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**COMMISSION STAFF WORKING DOCUMENT**

**ANNEXES**

*accompanying the*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**Action Plan on Unaccompanied Minors (2010 – 2014)**

{COM(2010) 213}

## COMMISSION STAFF WORKING DOCUMENT

### Annexes to the Action Plan on Unaccompanied Minors (2010-2014)

This Commission Staff Working Document includes two annexes to the Action Plan on Unaccompanied Minors (2010-2014). The first one outlines an overview of the EU's policy framework and tools for the promotion and protection of the rights of the child, relevant to unaccompanied children and the main requirements of the UN Convention on the Rights of the Child. It also outlines the main provisions in the EU legislative and financial instruments on asylum, immigration and trafficking in human beings addressing the specific situation of unaccompanied minors and provides examples of concrete projects financed by the EU to support Member States and third-countries in addressing different aspects of this phenomenon.

The second annexe lists the main international and EU instruments – directly or indirectly addressing unaccompanied minors – which have been adopted or proposed, as well as the main EU documents and studies on the subject. Data and factual information used as a basis for the Action Plan can be found in the European Migration Network Synthesis Report on 'Policies on Reception, Return and Integration for, and numbers of, Unaccompanied Minors – An EU Comparative Study' and in the Member States' reports<sup>1</sup>.

#### ANNEX I

##### I. AN OVERVIEW OF THE POLICY FRAMEWORK FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD

##### 1. EU STRATEGY ON THE RIGHTS OF THE CHILD

##### 1.1. General objectives

With the aim of developing a common basis for effective protection and promotion of children's rights in internal and external EU policies, the Commission adopted in 2006 the Communication 'Towards an EU strategy on the Rights of the Child'.

The main objective of this document was to establish an EU strategy which would encompass a broad number of dimensions of the EU children's rights policy. One of its specific objectives is to maximise the use of existing policies and instruments in order to address urgent needs concerning trafficking and exploitation.

The European Union has a responsibility to ensure that its own activities respect the standards set by the 1989 UN Convention on the Rights of the Child<sup>2</sup> and to promote and protect

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<sup>1</sup> See EMN website:  
<http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=6363CAFD8D18C0094C099F5D523DC770?directoryID=115>

<sup>2</sup> Case C-540/03 *European Parliament v Council of the European Union*, para 37.

children's rights in all its actions affecting children. All EU policies are potentially concerned by the rights of the child – i.e. the principle of the primacy of the interests of the child, the child's right to life, survival and development, non-discrimination and respect for the child's opinions – as stated in Article 24 of the EU Charter of Fundamental Rights and in the United Nations Convention on the Rights of the Child.

As announced in the Stockholm Programme, the Commission will further develop its Strategy on children's rights with a more focused approach. Particular attention will be paid to protection of the rights of the most vulnerable children.

## **1.2. Children's' Rights in the External Relations**

As part of the EU Strategy on the Rights of the Child, the European Union is firmly committed to promoting children's rights and responding to their basic needs as an integral part of both its internal and external policies. As regard external aspects, it is based on the existing policy framework that involves an active promotion of the rights of the child as an integral part of the EU's external policy on human rights, including in development, humanitarian, peace and security context.

- **EU Guidelines on Children in Armed Conflicts (2003, updated 2008)**

This policy document commits the EU to address the short, medium and long term impact of armed conflict on children, making use of the variety of tools at its disposal, and building on past and ongoing activities. Some of the actions provided in the Guidelines include: tracing of family members, redress and social reintegration, psycho-social rehabilitation programmes, participation in disarmament, demobilisation and reintegration programmes as well as within transitional justice frameworks. The Guidelines also recognise that girls and those children, who are refugees, displaced, separated, abducted, affected by HIV/AIDS, disabled, subject to sexual exploitation or in detention are particularly vulnerable. The EU focuses the implementation of the Guidelines on 19 priority countries, which are in accordance with the priority list of the Special Representative of the UN Secretary General for Children in Armed Conflicts.

- **EU Guidelines on the Promotion and Protection of the Rights of the Child (2007)**

This EU policy document aims to promote the rights of the child worldwide, in particular by advancing the implementation of the UN Convention on the Rights of the Child and its two Optional Protocols and by ensuring that the rights of the child are taken into account in all EU policies and actions. In the first phase, the implementation of the Guidelines focuses on combating all forms of violence against children, with a special focus on 10 pilot countries selected by the EU after consulting other stakeholders. In the context of unaccompanied children, the Guidelines address the specific situation of vulnerable children who experience threats to survival, lack opportunities for quality education, proper health and social care; are victims of worst forms of child labour, sexual exploitation and abuse, diseases, armed conflict, various forms of violence; are forced into early marriages and have to endure harmful traditional practices.

