

The protection of the rights and special needs of irregular immigrant minors and asylum seeking children

A thematic discussion paper prepared for
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Executive summary

This paper aims to identify policy interventions, legal measures and administrative procedures at EU level to protect the rights and special needs of irregular immigrant minors and asylum seeking children. The golden thread running through the paper is the “best interests” of the child and the changes that might be made to ensure those best interests are met.

The adequacy of existing instruments for ensuring that irregular migrant children’s rights are safeguarded must also be scrutinised. The current instruments have clearly been of benefit and served a useful purpose in setting minimum standards. However, they now need to be upgraded by more detailed guidance to build on the lessons learned by governments, international organisations and NGOs and in order to remove the differences that have developed in approaches by Member States. A key aspect of this is the difference in treatment accorded to irregular migrants and asylum-seeking children. This is apparent in many different fields and levels and is despite the fact that, in many cases, the initial classification is likely to have been inaccurate and that children may move between the two groups when for example, an irregular migrant child subsequently claims asylum or an asylum application is considered unfounded, and the applicant fails to leave the territory concerned.

These issues of categorisation, which need to be addressed by the EU, re-emerge in the context of data collection. Robust data collection, research and analysis are required to identify where problems exist and to develop solutions to address them, whether the children concerned are irregular migrants or asylum seekers. Moreover, the data needs to be at a sufficiently detailed level to be capable of use in a meaningful way whether that may be for the identification of trends or more practical application, for example in planning and resourcing. There also needs to be consistency in its collection and presentation, if it is to allow for comparison with other Member States and internationally.

As well as considering the legal and administrative infrastructure required to support irregular migrant and asylum seeking children, the paper also looks at the ways in which current instruments are applied in practice and how they take into account the specific rights and needs of the child. The picture that emerges is once again one of inconsistency between Member States in the standards they provide, for example in reception, guardianship, health and education, the extent to which procedures are “child friendly” and in some cases in the barriers that children have to overcome in order to be able to exercise their rights. Other differences in provision may emerge from the way in which responsibilities are allocated within Member States, whether the child is an irregular migrant or is seeking asylum, and the stage of the process they have reached. In some cases responsibility will fall to central government, in others to local or regional government, albeit, perhaps, without being accompanied by appropriate funding. Responsibilities overlap and communication between the agencies may be poor when what is required is a co-ordinated and holistic approach that has the welfare of the child as its key driver.

Nowhere, however, is the question of the best interests of the child more to the fore than in relation to returns where there is an obvious tension between the desire to maintain an effective immigration control by removing those who have entered illegally and the need for a solution that meets the best interests of the child. In the absence of a clear definition of the latter, the recommendation is for a balanced approach that takes into consideration a wide range of factors. Nor should that process ignore return as an option. Countries of origin are key stakeholders in terms of both returns and prevention and with the appropriate support and investment, have a significant contribution to make in reducing the trauma of irregular migrant and asylum seeking children in both of these areas. However, if return does appear appropriate, it is submitted that the possibility of voluntary return should always be considered.

Against this background, and based on material and views collected in the course of this project, the following recommendations are reached by the paper:

Recommendation 1: The European Commission should consider the possibility of developing a framework for achieving higher standards in the treatment of irregular migrant and asylum seeking children building on the experience of implementing previous instruments. The framework should be sufficiently detailed to ensure consistency of approach between Member States and thereby provide confidence that the needs of children in these circumstances will be met.

Recommendation 2: The European Commission should consider the possibility of developing guidelines for MS to gather data on all irregular migrant and asylum seeking children in a consistent way and to collate and make that data available via Eurostat. The data should be disaggregated to a level sufficient to allow for meaningful usage including policy development, evaluation and comparison between MS. Individual MS should also re-examine the data they collect either singly or in cohorts with other MS to ensure that it is sufficiently comprehensive and robust to allow for practical use.

Recommendation 3: The European Commission should examine the possibility of developing common criteria and guidelines for the determination of the best interest of vulnerable children on the move, based on UNHCR's Guidelines and the general Comment No. 6 by the UN Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin. The criteria should consider best interests in both the short and long term and be consistent with the overall spirit of the CRC.

