such situations would be better for children's safeguarding**.

Given the number of children they may have to support, it is doubtful that guardians or the 'persons who provisionally act as a guardians' can assist the children well or do their job in line with the requirements set out in the Pact or in line with the guardianship principles set out by the European Guardianship Network.[86]

Oversight and complaints mechanisms

The Member State must immediately inform the unaccompanied child in a child-friendly way in a language they understand, that the person (whether the interim or the representative) is designated to them and how they can lodge a complaint against them in confidence and safety (art 23(5)(a)).

The competent authorities can designate another guardian/representative if they have not performed adequately (art 23(9) APR).

Member States must have a system in pace to supervise the performance by the 'ad interim' people on a regular basis (art 23(10)). This includes "reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role." Indeed: as Table 3 above shows,

81 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 36

82 It concerns voluntary guardians in Italy.

83 Or maximum five if no other guardian can be appointed.

84 EU Fundamental Rights Agency, 2022, Guardianship systems for unaccompanied children in the European Union: Developments since 2014, pp. 30-31.

85 Maximum 50 per guardian.

86 European Guardianship Network, n.d., 7 Standards of guardianship. Key principles guiding the provision of guardianship for unaccompanied and separated children in the EU

the APR does not require Member States to check beforehand whether the people who is designated ad interim has a criminal record or not. This is, unsurprisingly, highly problematic. It illustrates the wider trend to lower safeguards in times of crisis or need.

This supervisory administrative, judicial or other entity is same organism that reviews complaints lodged by unaccompanied children against their representative/guardian or the provisionally appointed person (art 23(10) APR).

! Note that the European Commission's Common Implementation Plan wrongly states that only unaccompanied children who *benefit from* international protection (i.e., are recognized refugees or benefit from subsidiary protection) benefit from the possibility to lodge complaints against a guardian, the supervision and monitoring of guardians, etc.[87]

Age assessments and the benefit of the doubt

Article 25 of the APR organises age assessments. Although it isn't explicitly mentioned, we can conclude from the text that **the ages of children in families could also be assessed**. This is new, as traditionally unaccompanied children see their age put into question and subsequently assessed. Indeed, the Asylum Procedures Directive which the APR replaces allowed for the age assessment of unaccompanied children alone.

Member States are not required to do an age assessment if there is doubt about a person's age – whether they're a child or whether they're an adult, whichever they claim to be (art 25(1)). Member States can recognise age-assessment decisions taken by other Member States, if the assessment was done appropriately (in line with EU law) (art 25(7)).

Consent

The child, their parents, their representative/guardian or the person designated to them ad interim **must consent to any medical examination to assess the child's age** (art 25(5)), **but not to the age assessment in itself**.

They can only consent to the medical examination after being informed of the possibility that the child's age might be assessed by means of a medical examination – and only before an asylum claim is submitted. This is confusing, as the family will only have access to legal counselling after having claimed asylum (see section on legal aid).

The information given to them must include the method of examination, "possible consequences which the result of the medical examination might have for the examination of the application, and on the possibility and consequences of a refusal on the part of the applicant to undergo the medical examination" (art 25(4)) APR). The information should be provided in a language that they understand and in a child-friendly and age appropriate manner (same article).

Refusing to consent to the medical assessment shall not halt the asylum application (art 25(6)).

Article 25(6) also notes that "refusal may only be considered to be a rebuttable presumption that the applicant is not a minor." In other words, **children/families/representatives must be able to effectively fight the designation of a child as an adult as a consequence of them not agreeing with a medical examination. The APR thus effectively puts enormous pressure on the child, their family and their representative/guardian to agree with the medical examination, as the child may otherwise be excluded from the child-specific support they need**. And, if they do want to see the child treated as a child, they must go to a, probably laborious, administrative procedure.

Note that article 25 also includes the possibility that a person who, by custom or law of the Member State concerned, is responsible for the child consents to the medical examination. It is unclear why a third person could or should be designated to an unaccompanied, separated child or accompanied child, given that the Regulation already foresees a guardian and a person designated ad interim to unaccompanied (and separated) children. In addition, only parents should be able to give consent for their minor children if it concerns an accompanied child.

87 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 36

Waterfall system

The APR prescribes a system of various steps, whereby:

1. **Doubt** about the child's/asylum applicant's age must first be cast, based on their statements, available documentary evidence or other relevant indications. Recital 36 APR clarifies that "[d]oubts (...) may arise when the applicant claims to be a minor but also when they claim to be an adult."
2. The determining authority must undertake **a multi-disciplinary assessment** first, which includes a psychosocial assessment and the examination of available documents (which must be considered genuine unless proven otherwise). The child's statements must be taken into consideration. Recital 37 clarifies that the assessment "should be carried out by professionals with expertise in age estimation and child development, such as social workers, psychologists or paediatricians, in order to assess various factors, such as physical, psychological, developmental, environmental and cultural factors." It also lists elements the assessment can include: a psycho-social assessment and other non-medical methods, such as an interview, or assessment of documentation.
3. If doubts remain, the "least invasive" **medical examinations** possible can be used "as a measure of last resort." They must be performed "with full respect for the individual's dignity" and by medical professionals with experience and expertise in age estimation (art 25(2-4)).

