

# Belgian Presidency of the European Union

## Seminar on

### Unaccompanied Children: children crossing the external borders of the EU in search of protection

December 9<sup>th</sup>-10<sup>th</sup>, 2010

#### RECOMMENDATIONS

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*Children may travel unaccompanied into and throughout the European Union in diverse ways across land, sea and air borders and for a wide range of reasons. Whatever their nationality or migration status, all children should be treated as children first and foremost, and should enjoy their rights under the UN Convention on the Rights of the Child. This includes the right to special protection and assistance from the State for a child temporarily or permanently deprived of his or her family environment. The UN Convention on the Rights of the Child applies to all children within the jurisdiction of the State, which also includes children coming under the State's jurisdiction while attempting to enter the State's territory as a final destination or in transit.*

*The State's ultimate obligation towards unaccompanied and separated children outside their country of origin will be to achieve a durable solution, based on an individual assessment of the circumstances of the child and taking their best interests as a primary consideration.*

*Bearing these core principles in mind, and taking into consideration General Comment No 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin and the Separated Children in Europe Programme Statement of Good Practice, the following recommendations focus on child protection safeguards which should ensure that children travelling alone or separated from their parents or primary caregivers, who are at risk of inadequate care or potential harm or who otherwise need protection are both identified and referred to services providing special protection and assistance, followed by some recommendations on potential transnational actions concerning border crossings to contribute to the implementation of the EU Action Plan on Unaccompanied Minors:*

#### **Recommendations on Child Protection Safeguards at the Border and on First Encounter**

##### **Guiding Principle**

Safeguards at all borders and within the territory of the EU should provide **a circle of protection** around children travelling across borders, as well as children who seek to depart the EU, to reduce the risk that they are travelling into situations of inadequate care or potential harm or otherwise need protection (referred to here as a "child at risk"). States should put in place the following **child protection safeguards at the border and when otherwise first encountering** unaccompanied and separated children within their territory, in order to identify where children are at risk and to refer them to child protection services. This includes, but is not limited to children who self-identify as being at

risk, including, for example, by claiming asylum.<sup>1</sup> All such measures should respect the rights set out in the UN Convention of the Rights of the Child, including that the best interests of the child should be a primary consideration in all actions and that the child, in accordance with his age and maturity, can participate freely in all matters affecting him/her.

### Identification of Children at risk

1. **States should put in place identification procedures to ensure that children are properly identified both as children and as unaccompanied** by actors at the EU land, sea and air external borders and when first encountered by authorities within the EU territory. These identification procedures should also assist border guards, police, immigration officials, social workers and guardians in detecting **a risk that a child is travelling into situations of inadequate care or potential harm or otherwise needs protection**, using a combination of criteria, including questions relating to their documentation, as well as indicators and risk profiles.
2. With respect to documentation, the general introduction of **standard documentation and agreed processes with carriers** concerning the accompaniment and transfer on arrival or departure of children travelling without their parents or primary caregivers may reduce, although not exclude, the risk of being trafficked into or out of Europe<sup>2</sup>.

### Further Enquiries

3. **Where it is suspected that the child is at risk**, the authorities **should enquire further into their circumstances**, using child protection and child-friendly approaches. The aim of this inquiry will be to obtain information necessary to protect the child. State authorities responsible for child care should be notified of the presence of the child, in accordance with a pre-defined protocol, and a multidisciplinary approach should be adopted in conducting this inquiry.
4. When authorities encounter an unaccompanied or separated child, the child should be received in special rooms, separated from adults, where their basic needs should be first attended by qualified professionals. From the outset, **children should be provided with information**, in a

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<sup>1</sup> For children seeking to depart the European Union as unaccompanied and separated children, this may occur, for example, where a trafficker or smuggler is involved in transferring a child to a third country. Similarly, in the event that return of the child to a country of origin has been determined to be an appropriate durable solution, clear procedures should be in place for safe passage of the child, including all necessary safeguards at the external EU borders.