- **Commission Communication “A Special Place for Children in the EU's External Action” (2008)**

The Communication identifies the policy framework, priority areas, programming tools and guiding principles to progress on children's rights in selected priority areas:

- Development cooperation – by making full use of development cooperation and poverty eradication measures designed to address the root causes of poverty;
- Trade policy – by ensuring children’s rights protection as part of a broader agenda of sustainable development and in bilateral agreements;
- Political dialogue – through systematic consideration of the implementation of commitments under the Convention on the Rights of the Child in such dialogues;
- Regional and global actions – by appropriate actions at a regional and at the global level addressing issues that have a supra-national character;
- Empowerment of children – by addressing the lack of capacity to meet obligations with regard to children’s rights by empowering children and adolescents to play an active role in those matters that affect them directly;
- Children in humanitarian aid - by addressing, inter alia, three crucial issues related to children during crises and emergencies: separated and unaccompanied children, children associated with armed forces or armed groups and children’s education in emergencies.

The Communication is accompanied by the Action Plan and Staff Working Paper.

- **Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action the development and humanitarian dimensions (2008)**

In this policy document, the Council of the European Union underlines its commitment to enhance the EU’s-wide external policy on children’s rights especially in development and humanitarian dimensions, focusing on the most vulnerable groups and recognising the need to progress on achieving the Millennium Development Goals. In the context of unaccompanied children, the Council highlighted the need to address the issue of separated and unaccompanied children, including measures to prevent separation, to re-establish family links and to support orphans and vulnerable children affected by HIV/AIDS; children associated with armed forces or armed groups, in line with the 2007 Paris Commitments and Principles, in particular in the areas of preventing their recruitment and ensuring their unconditional release and reintegration, with special attention being paid to girls.

## **2. PROVISIONS OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD RELEVANT TO UNACCOMPANIED CHILDREN**

The UN Convention on the Rights of the Child (CRC), which has been ratified by all EU Member States, lays out the fundamental human rights of children. It also provides for the protection, care and proper treatment of unaccompanied children, as interpreted by the UN Committee on the Rights of the Child in its General Comment No. 6 (2005).

Provisions relevant to unaccompanied children:

- Legal obligations and implementation measures of State parties (art. 4)
- Non-discrimination (art. 2)
- Best interest of the child (art. 3)

- The right to life and development (art. 6)
- The right of the child to express their views (art. 12)
- Confidentiality (art. 16)
- Initial assessment measures (arts. 8, 9 (3), 10 (2), 22 (2))
- Protection of the child, guardian or adviser and legal representative (arts. 18 (1), (2) and 20 (1))
- Care and adoption arrangements (arts. 20, 21)
- Full access to education, cultural, religious and linguistic rights (arts. 28, 29 (1) (c), 30, 32)
- Right to an adequate standard of living (art. 27)
- Right to health (arts. 23, 24 and 39)
- Prevention of trafficking and of sexual and other forms of exploitation, abuse and violence (arts. 34, 35 and 36)
- Prevention of military recruitment and protection against effects of war (arts. 38 and 39)
- Prevention of deprivation of liberty and treatment in cases thereof (arts. 31, 37)
- Access to asylum procedure (art. 22)
- Procedural safeguards and support measures (art. 3(3), 22(1))
- Full enjoyment of all international refugee and human rights by children granted refugee status (art. 22)

## **II. PROVISIONS IN THE EU LEGISLATIVE AND FINANCIAL INSTRUMENTS ON ASYLUM, IMMIGRATION AND TRAFFICKING IN HUMAN BEINGS ADDRESSING THE SPECIFIC SITUATION OF UNACCOMPANIED MINORS**

### **1. ASYLUM POLICY**

#### **1.1 Legislation**

In the development of a Common European Asylum System, particular attention is paid to the protection of children as a general rule, notably by always referring to the best interests of the child. Specifically, each legislative act addresses the vulnerable situation of minors:

- **Directive on “Reception conditions”<sup>3</sup>**

This Directive lays down minimum standards for the reception of asylum seekers in Member States.

Firstly, concerning the situation of minors in general, the Directive specifies that the best interests of the child shall be a primary consideration for Member States when implementing relevant provisions that involve minors (Article 18). Moreover, it introduces certain entitlements such as the right to family unity (Article 8), access to education (Article 10) and to rehabilitation services, including appropriate mental health care and qualified counselling, for those 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".

Secondly, the Directive includes specific provisions for unaccompanied minors. In particular, Member States are required to ensure representation of the unaccompanied minor by appointing a legal guardian, a person acting on behalf of an organisation responsible for the care and well being of minors, or any other appropriate representation and to ensure that regular assessments are carried out by the appropriate authorities.