   Article 25 implies that only one (set of) medical examinations can be done. However, recital 37 can be understood by Member States that they can use more invasive methods, after having used the least invasive ones: "Where different procedures may be followed, a medical examination should prioritise the least invasive procedures before proceeding to more invasive ones taking into account guidance from the Asylum Agency where relevant." This is highly problematic, as it undermines the protective intention of article 25.
4. The **results** of the medical examination and the multi-disciplinary assessment must be analysed together, "thereby allowing for the most reliable result possible" (art 25(3)). If the result remains inconclusive or includes an age-range below 18 years, then Member States must assume the person is a child/minor (art 25(7), rec 37)

Recital 37 reminds the Member States that "In all cases, age assessments should be carried out in a manner that gives primary consideration to the best interests of the child throughout the procedure."

> ! Note that the European Commission's Common Implementation Plan instructs Member States to review and adjust standard operating procedures for age assessment to apply the multi-disciplinary age assessment. They refer to the EUAA guide on age assessment as guidance.

A risk of assessments based on physical appearance

Despite some of the promising features of article 25, the **details of the text include a risk of assessments based on physical appearance (alone)** – even though this should never be the case according to UNCRC guidance[88] and has been found to be illegal.[89]

This risk exists because recital 37 includes "visual assessment based on physical appearance" as a potential element of the first step, the multi-disciplinary assessment. Visual assessments can go either way: of course, no person who is obviously a child should undergo an age assessment – but they should not be running that risk, as no doubt on their age should be cast in the first place. On the other hand, and far more common, is that teenagers are deemed adults based on looks, even though they are not.

Even worse, it is **possible that these older children won't see their age assessed at all**. Article 23(2) APR states that "Where the competent authority has concluded that an applicant who claims to be a minor is without any doubt above the age of 18 years, it need not appoint a representative [guardian]."

88 UN Committee on the Rights of the Child, 2005, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6

89 For instance in the UK: UK High Court ruling in AA v Secretary of State for the Home Department (2016)

No explicit right to appeal the age assessment results

The APR does not include any reference to appealing the results of the age assessment. Indeed, the proposal by the European Parliament to add a right to appeal against an age assessment decision did not make it into the final text.[90] However, one would assume that national law on age assessments, which may include an effective appeals procedure, should apply. Moreover, **the APR must be implemented in line with the best interests of the child, the Charter and the UNCRC – which include a child's right to effective remedy or effective judicial protection**.[91]

This non-inclusion of an explicit right to an appeal regarding age assessments is a missed opportunity, as "one of the most consistent concerns in the age assessment practices of migrant children is the lack of an effective remedy to challenge the result."[92]

The only, implicit, reference to an appeal procedure is included in article 25(6), which states that a refusal to consent with the medical examination "may only be considered to be a rebuttable presumption that the applicant is not a minor." However, this does not concern the results of the age assessment, but the non-application of the presumption of minority.

Precarious access to a secure residence permit

People's, including children's, ability to access the variety of residence permits recognized by EU Member States and by EU law is hampered by the Migration and Asylum Pact. Here, we cover:

- some barriers children will experience when accessing international or subsidiary protection
- some barriers children will experience to access permits on other grounds,
- the problems that are created by issuing a decision rejecting an asylum application and one ordering the person to return to another country at the same time
- appealing these

For more on this topic, see PICUM, forthcoming, Preserving access to permits beyond asylum under the EU Migration Pact and PICUM, 2021, Why is the Commission's push to link asylum and return procedures problematic and harmful?

Access to international or subsidiary protection

People's access to international or subsidiary protection under the APR has been discussed extensively elsewhere[93] and we shall not do so here. However, note that children can apply for asylum, although adults can do so in their stead where national law does not allow applications by children (rec 35, art 32, art 33). Applications by/for *accompanied children* (i.e., children in families) must be submitted in the presence of the child and within the 21 day period set by article 28(1)[94] – unless they find themselves in the (asylum) borders procedure.[95] In that case, the claim must be submitted *within five days* (art 51(1) APR).

As we mentioned above in Table 2, people, including children in families, who entered the territory of the Member State "unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented [themselves] to the competent authorities or has not made an application for international protection as soon as possible, given the circumstances of his or her entry" will see the merits of their asylum claim examined in the

90 ECRE, 2024, ECRE comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, p. 94

91 Art 47 of the Charter, art 12 UNCRC.

92 ECRE, 2022, Age assessment in Europe. Applying European and international legal standards at all stages of age assessment procedures, Legal note, p. 4

93 ECRE, 2024, ECRE comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

94 "The applicant shall lodge the application with the competent authority of the Member State where the application is made as soon as possible and no later than 21 days from when the application is registered" (art 28(1)). Note that this is the last step of the three-step process of making, registering and lodging an asylum claim (art 26 – 28 APR). In normal times, the registering needs to happen within five to eight days of the person making their claim. See ECRE, 2024, ECRE comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Chapter III, Section I

95 The border procedure can be applied to children in families, but not to unaccompanied children – unless they can be considered a danger to national security or public order (art 53(1), see earlier).

accelerated procedure (art 42 APR). This means that **undocumented children and families with children who enter into Screening[96] and subsequently apply for asylum are seemingly punished for their irregular entry or stay by having their asylum application examined more quickly[97] – and possibly less carefully.** As ECRE notes, "A three-month time limit is tight (…) there is a risk that applicants are deprived of an effective opportunity to substantiate their claim."[98]