Recommendation 4: MS should ensure that their processes and procedures in respect of asylum seeking and irregular migrant children are applied in a child friendly way, that they view cases of separated children individually and that they take into consideration the best interest of the child and the right of the child to have his/her views heard. This includes, in particular, that better dissemination be made of good practice examples identified in selected Member States whereby the person(s) appointed to the role of guardians not only take responsibility for

the child's legal position but also look after the child's general welfare. It also includes, in line with the Reception Directive, that all persons coming into contact with children should have the appropriate training concerning their needs. This might include training in the interviewing of children, awareness of issues associated with culture, gender and religion and an understanding of the movement of children internationally.

Recommendation 5: All forms of detention for minors should be prevented, in line with Article 37b of the International Convention on the Rights of the Child. The benefits and possible challenges of alternative solutions tested in some countries, such as an obligation to report regularly to the police authorities, need to be examined in greater detail.

Recommendation 6: Central governments, regional and local authorities, and international organisations and NGOs should work together in a co-ordinated way to ensure that irregular migrant and asylum seeking children receive equal treatment in respect of education, health and other welfare services as children who are citizens of the host state. Where possible, a lead person should be identified within one of the relevant agencies to ensure that a clear and co-ordinated strategy is put in place which meets the best interests of the individual child

Recommendation 7: MS should ensure adequate funding for interim care, in particular where regional and local authority structures lead to unclear accountabilities.

Acknowledgments

In December 2007, Eurasyllum was contracted by the EU Agency for Fundamental Rights to conduct two studies on:

- The protection of the rights and special needs of irregular immigrant minors and asylum seeking children; and
- The protection of the rights and special needs of trafficked children.

The purpose of the present paper on "*The protection of the rights and special needs of irregular immigrant minors and asylum seeking children*" is to identify, through desk research, interviews and case studies, policy interventions, legal measures and administrative practices that are best suited to the protection of rights and special needs of trafficked children, and irregular immigrant minors and asylum seeking children. Taking relevant EU/international standards as a starting point, the paper aims to highlight the public policy benefits of interventions granting special protection to trafficked children. The paper should serve to support the greater use of such protection mechanisms by governments and other relevant stakeholders, such as law enforcement officials and the judiciary.

This paper was prepared by Don Ingham (lead author), Solon Ardittis, Landis MacKellar and Colin Manchip.

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- Caritas Luxembourg
- The Child Rights Information Network (CRIN)
- The Children's Ombudsman Bureau (Poland)
- The Council of Europe
- The Dutch Council for Refugees
- The European Network of National Observatories on Childhood
- The Hellenic Red Cross
- The Institute of Race Relations (UK)
- The International Organization for Migration (IOM)

- The Nobody's Children Foundation (Poland)
- La Strada International
- Save the Children Europe
- The 'Separated Children in Europe' Programme
- SOS - Kinderdorf (Austria)
- The UN Committee on Migrant Workers
- The UN Committee on the Rights of the Child
- UNICEF

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However, all views expressed, conclusions reached and recommendations made in this paper are solely those of the authors.

List of acronyms and abbreviations

AENEAS	EU programme supporting co-operation with third-countries in the field of asylum and immigration
AGIS	EU programme supporting the police, the judiciary and professionals from the EU Member States and candidate countries to co-operate in criminal matters and in the fight against crime
ARGO	EU programme supporting administrative cooperation in the fields of external borders, visas, asylum and immigration
COR	Committee of the Regions
CRC	Convention on the Rights of the Child
DAPHNE	EU programme supporting organisations that develop measures and actions to prevent or to combat all types of violence against children, young people and women, and to protect the victims and groups at risk of trafficking
ECHR	European Court of Human Rights
ERF	European Refugee Fund
FRA	EU Agency for Fundamental Rights
ILO	International Labour Office
IOM	International Organization for Migration
IRC	Irish Refugee Council
MEP	Member of the European Parliament
MS	EU Member State(s)
OHCHR	Office of the High Commissioner for Human Rights
PICUM	Platform for International Cooperation on Undocumented Migrants
SCEP	The Separated Children in Europe Programme
TEU	Treaty of the European Union

UNFPA United Nations Fund for Populations Activities
UNHCR United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund

1.0 Introduction

Under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes in accordance with its competences. This includes compliance with the provisions of both the European Convention of Human Rights and the United Nations Convention on the Rights of the Child (UNCRC).