Concerning accommodation arrangements, Member States are required to ensure that unaccompanied minors are placed with adult relatives, with a foster-family, in reception centres with special provisions for minors or in other suitable accommodation. Member States may, however, place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers. The Directive further specifies that as far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his / her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. Furthermore, the Directive stipulates that Member States shall endeavour to trace the family members of unaccompanied minors as soon as possible with due regard for their safety. Finally, it ensures that those working with unaccompanied minors shall have had or receive the appropriate training.

Taking into consideration the evaluation of the implementation of the Reception Conditions Directive during the first stage of the Common European Asylum System, the Commission adopted on 3 December 2008 an amending proposal<sup>4</sup> aimed at ensuring better and more equal standards of treatment for asylum seekers.

The proposal aims *inter alia* to ensure an adequate standard of living for all persons with special needs including minors by, for example, requiring Member States to set up national procedures in order to timely identify such needs and by facilitating access to health care. The proposal also specifies that minors shall not be detained unless it is in their best interests, whereas unaccompanied minors shall never be detained. Concerning accommodation facilities, it is maintained that minors shall be able to access leisure-activities, including play and recreational activities. Finally the proposal facilitates access and integration of minors to the national schooling system.

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<sup>3</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

<sup>4</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), COM(2008)0815 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0815:FIN:EN:PDF>.

- **Directive on “Qualification for refugee”<sup>5</sup>**

This Directive lays down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

As far as the content of the protection granted is concerned, this Directive specifies that the best interest of the child shall be of primary consideration and the specific situation of vulnerable persons such as unaccompanied minors shall be taken into account by Member States when implementing relevant provisions (Article 20). This Directive has some provisions addressing the specific situation of minors, such as the right to education and to family unity, as well as a specific article dedicated to the protection granted to unaccompanied minors (Article 30):

- (1) As soon as possible after the granting of refugee or subsidiary protection status, Member States shall take the necessary measures to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.
- (2) Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.
- (3) Member States shall ensure that unaccompanied minors are placed either: (a) with adult relatives; or (b) with a foster family; or (c) in centres specialised in accommodation for minors; or (d) in other accommodation suitable for minors.
- (4) In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.
- (5) As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.
- (6) Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be provided to ensure that the collecting, processing and circulating of information concerning those persons is undertaken on a confidential basis.
- (7) Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.

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<sup>5</sup> Council Directive 2004/83 of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>



The Commission adopted on 21 October 2009 an amending proposal<sup>6</sup> aimed *inter alia* at ensuring higher standards of treatment for refugees and beneficiaries of subsidiary protection. The amendments relating to unaccompanied minors are amended with a view to ensuring consistency with the Commission's proposal for the amendment of the Reception Conditions Directive and require Member States to establish procedures for tracing the family of unaccompanied minors as soon as possible after protection has been granted and to ensure that those working with unaccompanied minors have had – but also continue to receive – appropriate training.

- **Procedures Directive<sup>7</sup>**

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting or withdrawing refugee status.

Besides specific provisions relating to minors, such as the possibilities for interviewing a minor, this Directive also spells out special guarantees for unaccompanied minors. In particular, Member States are required to ensure representation of the unaccompanied minor by appointing a legal guardian, a person acting on behalf of an organisation responsible for the care and well being of minors, or any other appropriate representation. Member States may refrain from appointing a representative under certain conditions, for instance when the minor will in all likelihood reach the age of maturity before a decision at first instance is taken; or where he / she is 16 or older, unless he / she is unable to pursue his / her application without a representative. The Directive also insists on the appropriate skills for persons dealing with minors; it contains a provision on the use of medical examinations to determine the age of an unaccompanied minor, and underlines that the best interests of the child shall be of primary consideration for MS when implementing procedures provided for in the Directive.

On 21 October 2009, the Commission adopted a proposal for a revised asylum procedures Directive<sup>8</sup> which *inter alia* aims at reinforcing procedural guarantees for unaccompanied asylum seeking minors. In particular, the recast explicitly stipulates the right of every minor to apply for international protection, and maintains that appropriate bodies involved in the return procedures, as described in Article 10(1) of the Return Directive, should be allowed to lodge an application for international protection for an unaccompanied minor. The proposal invites Member States to ensure that applicants with special needs, including minors, are given an adequate opportunity to substantiate their applications for international protection. It is further underlined that personal interviews with minors should be conducted in a child friendly manner. As regards representation, the proposal makes it clear that unaccompanied minors should be represented by impartial and qualified guardians, that the guardians should both assist and represent unaccompanied minors throughout the procedure, and that a guardian and/or a legal advisor should always be present when minors are interviewed. The

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<sup>6</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted - COM(2009) 551, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0551:FIN:EN:PDF>