As Table 2 also illustrates: **undocumented unaccompanied children who entered into screening *cannot* see their asylum claim examined more quickly because they are/were undocumented alone**.[99] This is important, as unaccompanied children face huge barriers to accessing permits, including understanding and trusting the procedure, their guardians and other interlocutors, needing time to settle and prepare for interviews, etc.[100]

Access to permits on other grounds

The APR and the RBPR continue the precarious access to a secure residence status/permit other than asylum that Screening starts. They do this in several ways: by limiting children's and parents' ability to apply for permits on grounds other than asylum, by continuing the fiction of non-entry and by issuing rejection and return decisions together.

Continuing the fiction of non-entry

Asylum seekers in the border procedure are not allowed to enter the territory and, thus, remain 'at the border' – even if they may be physically on the Member States' territory (art 43(2); also art 51 and 53). The **fiction of non-entry** also exists in the RBPR. People, including stateless people and children, who saw their claim rejected in the asylum borders procedure, are not "authorised to enter the territory" (art 4 RBPR). Instead, they enter the applicability of the Return Border Procedure Regulation (RBPR), which allows Member States to "require [them] to reside (…) in locations in or at the proximity of the external border or transit zones. Where a Member State cannot accommodate such persons in those locations, it may resort to the use of other locations within its territory" (art 4(2) RBPR). However, "[t]he requirement to reside at a particular location in accordance with this paragraph shall not be regarded as authorisation to enter into or stay on the territory of a Member State" (same article).

This 'fiction of non-entry' is a legal fiction used by states to create a liminal legal space. That legal space is used by states to "claim to possess no obligation to provide rights to incoming migrants that they usually would provide once the migrant has legally arrived in the state."[101] States claim that not crossing the legal border alters the applicable legal framework, including people's access to asylum and other residence statuses, to freedom of movement, to privacy and to judicial review. However, the European Court of Human Rights found that states are required to meet the rights enshrined in the European Convention on Human Rights in all forms of immigration and border control, regardless by whom and where, because immigration and border control is a way in which a state exercises its jurisdiction.[102]

Unsure access to permits on other grounds

The text seemingly restricts people's ability to invoke all of the grounds for stay that exist in national/Member State law. However, **Member States have the ability to issue residence permits to anyone in the return border procedure at any time, as article 6(4) of the Return Directive applies** (art 4(3) RBPR).

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96 I.e., were on the territory of the Member State, but could not prove them having crossed the border regularly. See chapter on the Screening Regulation above.

97 Whole process must be finished within 3 months.

98 ECRE, 2024, ECRE comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, p. 42

99 As the grounds for an accelerated examination on the merits of an asylum claim by an unaccompanied child are: being from a safe third country, being considered a danger to national security or public order, subsequent applications, having intentionally misled authorities, or coming from a country with a lower than 20% recognition rate (art 42(3)).

100 For some insight into challenges faced by unaccompanied children navigating residence procedures, see PICUM, 2023, Key aspects of child protection systems that help protect all children from harm; PICUM, *forthcoming*, Guidance for policy makers and practitioners on accessing a secure residence status while transitioning into adulthood

101 Soderstrom K., 2022, An analysis of the fiction of non-entry as appears in the Screening Regulation, ECRE Commentary, p. 2

102 European Court of Human Rights, Case of Hirsi Jamaa and Others v. Italy (Application no. 27765/09)

Indeed, the recitals remind Member States of this too:

- Rec 9 RPBR reminds Member States that "The provisions on return set out in this Regulation are without prejudice to the discretionary possibility for Member States at any time to decide to grant an autonomous residence permit or other authorisation granting a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory."
- Recital 9 APR states something similar: "In addition to the international protection, the Member States may also grant other national humanitarian statuses under their national law to those who do not qualify for the refugee status or subsidiary protection status."

Member States should, in our opinion, **systematically asses, *ex officio*, if a person meets the requirements of all permits or grounds for stay that exist in their national framework and under international human rights commitments**. The latter must include issuing residence permits when the principles of non-refoulement and the best interests of the child require it.[103]

Issuing rejection and return decisions together

The difficult access to residence permits on other grounds than international protection is exacerbated by the fact that a return decision must be issued at the same time, preferably in the same document, as the decision to reject the asylum claim or find it inadmissible, unfounded or explicitly or implicitly withdrawn (art 37 APR).

This requirement is problematic because the refugee status determination procedure usually only assesses whether the person meets the conditions for refugee and subsidiary protection status, not whether the person meets other grounds for stay (including non-refoulement, being stateless, a victim of trafficking, crime or exploitation, humanitarian grounds, respect for family unity, social ties, best interest of the child, etc).

It also increases the likelihood that return orders/decisions are issued without the necessary checks are made – i.e., checking whether there is a risk of refoulement, whether the return is in the best interests of the child, etc. (The appeal court can make an appeal suspensive to respect the principle of non-refoulement, but the child/their family must first appeal the rejection and return decision; see below).

> ! Note that the European Commission's Common Implementation Plan mentions that 19 Member States are already issuing these together, some issuing them as one act, some as two separate acts.[104] The plan also mentions that the Commission will set up mechanisms to support those Member States that aren't yet issuing these together in 2025.