<sup>2</sup> Such procedures would involve, amongst other things, improved standards concerning travel documents for children travelling without parents (including, for example, individual passports for every traveller, including children; an obligatory, uniform document stating parental consent to travel), cooperation with airlines for a standard and extended air aviation procedure for “unaccompanied minors”, implementation of the so-called “Spanish Directive” 2004-82-EG (dd 29.04.2004) on the use of Advanced Passenger Information System (APIS) and the accessibility to Passenger Name Record (PNR)-data (including the traveller’s age), and standard procedures for all children travelling without their parents or guardian (even if they are accompanied by a “third person”) on arrival at a border (for example, specialised border controls and supervised transfer into the care of an appropriate adult as foreseen in the documents). Additionally, harmonisation between EU-Member States regarding the age at which a child can travel alone may prove useful.

manner and language they understand, and adapted to their age and maturity, on the situation in which they find themselves, the procedures that may apply and the assistance that will be provided to them. As soon as possible after such a child at risk is identified at the border (or notified to an authority at the border), **an independent qualified guardian should be appointed to act in the child's best interests**. As necessary, the presence of a lawyer and an interpreter must also be ensured within the shortest possible period of time.

5. Child protection safeguards when first encountering an unaccompanied or separated child should allow authorities to work with **the assistance of a linguistic and cultural counsellor and in cooperation with civil society stakeholders**, as necessary.
6. **Registration of the situation of the child should take place**, aiming at the child's protection, including information on the child's identity, circumstances of their arrival and interception, background of the child and travelling conditions. The registered information should be available for use in migration and child protection procedures, subject to personal data protection, right to privacy and child protection safeguards (such as ensuring that no harm will come to the child or his or her family from use of the information).
7. Where there is a **serious doubt as to whether a person is a child**, including in situations where an individual is claiming to be an adult, the border authorities should notify that doubt to the authorities responsible for child protection. Pending any age assessment, the individual will be afforded the benefit of the doubt, with a guardian and all further necessary protection and assistance afforded to unaccompanied children. Procedural guarantees should be ensured in all cases, including when a child refuses age assessment testing.<sup>3</sup>

#### **Referral to Child Protection Authorities**

8. **A child at risk should be rapidly referred away from the border or place of first encounter by the authorities to services responsible for child protection**, in order to identify whether and what measures of reception care and/or assistance should be put in place for the child and/or any other necessary follow-up measures. Services involved should be based on collaboration between interdisciplinary actors, including NGOs and IGOs, on a national, and where necessary, transnational basis. A guardian should represent the child's interest at all stages of the decision-making process concerning the child.

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<sup>3</sup> Age assessment procedures will incorporate all necessary safeguards, including using appropriate techniques to conduct an age assessment and that medical examinations are a measure of last resort, the requirement that the separated child and/or his/her guardian or other representative give informed consent to any medical examination, based on age appropriate information on the procedures, its medical risks and its potential consequences. Methods should be interdisciplinary and respect the dignity of the child. The assessment should be carried out by independently and appropriately skilled practitioners, with a recognition of the margin of error and its application in favour of the individual.

9. **Cooperation** between actors both state and non-state actors (including industry, such as airline companies), is crucial in all matters from first encounter. This cooperation should be based on equality, mutual trust and mutual recognition of all actors' role and position.

This cooperation needs also to be established in third countries (e.g. between embassies and liaison officers and airline companies).

### **Post-Referral**

10. **Post referral**, and in the same way as other unaccompanied and separated children first encountered by authorities, these children should continue to benefit from all their rights under the UN CRC. This should include being placed in adequate and safe reception conditions, have access to physical and mental health services and adequate psychological support as well as access to education and training services. They must receive ongoing information on their situation and receive the continuing assistance of a guardian and lawyer. Authorities have the duty of care to ensure that children are in safe and secure reception conditions and to take measures to eliminate unexplained disappearances from care.

11. All **disappearances** of unaccompanied or separated children should be **followed-up** appropriately.

12. **The State's ultimate obligation will be to identify a durable solution** for any child alone or separated from their parents or primary caregivers outside their country of origin, based on an individual assessment of their individual circumstances and taking their best interests as a primary consideration. Options for durable solutions include return and reintegration in the country of origin; granting of international protection status or other legal status allowing minors to integrate in the Member State of residence or transfer to another Member State or third country. Proper procedures, tools and cooperation with other EU Member States and third countries will be necessary to ensure an outcome which fully respects the rights and safety of the child.