<sup>7</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

<sup>8</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast) - COM(2009) 554, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0554:FIN:EN:PDF>.

amendments reduce exceptions to an obligation to appoint a representative (guardian). In this respect, provisions allowing Member States to refrain from appointing a representative (guardian) where the minor is 16 years or older, or where free legal assistance is available, are deleted. The proposal underlines that, subject to limited exceptions, unaccompanied minors should have access to free legal assistance at first instance and appeals procedures, and introduces additional safeguards with respect to medical examinations to determine the age of unaccompanied minors. In the latter case, Member States are encouraged to employ less invasive exams and consider other evidence before taking a decision to use a medical examination. Finally, unaccompanied minors are explicitly exempted from accelerated, safety third country and border procedures.

- **Dublin Regulation**

The Dublin Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

It contains several rules to deal with the specific situation of unaccompanied minors. It states that the Member State responsible for examining his/her application is the Member State where a member of his/her family is legally present. If no family member is legally present, the Member State where the asylum claim is lodged is responsible. In addition, the unaccompanied minor has a relative or relatives in another Member State who can take care of him/her, Member States shall, if possible, unite the minor with his or her relatives.

In its recent proposal amending the Dublin Regulation<sup>9</sup>, the Commission proposed to strengthen these rules in order to guarantee absolute compliance with the principle of the best interests of the child. In particular, a new Article 6 has been added which requires Member States to closely cooperate with each other in assessing the best interests of the child and in particular to take due account of the following factors: the family reunification possibilities; the minor's well-being and social development; safety and security considerations as well as the views of the minor, in accordance with his/her age and maturity. The Commission also proposed to make the reunification of an unaccompanied minor with a relative who can take care of him/her a fully binding criterion for determining responsibility and clarified that in the absence of a family member or another relative, the Member State responsible is the one where the applicant lodged his/her most recent application for international protection, provided this is in his/her best interests.

- **Directive on “Temporary Protection”<sup>10</sup>**

This Directive establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their

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<sup>9</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast) - COM(2008) 820, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF>

<sup>10</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:NOT>.

country of origin and to promote a balance of efforts between Member States in bearing the consequences of receiving such persons.

Besides specific provisions relating to minors, such as the access to education and the right to family unity, particular attention is given to unaccompanied minors: the Directive requests that Member States provide for necessary medical care or other assistance for persons with special needs, such as unaccompanied minors. Member States shall also take measures, as soon as possible, to ensure the necessary representation of unaccompanied minors by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. During the period of temporary protection Member States shall ensure that unaccompanied minors are placed with adult relatives, a foster-family, in reception centres with special provisions for minors, or with the person who looked after the child when fleeing. Finally, the Directive specifies that the views of the child shall be taken into account in accordance with his / her age and maturity.

## **1.2 Practical cooperation – Exchange of information and best practices**

The future European Asylum Support Office (EASO) will soon facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the Common European Asylum System, including its external dimensions. The Regulation of the European Parliament and of the Council establishing the Support Office will be adopted during the first months of 2010<sup>11</sup>. The Commission is committed to proceeding as quickly as possible with the establishment of the Support Office.

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<sup>11</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office - COM(2009) 66, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0066:FIN:EN:PDF>; Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions - COM(2009) 67, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0067:FIN:EN:PDF>.

## 2. IMMIGRATION POLICY

- **Directive on family reunification**<sup>12</sup>

This Directive – which also applies to refugees – contains specific provisions in case the refugee is an unaccompanied minor: in this case the Member States shall authorise the entry and residence of his/her first-degree relatives in the direct ascending line and may authorise the entry and residence of his/her legal guardian or any other member of the family, if the refugee has no relatives in the direct ascending line or they cannot be traced. No such provisions exist however in the Directive for unaccompanied minors who have not been recognised with refugee status. A report on the transposition and implementation of the Directive by Member States has been published by the Commission in 2008 (COM(2008)610 final of 8.10.2008).

## 3. RETURN POLICY

- **Return Directive**<sup>13</sup>

Recital 22 of the preamble states that in line with the 1989 United Nations Convention on the Rights of the Child, the “best interests of the child” should be a primary consideration of Member States when implementing this Directive. In line with the European Convention for the Protection of Human Rights and Fundamental Freedoms, respect for family life should be a primary consideration for Member States when implementing this Directive.

Article 5 expressly obliges Member States to take due account of the best interests of the child and family life when implementing the Directive.

According to this Directive, Member States are obliged, before deciding to issue a return decision, to grant assistance to unaccompanied minors by appropriate bodies other than the authorities enforcing return. Furthermore, before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Where necessary, Member States shall extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, children attending school and the existence of other family and social links.