Right to appeal

Important here is the right to appeal (art 67, 68 APR). The APR states that anyone should be able to appeal a negative decision or a return decision. However, the appeal itself will not suspend the enforcement of everyone's return decision/order. People who do not have a right to remain on the territory under procedures listed under Art. 68(3) APR[105] (or who are not on the territory), won't have access to the suspensive effect typically attached to appeal procedures – meaning that they can/will be returned while the appeal procedure is still ongoing (art 68). This will be the case for children in families in border procedures, but does not apply to unaccompanied children in the border procedure (art 68(3)).

These families with children **must ask a judge to give them the right to remain pending the appeals procedure** (art 68(7)). The court can also decide to do this *ex officio* (art 68(4)), for example to respect the principle of *non-refoulement*. **They have to have at least five days from the date of the notification of the decision to ask this (art 68(5)a). However, note that weekend and official holidays also count towards these days (art 73(c) APR).**

103 As required by the Charter of Fundamental Rights and other international human rights obligations. For more on the commitment regarding children, see UN and civil society Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework.

104 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 22

105 See section on 'Right to effective remedy' in PICUM, *forthcoming*, PICUM Analysis of the Asylum Procedure Regulation

Article 67 states that people can only appeal a return decision while simultaneously appealing the decision rejecting the asylum claim.[106] As ECRE notes,[107] that means that, where negative decisions and return decisions are issued in the same act (which the APR promotes through article 37), then anyone in border procedures / 'at the border' need to do three things simultaneously (but potentially towards different institutions[108]). They must request to be allowed to remain,[109] they must appeal the negative decision, and they must appeal the return decision.

Given that legal assistance and representation isn't ensured – they must request it too (art 68(5)c) – the risk of faulty procedures is enormous.

Risk of detention and de facto detention

Both the Asylum Procedures Regulation and Return Border Procedure Regulation increase the risk that children, especially children in families, are *de jure* or *de facto* detained.

The UN Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families deem **child immigration detention to be in violation of the UN Convention on the Rights of the Child**.[110]

However, **EU allows for the immigration detention of children and thus does not meet these international standards**.

(De facto detention can be understood as a measure which in practice amounts to deprivation of liberty but which states do not formally qualify as such. When states decide to place a person in immigration detention, they need to comply with a number of requirements. To avoid these safeguards, states sometimes refuse to acknowledge that a person is detained. Rather, they argue that the measure is merely a restriction on the person's freedom of movement. For more on this, see PICUM, 2023, Immigration detention and de facto detention: What does the law say?)

! Note that the European Commission's Common Implementation Plan confirms both our concern with the risk of de facto detention and our concern with an ever-expanding use of alternatives to detention where detention may not be warranted (and thus, alternatives to detention are not either). The implementation plan states that "Member States will have to take the appropriate actions to ensure that migrants remain available to authorities during the screening and the border procedures (and are prevented from an unauthorised entry and limited from moving in an unauthorised manner). These actions could include protocols covering an assessment of measures to limit the risk of absconding, including alternatives to detention (which should be defined by law), notably for families with children, and possible use of detention."[111]

! The Implementation Checklists requires member states to "provide for instructions, protocols and procedures to ensure guarantees on detention relating to children (no detention as a rule, best interests assessment."[112]

106 Or rejection as a consequence of an implicit withdrawal.

107 ECRE, 2024, ECRE comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

108 If the negative decision and the return decision are taken in different acts.

109 Article 68(3)a to e lists the groups of people who do not have a right to remain (and whose appeal is thus not suspensive):

110 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 2017, Joint General Comment No. 3 of the CMW and No. 22 of the CRC in the context of International Migration: General principles

111 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 12

112 European Commission, 2024, Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, p22

Under the Asylum Procedures Regulation

The text of the APR affirms that the border procedure can be applied without necessarily making recourse to detention (recital 69). However, member states can justify the detention of applicants during border procedures with the aim to 'prevent unauthorised entry' (art. 43(2) APR). Whenever detention is applied, it must follow the grounds set in the Reception Conditions Directive (RCD; art 53 APR) – same as during screening.

The Reception Conditions Directive (RCD) states that children and families should "as a rule" not be detained (art. 13(2)), but instead placed in "suitable accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements" (rec 40). However, it is possible to detain them in exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests.

According to the same article, it is in the best interests of a child to be detained if "(a) in the case of accompanied minors, where the minor's parent or primary care-giver is detained; or (b) in the case of unaccompanied minors, where detention safeguards the minor[113] (art. 13(2))." However, recital 40 clarifies that "the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them" (see also art 13(2)).

The RCD also includes conditions the detention facilities must meet. These include access to an open-air space (art 12(2)), access to education (art 16) and leisure and play activities (art 13(2)). Families with children must be given separate accommodation that guarantees privacy in "detention facilities adapted to the needs of minors" (art 13(3)). Article 26 and 27 list other safeguards that apply to children or unaccompanied children, including access to rehabilitation services and mental health care for child victims[114] (art 26(4)). *However*, the RCD also allows the derogation from these requirements at border posts of in transit zones "in duly justified cases and for a reasonable period of time, that shall be as short as possible" (art 13(6)).