### **Training of Actors**

13. Training of border guards, police, immigration officials, social workers and guardians dealing with the situation of these children is a key component of child protection safeguards. This includes training in
  - (1) child-friendly approaches;
  - (2) detection and identification of situations of risk, including but not limited to trafficking cases (through training in child psychology and in detecting physical and behaviour revealing potential risks); and
  - (3) understanding the challenges associated with identifying the age of a child, and how to

address any doubt as to the age of an individual and the necessary procedural safeguards that should accompany age assessment.<sup>4</sup>

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### **Recommendations on Potential Transnational Actions concerning Border Crossings to contribute to the Implementation of the EU Action Plan on Unaccompanied Minors**

In light of the foregoing, the follow actions should be considered as actions which would contribute to the implementation of the EU Action Plan on Unaccompanied Minors:

#### **Developing Guidelines, Guidance and Training**

1. Profiles and indicators of situations of children at risk of inadequate care or potential harm or otherwise needing protection, including but not limited to trafficking, should be created and shared on a regular basis among Member States authorities. This should include an exchange of information on known trafficking patterns.
2. To promote mutual recognition of age assessment decision between Member States, harmonisation of procedures, safeguards and practices are needed. EU guidance on age assessment procedures, as foreseen by the EU Action Plan on Unaccompanied Minors, should include specific provisions on issues raised at the border. More multidisciplinary oriented academic research is needed regarding age assessment practices and possibilities. Moreover, monitoring is needed regarding current age assessment practices in EU Member States, including the different roles of the actors involved.
3. The development of EU-level guidance on best interests determination procedures and tools for their implementation should take account of and provide general orientations for child protection safeguards on first encounter.
4. The EU should develop training modules for involved actors, founded in a child rights and protection perspective. They may draw inspiration from existing regional training modules targeting other stakeholders, such as the European Asylum Curriculum module on child interviewing for caseworkers dealing with asylum claims.
5. More and ongoing data collection and research is needed regarding the circumstances of children travelling to and within European countries. Therefore, a study should be carried out to follow-up on unaccompanied children travelling throughout Europe and standardized data on these children should be gathered systematically. Such a future study could build on the research of the EU Agency for Fundamental Rights in its Comparative Report on Separated, Asylum-seeking children in European Union Member States, as well as the European Migration Network Study into Reception, Return and Integration Policies for, and numbers of, Unaccompanied Minors.

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<sup>4</sup> Age assessment procedures will incorporate all necessary safeguards, including that medical examinations are a measure of last resort, the requirement that the person of the guardian give informed consent to any medical examination, based on age appropriate information on the procedures, its medical risks and its potential consequences. Methods should be interdisciplinary and respect the dignity of the child. The assessment should be carried out by independently and appropriately skilled practitioners, with a recognition of the margin of error and its application in favour of the individual.

6. At national and EU level, the roles and responsibilities of different actors encountering and working with unaccompanied children, and the manner and scope of cooperation between them, should be systematically explored and developed, alongside an analysis of the current interactions between child protection law and border and immigration control as well as crime control measures such as trafficking to ensure that child protection concerns are addressed fully in all relevant procedures.

### **Promoting Better Transnational Cooperation**

7. Regular exchange of information and good practices on the procedures and roles of all actors involved with unaccompanied and separated children, including civil society actors, should take place regionally, with participation of experts from all relevant actors.
8. Transnational mechanisms should be in place to ensure that key actors, including guardians, can follow-up the situation of children arriving in and travelling throughout the EU and when returning to their home country.
9. Pilot studies need to be developed to realize outreach programmes providing children on the move with sufficient information and care (such as, e.g. for Afghan minors, in transit points such as Iran, Pakistan, Turkey, Greece, Italy, Calais, Zeebrugge,).
10. National authorities should work together to exchange good practices and improve regional standards on referral mechanisms, as well as regarding the reception, protection and assistance provided to unaccompanied and separated children.
11. National authorities should explore regional responses from a child protection perspective to the situation of children stowing away on cargo boats arriving in European ports, including through discussions with carriers.
12. The proposal to install National Contact Points within every Member State which may be contacted by authorities of the State or other Member States in relation to the disappearance of an EU national child or a third country national child residing in the EU, adopted under the Portuguese Presidency<sup>5</sup>, might be extended to ensure that every Member State has an operational National Contact Point, and that this Contact Point covers all children present in an EU country, regardless their status. This National Contact Point can also centralize and integrate data – according to commonly shared definitions – on unaccompanied and alone travelling children arriving or/and living in the EU, leading to a better and more clear understanding of the phenomenon.

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<sup>5</sup> Annex 37 of the Practical Handbook for Border Guards