During the period for voluntary departure and periods for which removal has been postponed, Member States shall ensure that the following principles are taken into account as far as possible in relation to third-country nationals:

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<sup>12</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12), available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>

<sup>13</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98), available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

- Family unity with family members present in their territory is maintained;
- Emergency health care and essential treatment of illness are provided;
- Minors are granted access to the basic education system subject to the length of their stay;
- Special needs of vulnerable persons are taken into account.

As regards detention of minors, the Directive contains specific safeguards providing that unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.

Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal. Recital 17 of the Preamble recalls the general principle that third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law.

#### • **Readmission Agreements**

Minors are fully covered by the scope of the EU readmission agreements currently in force or those still negotiated<sup>14</sup>. Furthermore, the recent EU readmission agreements contain clauses according to which minor unmarried children of the person to be readmitted shall also be covered by the readmission procedure of that person regardless of the child's place of birth or nationality unless the child has an independent right to stay.

The EU readmission agreements do not contain any particular provisions regarding protection of minors.

Obviously those readmission agreements are applicable only following the accomplishment of the return procedure. Hence, any person including a minor will first be in the position to use all the safeguards provided for by the Return Directive.

Finally, all readmission agreements contain a non-affected clause with the European Convention of Human Rights.

#### • **Regulation on Community Statistics on Migration and International Protection<sup>15</sup>**

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<sup>14</sup> The EU Readmission Agreements with the following third countries are currently in force: Hong-Kong, Macao, Sri Lanka, Albania, Russian Federation, Ukraine, FYROM, Serbia, Bosnia and Herzegovina, Montenegro and Moldova.

<sup>15</sup> Regulation (EC) n. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF>.

Article 4(3), of Regulation No 862/2007 sets the obligation for the Member States to transmit annual figures on applicants for international protection who are considered to be unaccompanied minors. This data must be disaggregated by age and sex, and by the citizenship of the persons concerned. They shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within three months of the end of the reference year. The first reference year shall be 2008.

The Regulation also provides that general demographic data on immigrants, emigrants and stock and statistics on apprehensions must be disaggregated by age. Residence permit data, statistics on returns and statistics on refusals, on the contrary, must not<sup>16</sup>. However, disaggregation by age does not provide any information on whether these minors are unaccompanied or not.

#### 4. POLICY ON BORDER CONTROL

- **Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)**<sup>17</sup>

Point 6 of Annex VII of the Schengen Borders Code provides that border guards shall pay particular attention to minors, whether travelling accompanied or unaccompanied. Minors crossing an external border shall be subject to the same checks on entry and exit as adults, as provided for in the Code. In the case of minors travelling unaccompanied, border guards shall ensure, by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them.

Furthermore, point 3.7 of Part Two, Section I of the Practical Handbook for Border Guards (Schengen Handbook)<sup>18</sup> provides that if there is doubt whether a minor who is a citizen of the EU or a third-country national legally residing in the EU is authorised to cross the border on exit, the national point of contact of the Member State of the minor's nationality or residence should be contacted. A list of national points of contact for consultation purposes on minors is attached to the Handbook and is accessible on the circa network.

In accordance with its mandate, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) prepares both general and tailored risk analysis related to illegal immigration across the external borders of MS in which particular attention is paid to the situation of minors. The Agency has also been developing special training tools for border guards aimed at improving their skills on interviewing unaccompanied minors.

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<sup>16</sup> For all the categories which do not need to be disaggregated by age, the age disaggregation can be added at a later stage through the additional disaggregations, as provided by Article 8 of Regulation (EC) No 862/2007.

<sup>17</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>.

<sup>18</sup> Practical Handbook for Border Guards (Schengen Handbook) available at <http://register.consilium.europa.eu/pdf/en/08/st11/st11253.en08.pdf>

## 5. TRAFFICKING AND EXPLOITATION OF HUMAN BEINGS

- **Framework Decision on combating trafficking in human beings and Commission's proposal for a revision<sup>19</sup>**

The Framework Decision responded to a generally perceived need to address the serious criminal offence of trafficking in human beings at EU level, providing a minimum level of approximation in national legislation.

On 29 March 2010, the Commission tabled a Proposal for a *Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA*. Some provisions are of particular relevance to unaccompanied minors that are victims of trafficking. This includes a presumption of minor age in case of doubt, special assistance and support measures for child victims for their recovery, and to facilitate their participation in criminal proceedings, such as a special representative, free legal counselling and free legal representation, or child-sensitive ways to obtain their testimony. It also includes the possibility of not prosecuting or imposing penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being trafficked, as well as training for officials likely to come into contact with victims and potential victims (front-line police officers, border guards, labour inspectors, health care personnel and consular staff), aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

- **Framework Decision on combating the sexual exploitation of children and child pornography and Commission's proposal for a revision<sup>20</sup>**

This Framework Decision introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims.