On the basis of an analysis conducted by the EU Agency for Fundamental Rights, the following articles of the UNCRC are considered to be of direct relevance to Community action and competence:

- Article 2 Non-discrimination
- Article 3 Best interests of the child
- Article 9 Separation from parents
- Article 10 Family reunification
- Article 11 Kidnapping
- Article 12 Respect for the views of the child
- Article 18 Parental responsibilities; state assistance
- Article 19 Protection from all forms of violence
- Article 20 Children deprived of family environment
- Article 21 Adoption
- Article 22 Refugee children
- Article 23 Children with disabilities
- Article 25 Review of treatment in care
- Article 30 Children of minorities/indigenous groups
- Article 32 Child labour
- Article 34 Sexual exploitation
- Article 35 Abduction, sale and trafficking
- Article 37 Detention and punishment
- Article 39 Rehabilitation of child victims
- Article 40 Juvenile justice

Articles 24 and 32 of the Charter of Fundamental Rights also stipulate that children shall have the right to such protection and care as is necessary for their well-being; that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration; that every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests; and that child labour is prohibited.

The European Commission's Communication "Towards an EU strategy on the Rights of the Child", which calls for the development of a comprehensive EU strategy to effectively promote and safeguard the rights of the child in the EU's internal and external policies, and to support Member States' efforts in this field, was

a major step forward in the recognition of children's rights.¹ The strategy takes a transversal and cross-cutting approach to children's rights, encompassing civil and criminal justice, employment, development co-operation, trade negotiation, education and health. The strategy aims, inter alia, to promote and support attention to children's needs, drawing on Europe's values of social protection and on its policy commitments and programmes in different fields.

In response to the above mentioned Commission Communication the European Parliament's LIBE Committee issued a report that calls for the protection of children's rights to be included among the priorities of the EU Fundamental Rights Agency's multi-annual framework, identifying the following priority fields: violence, poverty, discrimination and education, and migrant children.²

The report also asks the Fundamental Rights Agency to set up a network for cooperation with international institutions and NGOs working in this area as soon as possible, in order to take full advantage of their experience and the information available to them.

The report further calls on the Commission, the Fundamental Rights Agency and the Member States to work towards improving the gathering of statistical data on the situation of children in the EU, if necessary by extending Eurostat's mandate, with a view to including a larger number of benchmarks relating specifically to children. The report notes the vital role of the Fundamental Rights Agency, stating that the Commission's future assessment of the effectiveness of its existing actions affecting children will require reliable, exhaustive, detailed and up-to-date statistics. In this context the Fundamental Rights Agency will be required to develop methods and standards to improve the comparability, objectivity and reliability of data at European level, in cooperation with the European Commission and the Member States.

The main focus of this paper is on unaccompanied minors who are seeking asylum or who have otherwise arrived irregularly in a Member State (MS). However, reference is also made to children in these circumstances accompanied by one or both parents or other relative(s). Unaccompanied minors are defined as 'third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person'.³ The Separated Children in Europe Programme (SCEP - a joint initiative of some members of the International Save the Children Alliance and UNHCR) uses the term "separated" to define more precisely the problems these children are

1 *Communication from the Commission: Towards an EU Strategy on the Rights of the Child, Brussels, 4.7.2006* COM(2006) 367 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0367en01.pdf

2 *Towards an EU strategy on the rights of the child (2007/2093(INI))*, Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Roberta Angelilli, 20.12.2007, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0520+0+DOC+PDF+V0//EN>

3 Council of Europe Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), http://www.separated-children-europe-programme.org/separated_children/other_resources/legal_policy/minors_unaccompanied_EUcouncil_resolution.pdf

facing and has developed a broader definition of the term “separated child,” which recognises that some children may appear “accompanied” when they arrive but in practice the accompanying adult may be either unable or unsuitable to assume responsibility for their care.⁴

Figures cited in Chapter 2 below suggest that there are at least 100,000 (and perhaps many more) unaccompanied minors in Europe.

The UN Convention of the Rights of the Child (CRC) 1989, which has been ratified by all MS, provides the baseline for the type of support and protection they require irrespective of their status. Article 22 states that in respect of unaccompanied refugee children ‘the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.’ Chapter 3 and Annex 1 of this paper provide a detailed consideration of the relevant international and EU standards and instruments.