Article 53(2) APR requires Member States to let people, including children, leave the border procedure when they cannot meet the conditions set by the RCD listed here.

However, as a general rule, all applicants in border procedures are required to reside at or in proximity of the external border or in a transit zone *or in other designated locations within their territory* (art. 54 APR). Therefore, it is highly likely that even in circumstances that are not formally recognised as detention, restrictions imposed to applicants may amount to de facto deprivation of liberty.

! Note that the European Commission's Common Implementation Plan states that "the general rule" regarding children is that they should not be detained. The plan instructs Member States to develop "protocols or specific instructions" to ensure children "are only detained in exceptional circumstances, where strictly necessary, as a measure of last resort and for the shortest possible period of time, after it has been established that other less coercive alternative measures cannot be applied effectively, and after it has been assessed to be in their best interests." [115]

! Note that the European Commission's Common Implementation Plan reminds Member States that all asylum-seeking children must have access to education within two months of lodging the asylum claim.[116]

113 Art 11(5) RCD requires the detention to be reviewed ex officio at "reasonable intervals" or at the request of the detainee; the same article requires more regular, ex officio, reviews when unaccompanied children are detained.

114 "Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided where needed." (art 26(4))

115 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 38

116 Ibid, p. 40.

Under the Return Border Procedures Regulation

Detention of unaccompanied children and families is allowed by the RBPR (i.e., the 12 week detention after an asylum claim was rejected as part of the asylum border procedure).

Articles 14(1) and 17 of the Return Directive applies to detention of children and families under the RBPR (art 4(3) RBPR). Article 17 RD states they can only be detained as a measure of last resort and for the "shortest appropriate period of time," that they should be provided with separate accommodation guaranteeing adequate privacy and that children should be able to engage in leisure activities, including play and recreation, and access to education.[117] It also requires Member States to give unaccompanied children accommodation in adapted institutions, and to consider the best interests of the child first.

Voluntary departure under the RBPR – risk of entry bans?

The Return Border Procedure Regulation does not include an automatic voluntary departure period.[118] Article 4(5) RBPR states that people *must request* the 15-day voluntary departure period provided in the Regulation, during which they must surrender any valid travel document they may have "for as long as necessary to prevent absconding." The persons remain fictionally 'at the border' during the voluntary departure period.

The relevant articles of the Return Directive (RD) apply to this period[119] and lists safeguards that must be ensured during the voluntary return period and reasons why the period should be extended.

- Article 14(1) RD states that the following should be ensured during the period of voluntary return: "(a) family unity with family members present in their territory is maintained; (b) emergency health care and essential treatment of illness are provided; (c) minors are granted access to the basic education system subject to the length of their stay; (d) special needs of vulnerable persons are taken into account." These safeguards should apply, including when measures[120] are put in place to prevent absconding during the voluntary departure period.
- Art 7(2) RD requires Member States to extend the period of voluntary departure when specific circumstances of the individual case require it, for instance the length of stay, children attending school or the existence of family and social connections in the Member State.

The fact that a period for voluntary departure is not automatic may be problematic. It **may mean that entry bans are issued more systematically than before, including to children**. Article 11 of the Return Directive requires Member States to add entry bans to return decisions if no period of voluntary departure has been granted (or if the person did not comply with the obligation to return). That same article does allow Member States to "refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons", in individual cases or to certain categories of cases for other reasons.

It also remains to be seen if people will be offered assisted voluntary return and reintegration support if they don't apply for a voluntary departure period.

! Note that, although the APR and RBPR do not mention return counselling or reintegration support, the European Commission's Common Implementation Plan does. Member States are recommended to "provide capacity to reinforce return counselling to ensure those who need to be returned are swiftly accompanied through the process" and "reinforce incentives to voluntary return and streamline reintegration support, in

117 The Return Directive states that access to education depends on their length of stay in detention, but given that these children will have potentially been in detention of 13 weeks*, and potentially for 6 more months**, their access to education should be a non sequitur. (*= 7 days screening procedure + 12 weeks asylum border procedures; ** = 6 months maximum duration under the Return Directive, including the 12 weeks under the RBPR)

118 Despite there not being an automatic voluntary departure, the article 4(5) states that it applies "without prejudice for the possibility for them to return voluntarily at any time."

119 4(3) RBPR.

120 The Return Directive lists three possible measures as examples: regular reporting to the authorities, deposit of an adequate financial guarantee and submission of documents or the obligation to stay (art 7(3)).

close cooperation with Frontex."[121] They are encouraged to actively use Frontex's EU Reintegration Programme to do so.[122]

121 European Commission, 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Common Implementation Plan for the Pact on Migration and Asylum, COM(2024)251 final, p. 23

122 Ibid, p. 24.

Children's rights in Eurodac

The 2024 Eurodac Regulation expands the European Asylum Dactyloscopy Database ('Eurodac') to warehouse and share data of not only asylum seekers, but of undocumented people too (as well as other groups). It does so with the quite different purposes to, amongst others, "assist with the control of irregular immigration to the Union, the detection of secondary movements" and "the protection of children, including in the context of law enforcement" (art 1(1) Eurodac).