On 29 March 2010, the Commission tabled a Proposal for a *Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA*. Some provisions are of particular relevance to unaccompanied minors that are victims of sexual abuse and sexual exploitation. This includes a presumption of minor age in case of doubt, special assistance and support measures for child victims for their recovery, and to facilitate their participation in criminal proceedings, such as a special representative, free legal counselling and free legal representation, or child-sensitive ways to obtain their testimony. It also includes the possibility of not prosecuting or imposing penalties on child victims of sexual exploitation for their involvement in unlawful activities as a direct consequence of being subjected to those offences (i.e. sanctions on prostitution).

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<sup>19</sup> Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>

<sup>20</sup> Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ L 13, 20.1.2004, p. 44), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004F0068:EN:NOT>

- **Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings who co-operate with the competent authorities**<sup>21</sup>

Member States may decide to apply the Directive to minors who are or have been victims of trafficking in human beings. In this case, specific provisions are applicable: Article 10 stresses that the best interests of the child must be taken into due account and that minors must have access to the educational system. In case of unaccompanied minors, Member States shall take the necessary steps to establish their identity and nationality, shall ensure legal representation if necessary and shall make every effort to locate the families as quickly as possible. Article 9 also states that minors shall be provided with necessary medical or other assistance in order to meet their special needs. A report on the transposition and implementation of the Directive by Member States will be published by the Commission in 2010.

## **6. EU FINANCIAL INSTRUMENTS**

Several European financial instruments can be used to address the issue of unaccompanied minors.

### **6.1 Solidarity and management of migratory flows**

Under the Framework Programme "Solidarity and management of migratory flows", which has an overall amount of about 4020 million € for the period 2007-2013, the "European Integration Fund" covers unaccompanied minors' integration if they are considered legally resident as well as the "European Refugee Fund" if they are asylum seekers, refugees or with subsidiary protection status. Moreover, under the "European Refugee Fund", Member States receive a fixed amount of EUR 4 000 for each resettled person falling into one of four specific categories, including unaccompanied minors<sup>22</sup>.

The "European Return Fund" covers measures in the framework of the return procedure or specific actions addressed to unaccompanied minors, like information on return, costs of travel and food for returnees, family reunification in the country of origin as well as reintegration measures, etc. This fund can also be used to implement the specific provisions provided on the issue by the Return Directive<sup>23</sup>. The Commission intends to launch in the framework of the Return Fund 2009 Community Actions a specific study on the situation of minors in the return process. The comparative study should be carried out to analyse practices and highlight best practices relating to return of minors in Member States. The study shall

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<sup>21</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities (OJ L 261, 6.8.2004, p. 19) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

<sup>22</sup> Article 13 (3) of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC (OJ L 144, 6.6.2007, p. 1) available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0001:0021:EN:PDF>

<sup>23</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>



focus on, but not be limited to unaccompanied minors. The scope of the study shall cover the whole range of legal obligations laid down in Directive 2008/115/EC covering in particular the general treatment of minors during the return procedure, the detention conditions and alternatives to detention, measures taken by Member States to guarantee a reception in the country of return in accordance with Article 10 of the Directive and measures taken to prepare a smooth and sustainable reintegration. The study may also deal with more favourable national provisions and shall finally provide concrete recommendations.

## **6.2 DAPHNE II**

The Daphne Programme aims at combating violence against women, young people and children and protecting victims and groups at risk. Daphne started in 1997 and is financing targeted actions by NGOs, local public authorities and universities/research institutes to fight all forms of violence against women, young people and children and support victims and groups at risk. The current DAPHNE III Programme (2007-2013), adopted in June 2007, has a total budget of 116.85 million €. Since its establishment in 1997, Daphne has funded more than 500 projects, including projects addressing violence or the risk of violence against unaccompanied minor migrants (UAM). Details on funded projects are found on the website [Daphne Toolkit http://ec.europa.eu/justice\\_home/daphnetoolkit/](http://ec.europa.eu/justice_home/daphnetoolkit/).

The Daphne Programme has funded several projects focusing on the phenomenon of UAM travelling into and through Europe. These children, commonly in the 12 to 17 age bracket, are exposed to great risk of falling into the hands of exploiters, since the children often have no other way to survive than by earning money in the grey economy, or in begging or street hawking. Older children may end up in prostitution and girls in particular are at risk of entering exploitative domestic service or the sex trade. Research funded by Daphne has showed that there are generally two specific groups of UAM in Europe: those who seek asylum and use legal ways of entry in order to consolidate their residency status, and those who cross borders illegally and who, in fear of being deported, soon go 'underground'. While there are quite extensive networks of help for the first group, including family reunification programmes, the second group of children is without protection and support. They are at high risk of exploitation and trafficking. Results from these Daphne-funded projects include a broad-ranging list of priority recommendations to help such children pointing to their right, as children, to the same protections as children who migrate legally, and to the specific need to get them into school or vocational training. Research has also found that the children in general have a relatively high need for medical and therapeutic support.