As mentioned above, under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes in accordance with its competences. These rights include in particular the ECHR, which contains provisions concerning children’s rights. Moreover, the provisions of the UNCRC must be taken fully into account. The European Parliament has also stated that the EU strategy on the rights of the child should be rooted in the values and principles laid down in the UN Convention on the Rights of the Child.⁵ The difficulties that result from the children’s position as irregular migrants (whether unaccompanied or because their parents are irregular migrants) are increased by their special vulnerability and needs as children. Many children suffer terrible conditions and deprivations during their journey towards Europe, and a key issue is how to better protect the lives and safety of children migrating in ways that expose them to high levels of risk, in particular when seeking to enter the EU by boat.⁶ Similarly, asylum-seeking children are often, if not always, children who are in some way traumatised by having been forced to leave their country. In most cases they are the direct or indirect victims of acts of violence, torture, persecution, or armed conflict.⁷

Distinctions between children seeking asylum and other children who are irregular migrants are drawn at EU level and internationally and are reflected in national legislation and the associated policies, procedures and internal structures. However, in some cases the initial classification will change as children who arrive illegally subsequently claim asylum and in practice there is often little differ-

4 <http://www.separated-children-europe-programme.org>

5 European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child (k)

6 For an examination of the special human rights problems arising from the protection of the southern maritime borders see, for example, German Institute of Human Rights : *The Demands of Human and EU Fundamental Rights for the Protection of the European Union’s External Borders*, July 2007, <http://www.statewatch.org/news/2007/sep/eu-borders-gihr.pdf>

7 Comment from the Secretariat of the Committee on the Rights of the Child and the Secretariat of the Committee on Migrant Workers in response to Eurasyllum’s questionnaire used for this study.

ence between children who submit unfounded asylum claims and others who enter irregularly. The key issue is the general vulnerability of children because of the emotional and/or physical traumas they may have experienced. As unaccompanied minors they are separated from their families, friends and communities. Some may require specialist care and support for the traumas they have experienced but all will be in need of special attention. The issue is the best interests of the child rather than the category into which they appear to fall.

Against this background, this paper has identified seven key policy challenges that need to be addressed when considering the rights and special needs of irregular immigrant minors and asylum seeking children in the EU. These relate to issues of data collection; reception conditions; protection under the law; structural responsibilities, including the allocation of responsibilities at central and local government levels; issues of health; education; and return/repatriation policies. All of these are examined and analysed in chapter 2 below, while chapter 3 reviews the paper's main conclusions and recommendations. Annexes 1 to 3 provide selected case studies of good practice interventions in support of immigrant minors and asylum seeking children in the EU; a discussion of key EU legal standards and financial instruments in support of this target group; and excerpts from key EU and international legal standards.

2.0 Current state of affairs and key policy challenges

Data collection

The EU Committee of the Regions (COR) quotes SCEP as conservatively estimating that there are at least 100,000 unaccompanied minors in Europe.⁸ IOM Brussels has stated that each year around 200,000 children are found in the European Union territory without legal status.⁹ The scale of the difference makes clear how difficult it is to ascertain the scale of the problem with a high degree of confidence. According to a report by MEP Roberta Angelilli, rapporteur to the Committee on Civil Liberties, Justice and Home Affairs, 5 percent of all asylum-seekers entering the EU are unaccompanied children.¹⁰ However, the EU Committee of the Regions has commented on the difficulty of obtaining EU-level data on this issue, because national authorities employ different methods of classifying unaccompanied minors. In some countries they are classified as asylum seekers, in other countries as economic migrants and in others as abandoned minors.¹¹ The numbers may therefore be significantly different if a common classification was adopted to cover all children who have obtained entry irregularly whether or not as asylum seekers.

Similarly and at a more detailed level, data is lacking on the irregular migrant and asylum seeking children's backgrounds and their experiences at different stages of the asylum/immigration process. The UN Committee on the Rights of the Child has commented that whilst data tends to be concentrated on the number of arrivals/applications, there is a lack of comprehensive and disaggregated data on children in need of special protection including separated and asylum seeking children.¹² The absence of data, which is robust, comprehensive and comparable between MS, hinders research into outcomes and is an impediment to needed evidence-based policy development.

8 Opinion of the Committee of the Regions, of 12 October 2006 on 'The situation of unaccompanied minors in the migration process – the role and suggestions of regional and local authorities', para 7. http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdr%5Cconst-iv%5Cdossiers%5Cconst-iv-005%5Ccdr136-2006_fin_ac.doc&language=EN

9 Statement by IOM Brussels 3 August 2007 introducing the EUAM project, http://www.belgium.iom.int/News_Details.asp?sm=508

10 Towards an EU strategy on the rights of the child (2007/2093(INI)) Committee on Civil Liberties, Justice and Home Affairs, Para. 135. Document Number A6-0520/2007, 20.12.2007. No information is provided on how this figure was estimated.