Note on geographical application: The IT-system set up by the Eurodac Regulation is used by 31 countries: the 27 member states and four associated countries (Iceland, Norway, Switzerland and Liechtenstein).[123] In line with the rest of the Pact files, the Eurodac entered into force in June 2024 and applies from 12 June 2026 (art 63).

What the Regulation sets up

Eurodac is a large-scale IT system that stores and processes the digitalised fingerprints of asylum seekers and irregular migrants who have entered a European country. Here we focus on two groups that are of particular interest to PICUM's analysis of the Pact: people crossing a border irregularly and undocumented people found on the territory. We do not cover the articles affecting asylum seekers and refugees.

Chapter IV of Eurodac deals with third country nationals apprehended in connection with the irregular crossing of an external border, while chapter V deals with undocumented people apprehended on the territory. The following personal information of both groups will be recorded under Eurodac (art 22 and 23 respectively):

- surnames and forenames,
- names at birth, previously used names and aliases,
- nationality,
- date of birth,
- place of birth,
- sex,
- biometric data (fingerprint data[124], facial image[125]) – of anyone over six years old (see below)
- a colour scan of identity or travel document
- date and member state of apprehension

The following is added when applicable:

- When the person previously left or was removed from the EU
- If assisted voluntary return and reintegration support (AVRR) is granted
- If the person could pose a threat to internal security following a security check done in Screening[126] or following a security check carried out at the moment of taking biometric data[127] and it is found that the person is armed or violent, or that there are indications they are involved in any of the offences mentioned in the Counter-Terrorism Directive or the Council

123 EU-Lisa, Eurodac, webpage [checked on 30 August 2024]

124 Article 2 Eurodac defines 'fingerprint data' as the data relating to plain and rolled impressions of the fingerprints of all ten fingers, where present, or a latent fingerprint. (Note: latent fingerprints are fingerprints "that are not apparent to the eye but can be made sufficiently visible, as by dusting or fuming, for use in identification" Source: Horiba Scientific, Latent fingerprint detection, webpage [checked on 30 August 2024])

125 Eurodac defines 'facial image data' as digital images of the face with sufficient image resolution and quality to be used in automatic biometric matching (art 2).

126 Or a later security check, if one was not done during screening.

127 This specifically for undocumented people apprehended on the territory (art 23(3)e).

Framework Decision on the European arrest warrant.

The Regulation does not include a definition of 'being violent' in any of the articles, leaving it open to interpretation and abuse. However, recital 8 does explain that: "When assessing whether a person is violent, it is necessary that a Member State determine whether the person has displayed behaviour that results in physical harm to other persons that would amount to a criminal offence under national law."

Data of undocumented people, including children, apprehended at the border or on the territory will be stored for five years (art 29(6) and 29(7) respectively).

For more on Europe's use of databases and its interoperability exercise, see PICUM's resources on digital technologies.

What the Regulation means for children

The data of children, both unaccompanied children and children in families, will be recorded, stored and accessed in Eurodac. Article 14 ('special provisions relating to minors') contains most of the references to children's rights.

General provisions regarding children

Eurodac contains the following fundamental child safeguarding provisions:

- Respect of human dignity and fundamental rights and observance of the Charter (art 14(2)).
- The best interests of the child must be a primary consideration when applying Eurodac (rec 47, art 14(1)).
- The child is accompanied when having their biometric data taken – either by an adult family member (when it concerns an accompanied child), or a representative or 'interim person' designated under Screening (when it concerns an unaccompanied child). The latter cannot be the official taking the biometric data and cannot receive orders either from the official or the service responsible for taking the biometric data (rec 46, art 14(1)).

Biometric data taken as of six years old

Article 14 Eurodac **requires that the biometric data of children older than six must be taken and stored.** This lowers the age by eight years, as it was previously only required for those 14 and up.

Children's biometric data cannot be taken by just anyone. It must be taken "by officials trained specifically to take a minor's biometric data in a child-friendly and child-sensitive manner and in full respect of the best interests of the child and the safeguards laid down in the United Nations Convention on the Rights of the Child" (same article).

Recital 45 elaborates that "[t]he official responsible for taking the biometric data of a minor should receive training so that sufficient care is taken to ensure an adequate quality of biometric data of the minor and to guarantee that the process is child friendly so that the minor, particularly a very young minor, feels safe and can readily cooperate in the process of having his or her biometric data taken."

While biometric data – fingerprinting or facial imaging – can only be taken of children older than six, the text requires the recording and storing of the other information listed above for all children.

Potential use of coercion

Article 14(1) states that "[n]o form of force shall be used against minors to ensure their compliance with the obligation to provide biometric data. However," it continues, "where permitted by relevant Union or national law, and **as a last resort, a proportionate degree of coercion may be used against minors to ensure their compliance** with that obligation. When applying such a proportionate degree of coercion, Member States shall respect the dignity and physical integrity of the minor."

Benefit of the doubt

Given that Eurodac will apply to children whose age may be unclear, for instance because they don't have any identity documents, it is **very positive that article 14(1) includes the benefit of the doubt**. The article states that "[i]n the event that there is uncertainty as to whether or not a child is under the age of six and there is no supporting proof of that child's age, the competent authorities of the Member States shall consider that child to be under the age of six for the purposes of this Regulation."