## **6.3 Prevention of and fight against crime**

The current Prevention of and Fight against Crime Programme (2007-2013), adopted in February 2007, has a total budget of 600 million € and is destined for law enforcement agencies, including local, regional and national authorities, social partners, universities, statistical offices, and non-governmental organisations. It provides financial support to activities regarding all types of crime in particular terrorism, trafficking in persons and

offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud<sup>24</sup>.

The Programme is currently financing seven projects aimed on combating the sexual exploitation of children and protection of victims and groups at risk. Four out of the eight projects aim at strengthening children's right to criminal procedures and are implemented by law enforcement authorities in Bulgaria, Italy, Germany and United Kingdom with partners from Austria, Romania, Greece, Slovakia, Finland, Croatia and Portugal.

Activities involve cooperation between child care and criminal justice agencies in case of sex offences against children, elaboration of national strategies to improve the situation of child victims of crime that are involved in legal procedure and dissemination of knowledge and best practices.

Two projects implemented by Italian and French non governmental organisation focus on training of professionals in the police, judicial and social services working with children victims of sexual exploration. Another project implemented by Sweden's Crime Prevention Board seeks to create a European coalition of stakeholders to combat as a unified taskforce internet child exploitation and sexual abuse images in the European Union. The total amount awarded to these projects is so far 1.562.123,00 €

The programme is also financing five projects to combat trafficking of children, implemented by Poland, Italy, United Kingdom and Belgium involving partners from law enforcement authorities in Spain, Romania, France and the Netherlands.

Activities involve practical joint investigation teams into organised crime networks criminally exploiting and trafficking children, development of new monitoring and reporting tools and awareness raising actions towards the victims at risk. The amount awarded to these projects is so far 1.872.069,00 €

#### **6.4 Thematic programme for cooperation with Non-EU Member Countries in the areas of migration and asylum**

As regards the external dimension, the "Thematic programme for cooperation with Non-EU Member Countries in the areas of migration and asylum", successor of the AENEAS programme, offers financial and technical assistance to third countries in the field of migration and asylum.

The Aeneas and the Thematic programme are currently financing eleven projects aimed at addressing, directly or indirectly, the phenomenon of unaccompanied minors in non-EU countries.

Four of these projects are carried out in Morocco.

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<sup>24</sup> Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against Crime' (2007/125/JHA), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:058:0007:0012:EN:PDF>

Two of the projects are implemented by Spanish organisations (the Comunidad de Madrid and the Secretariat for Immigration of Catalonia), and both aim at assisting Moroccan unaccompanied minors intercepted in the two respective destination areas (Madrid and Catalonia) and facilitating, when possible, their return and reintegration back to their country of origin, as well as raising public awareness amongst minors on the risks of illegal migration. The project of the Secretariat for Immigration of Catalonia has also established a centre in Tangier, which also tries to contribute to the prevention of further departures, by offering some assistance and training to minors at risk.

A third project in Morocco has been carried out between 2005 and 2009 by the Italian NGO MLAL (*Movimento Laici America Latina*), with the aim of providing information specifically to Moroccan youngsters and students of the Tadla Azilal region, in order to clarify the rules related to legal admission and entry in the EU, and to discourage attempts to embark in illegal migration towards the EU.

A fourth project has just been launched in Morocco by another Italian NGO called CISS (*Cooperazione Internazionale Sud Sud*). This project, which aims at promoting the prevention of departures of unaccompanied minors by raising awareness on the risk of illegal migration and offering training among minors at risk and authorities and persons (like teachers etc.) having contacts with them, will also be carried out in Algeria and Tunisia.

Two other projects are implemented in Albania and both of them specifically target minors at risk or who are victims of trafficking.

One project, which has been carried out since 2008 by the Italian NGO, CIES (*Centro di Informazione ed Educazione allo Sviluppo*), jointly with the Federation of Industrial Workers' Unions of Greece, the Ministries of Interiors of Italy and of Albania, and two Albanian NGOs, aims at contributing to the prevention of trafficking in human beings, with a focus on children and women. The project will support prevention of trafficking in human beings with a focus on women and children living in two of the most deprived areas of Albania: Elbasan and Kinestudio. The project aims at raising awareness on the risks of trafficking, promoting the creation of specialised staff who are capable of dealing with persons at risk or who have been victims.