11 Opinion of the Committee of the Regions, of 12 October 2006 on 'The situation of unaccompanied minors in the migration process – the role and suggestions of regional and local authorities', para 5. http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdr%5Cconst-iv%5Cdossiers%5Cconst-iv-005%5Ccdr136-2006_fin_ac.doc&language=EN

12 ChildONEurope: *Survey of the CRC Committee's Concluding Observations on the last EU Countries' Reports'* ChildONEurope Secretariat, June 2006

Issues of Reception

Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), and Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, set the standards for the reception and subsequent treatment of unaccompanied minors and asylum seekers respectively. However, the UN Committee on the Rights of the Child expressed the view that there is a lack of adequate services in MS receiving asylum-seeking children, including for their recovery and reintegration.¹³ There have also been comments that current EU asylum instruments intended to harmonise national laws accomplish only minimum standards or do not address the issues at a sufficiently detailed and practical level. For example the European Parliament has drawn attention to the fact that ‘even though the instruments which currently exist already contain provisions to protect children, they are not always adequate and problems exist with their applications’.¹⁴ The European Commission has also referred, in its evaluation of the implementation by MS of the Reception Directive, to the wide discretion allowed by the Directive in a number of areas including health care, reception conditions and the treatment of vulnerable persons, which in turn undermines the objective of creating a level playing field in the area of reception conditions.¹⁵

Reception facilities are intended to provide a safe environment for the reception of unaccompanied minors, giving basic care and support and allowing time for gathering information about their identity and/or the submission of their claim as asylum seekers and enabling carefully considered decisions to be made regarding their future. This includes defining whether they are unaccompanied (separated) and whether they are children (where necessary through age assessment). In some cases reception is in dedicated centres although facilities vary and may be dependent on whether an unaccompanied minor is seeking asylum. Provision may also be made for minors travelling with one or both parents or with another relative, where possible in segregated accommodation allowing the family to remain together as a unit. Following an initial induction and assessment period, an unaccompanied minor might be transferred to another facility for the longer term. Unaccompanied minors may also be housed in facilities provided for (domestic) homeless children or fostered. Where possible, this might be with a family of their own ethnicity (which a number of commentators recognise as the most desirable outcome and is referred to in Article 20 of the Convention on the Rights of the Child).

13 Response to Eurasyllum’s questionnaire used for this study

14 *Submission from Save the Children Europe Group on the Commission Green Paper on the Future of the Common European Asylum System* (COM (2007) 301), http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/contributions/ngo/save_the_children_en.pdf

15 *Report from the Commission to the Council and to the European Parliament on the Application of Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, Brussels, 26.11.2007 COM(2007) 745 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0745:EN:HTML>

Whilst all of these measures are satisfactory and compliant with the Reception Directive and other instruments, there are concerns and reports from organisations such as Amnesty International that they are not always put into practice.¹⁶ Whilst acknowledging that exceptional circumstances may arise, capacity is frequently a more general issue and unexpected arrivals may result in *ad hoc* arrangements resulting in children being housed in facilities that fall below the required standards. The UN Committee on the Rights of the Child has stated that, as a general rule, unaccompanied or separated children should not be detained.¹⁷ However, fine lines are often drawn between the exceptional and the unplanned; between time taken at a border or elsewhere to conduct preliminary enquiries and deprivation of liberty; between facilitating deportation and holding a child in secure conditions; and between reception and detention.

As was documented in a recent report on detention centres in all the EU member states commissioned by the European Parliament, in some countries, there are centres reserved exclusively for unaccompanied foreign minors (e.g. Denmark, Spain, Finland, Italy, Ireland). In other countries, these minors are accommodated in orphanages or reception centres for foreign minors and reception centres for minors in general (e.g. Poland). Unaccompanied foreign minors are also sometimes accommodated in separate areas within asylum-seeker reception centres (e.g. Slovakia, Lithuania).¹⁸

Some countries have implemented measures to assess the situation of minors before possibly referring them to other reception structures (e.g. Belgium, Czech Republic).