Involvement of child protection actors

Surprisingly, **the Eurodac Regulation includes more references to child protection actors than the Screening, APR and RBPR combined**. Unfortunately, child protection was one of the arguments used to lower the age of children who must be fingerprinted and photographed in Eurodac from 14 to six years old. Indeed, recital 44 argues that "[e]ffective identification procedures will assist Member States in guaranteeing the adequate protection of children."

Recital 44 also argues that biometric data must be taken of children "to help establish the identity of children and to assist Member States in tracing any of their family members in, or links they might have with, another Member State, as well as in tracing missing children, including for law enforcement purposes." The text specifically refers here to the importance of fingerprinting and photographing "unaccompanied minors who have not applied for international protection and children who might become separated from their families" – effectively covering all children, as any child may become separated from their families, and implicitly referring to the homeless unaccompanied children who drift from member state to member state in search of a better life.

Article 14 can play an essential role in **protecting vulnerable unaccompanied children, as it requires their referral to child protection authorities**: "Where a minor, in particular an unaccompanied or separated minor, refuses to give their biometric data and there are reasonable grounds for believing that there are risks relating to safeguarding or protecting the minor, as assessed by an official trained specifically to take a minor's biometric data, the minor shall be referred to the competent national child protection authorities, the national referral mechanisms or both." This also means that **the person taking children's biometric data must also be trained in identifying child protection needs, potential victims of crime, exploitation and trafficking, etc**.

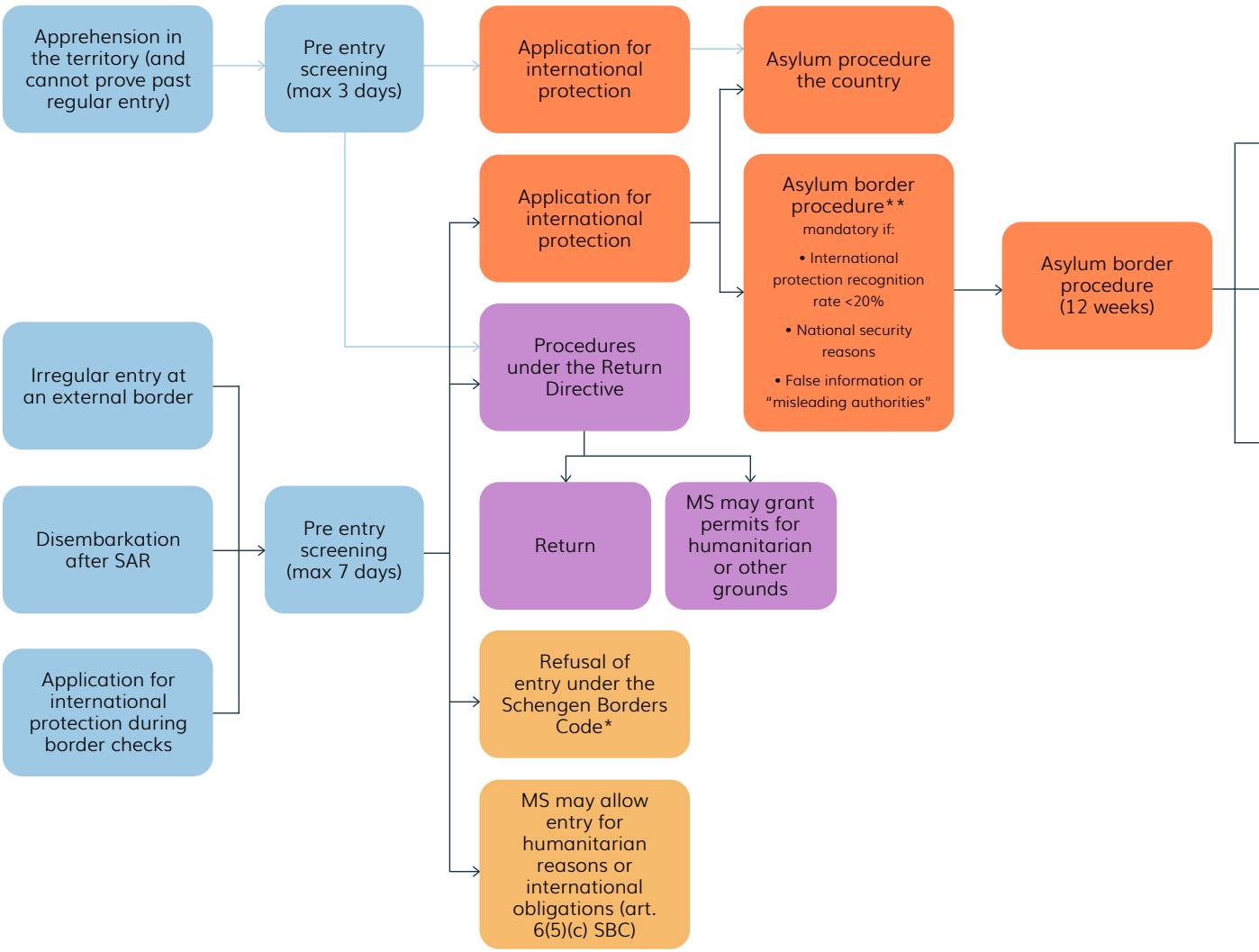
It is also positive that Eurodac recognizes that refusing to give biometric data or cooperate with authorities can indicate fear, exploitation or trafficking rather than ill will or inconsistent asylum claims, as APR does.