The other project, carried out by the Italian Ministry for Social Solidarity aims at strengthening the mechanisms of transnational cooperation both at central and local levels for the superintendence of Albanian minors who migrated alone towards Italy. This project will train social service actors in Albania with the aim to prevent further departures of minors and to facilitate social reintegration of unaccompanied minors accepting to return voluntarily. The project will also facilitate the establishment of networking and the dissemination of best practices and carry out information campaigns in schools. It will focus on 200 Albanian unaccompanied minors coming from Diber, Shkoder, Tirana and Elbasan and hosted in the Italian cities of Trento and Florence, and on their families.

Three projects are implemented in several developing countries:

The Belgian Red Cross has carried out from 2006 to 2008 a project aimed at providing information specifically to youngsters and students of the Kinshasa region in the Democratic Republic of Congo, in order to help them to understand the risks of death at sea and in the

desert, or of being trafficked and exploited, all linked to irregular migration, and the true dangers and sufferance to which an irregular migrant is normally exposed.

Recently, the Spanish organisation FIIAP (Fundacion Internacional y para Iberoamerica de Administration y politcas publicas) has started to carry out a project in Senegal, consisting in the establishment of a vocational training centre, which could at the same time offer an alternative to irregular migration to youngsters at risk of embarking in attempts of clandestine departure, as well as a support for the social and professional reintegration of youngsters being returned to Senegal after an experience abroad as unaccompanied minors.

The French NGO, "Groupe Développement Association" carries out a project aimed at preventing unsafe migration and trafficking in children and adolescents from India (West Bengal and Andhra Pradesh), Bangladesh and Nepal.

Through this thematic programme, the Commission also provides financial support to two projects dealing with minors, but whose specific target are in fact minors that are asylum seekers and refugees:

The Danish refugee Council is implementing in Ukraine a project aimed at providing assistance to minors that are asylum seekers and refugees, both through providing material support for their specific needs (for instance schooling etc.) and through raising the awareness and capacities of Ukrainian authorities on the most appropriate modalities to address their situation.

The UNHCR is carrying out since 2007 a project aiming at disseminating in non-EU countries (on a worldwide scale), among practitioners of migration and asylum, best practices related to the specific modalities and standards to be followed for the identification, protection, assistance of minors that are asylum seekers and refugees. The project includes a strand on child protection systems in Sudan, Nepal, Yemen, Ethiopia and Colombia.

Finally, the thematic programmes support also several projects dealing with human trafficking, some of them with special focus on trafficking of children, for example, this is the case of a project implemented by the NGO World Vision UK which aims at preventing trafficking in children, youth and women in Myanmar and at supporting their return and reintegration in the communities of origin.

In addition, it must be noted that the issue of unaccompanied minors and human trafficking is amongst the priorities of the last call for proposals of the Thematic Programme launched in August 2009, and therefore more projects on unaccompanied minors and child trafficking are likely to be selected in the near future.

## **6.5 Other external financial instruments**

It should also be noted that support for projects aiming to address the problem of unaccompanied minors, in particular child trafficking, is provided also through other EU external financial instruments, both geographical and thematic. The majority of the EU's development assistance for the promotion and protection of children's rights is covered under various geographical instruments. These instruments are complemented by thematic instruments, such as the European Instrument for Democracy and Human Rights (EIDHR). One of the objectives of the EIDHR is to implement the EU Human Rights Guidelines,

including the EU Guidelines on Children in Armed Conflicts and the EU Guidelines on the Rights of the Child.

This is the case for instance of a project implemented by UNDP/ILO in Zambia financed by EDF funds which aims at capacity building and raising the awareness of public bodies on child trafficking, a project under the former "Co-financing with NGOs" programme implemented by the Italian NGO ALISEI in Gabon aimed at promoting children's rights and protecting them against traffic and exploitation, a project supported through the thematic programme "Investing in People" implemented by the Czech NGO CLOVEK V TISNI aimed at preventing child trafficking and rehabilitation of trafficking victims in Ethiopia, or finally a project funded through the "European Initiative on Democracy and Human Rights (EIDHR)" implemented by an Albanian NGO whose purpose is to prevent trafficking of vulnerable youth and women in Kosovo. As regards candidates and potential candidates for enlargement of the EU, Instrument for Pre-Accession Assistance (IPA) is a key instrument. It helps to strengthen capacity of Western Balkans region and Turkey to cope with migration and trafficking in human beings. It also builds capacities of law enforcement agencies to investigate possible organised crime activities in these areas. It supports their cooperation and strengthens their ability to protect the borders. In addition to the law enforcement, IPA also targets protection of human rights and fundamental freedoms as well as of vulnerable groups.

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