Recital 44 focusses heavily on identification to reunite families that have been separated and the role of child protection authorities: "Establishing family links is a key element in restoring family unity and must be closely linked to the determination of the best interests of the child and, eventually, the determination of a sustainable solution in accordance with national practices following a needs assessment by the competent national child protection authorities."

Limited use of biometric data of six-to 14-year-olds

While Eurodac requires the biometric data of all children six and up to be taken and registered, it limits the use of data of children younger than 14. According to article 14(3), the data of young children can only be used for law enforcement purposes if that data is necessary to prevent, detect or investigate terrorist or other serious criminal offences that the child is a suspected to have committed.

Annex: Schematic overview of the screening and border procedures set in place by the Migration and Asylum Pact



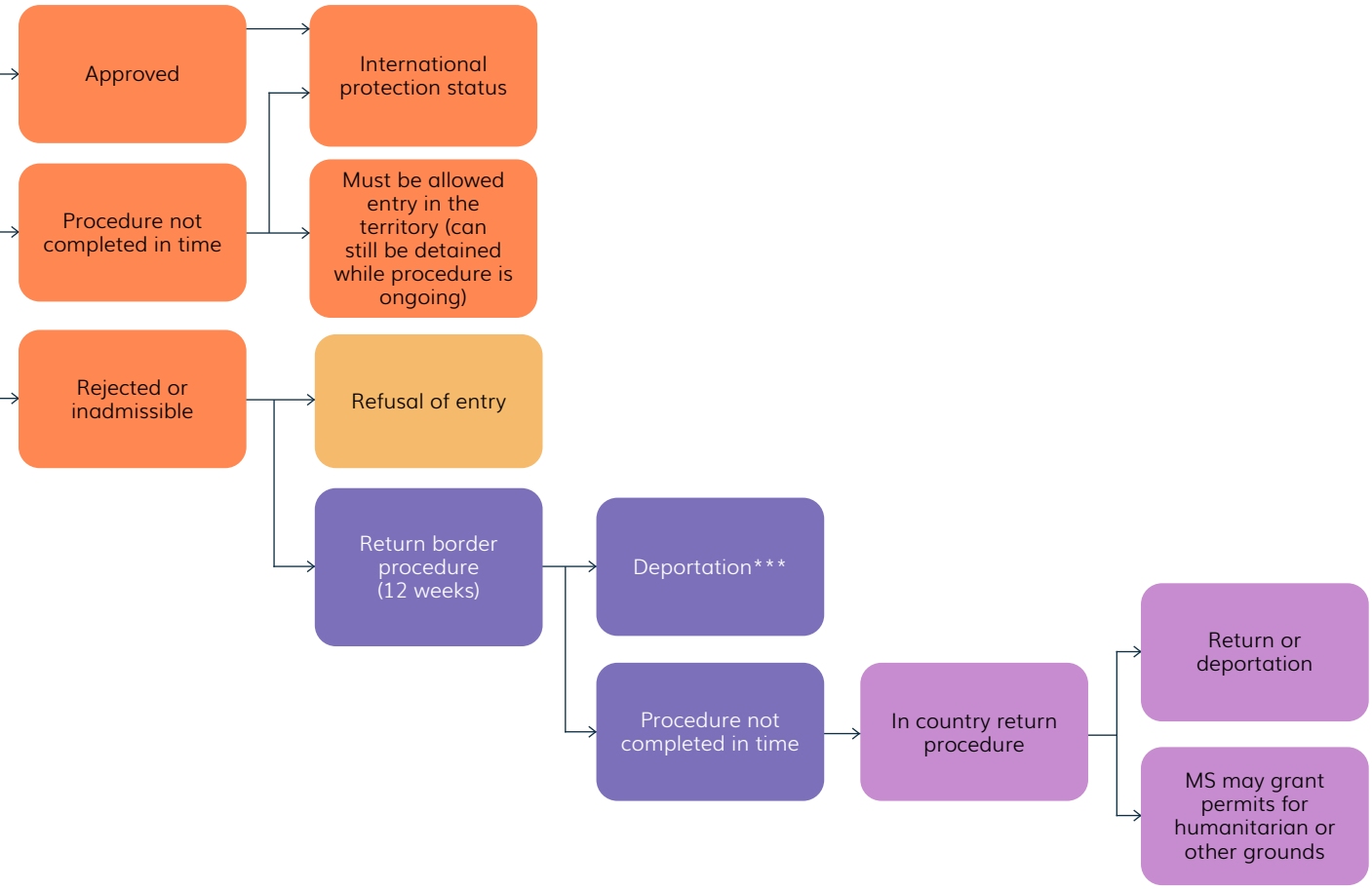
Screening Regulation

Asylum Procedures Regulation

2008 Return Directive

Return Border Procedures Regulation

Schengen Borders Code (SBC)



**The provisions of the Screening Regulation, the Asylum Procedures Regulation and Eurodac are contradictory on this point.*

***Children with families are included in border procedures. Unaccompanied children are excluded, except if flagged as a security risk.*

****In the return border procedure, individuals can request a voluntary departure period of 15 days.*

PICUM

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