The report further shows that reception conditions (material conditions, social assistance, etc.) varied greatly according to the centres visited. Other major difficulties reported in the centres included the following:

- A major concern was assistance for minors suddenly deprived of all support upon reaching the age of 18. Apart from a few rare exceptions (e.g. in Ireland where there is a special centre for young adults), in most cases they no longer benefit from State structures at this age. There is an even greater concern, expressed by many social workers in contact with unaccompanied minors, for those who have not obtained a legal status to reside in the country and therefore risk being repatriated.

16 Amnesty International : *Invisible Children – The human rights of migrant and asylum-seeking minors detained upon arrival at the maritime border in Italy*, 2006 <http://www.amnesty.org/en/report/info/EUR30/003/2006>

17 General Comment Number 6 (2005) on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, para. 61

18 'The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states', European Parliament, Directorate-General Internal Policies, Policy Department C, Citizens Rights and Constitutional Affairs, 2008

- Some stakeholders working in the centres expressed another concern regarding their fear that the cutting off of all support may send the minor back into a human trafficking network. This issue was raised by stakeholders in Belgium, who emphasised the difficulties encountered in protecting minors who had been victims of trafficking against the networks with whom they remained in touch.
- Another difficulty observed in some centres is the large number of minors who "disappear". Centre managers do not always know the reasons for these disappearances (e.g. impression of imprisonment and isolation in certain centres, encouragement from criminal networks, adaptation difficulties).

Wherever the child is accommodated, the level of care should be appropriate to their needs, covering not only their physical and mental well-being but also their educational, leisure and emotional needs. The OHCHR Committee on the Rights of the Child, for example, has consistently recommended that States should take measures to identify asylum seeking children who may have been recruited or used in hostilities in another country and to provide them with assistance and adequate services for their recovery and reintegration. There are various examples of good practice in this area: for example by empowering unaccompanied minors through the provision of information and training; and by providing younger children with creative and meaningful activities to help overcome boredom and a feeling of isolation. Some specific examples are quoted in the case studies in Annex 1. Problems remain, however, in ensuring that protection services reach those vulnerable children migrating on their own, who have not come in contact with authorities, and in preventing those who have had such contact from going "underground" or missing from reception centres or other facilities.

Protection under the law

The Reception Directive requires that unaccompanied minors be provided with legal guardians to support them during the asylum procedure including any appeal process. In many cases there is also domestic legislation establishing the child's rights to legal protection by a Ministry, Court, public official or social worker and a prohibition on interviewing a child in the absence of the guardian. There are also good practice examples whereby the person(s) appointed to this role looks after the child's general welfare rather than just the legal position. The challenge is to apply these provisions consistently and with a level of enthusiasm and commitment to serving the best interests of the child. This goes beyond the appointment of a legal representative and touches upon broader questions of how to design and organise the asylum and other immigration procedures in a way that takes into account the specific rights and needs of children such as the provision of information in a child-friendly manner and the right to be heard.

Closely linked to this is the need for training. The Reception Directive also stipulates that all persons coming into contact with children should have the appropriate training concerning their needs. This might include training in the interviewing

of children, awareness of issues associated with culture, gender and religion and an understanding of the movement of children internationally. The ability to identify and respond to signs of fear and distress is of particular importance. One of the main problems in this area is the number of different people and agencies likely to be involved with an unaccompanied minor during his/her stay in the host country. Whilst it is relatively easy to recognise training needs for primary contacts such as border officials, it is more difficult to identify more remote actors, including policy makers, as well as those who interact with a child at later stages of the process, for example when he/she enters mainstream education.

Structural responsibilities

There is considerable variation in the way in which responsibility for the reception and care of unaccompanied minors is allocated both between and within MS. In some cases reception and care are funded by central government, in others by regions, local authorities or by NGOs or a mixture of all of these. Distinctions may also be made dependent on whether an unaccompanied minor is an asylum seeker or in relation to the stage of the asylum consideration process.

This creates a number of problems that have been referred to by the EU Committee of the Regions amongst others.¹⁹ Local and regional authorities may have neither the powers, policies, resources or capacity to deal with an influx of unaccompanied minors, yet may be called upon to provide housing, social and medical assistance and education. While they may need to shoulder the financial and social problems of integration and switch priorities in the allocation of resources, they have no say on issues of repatriation or return which in many cases is retained as a function of central government. Competences overlap between NGOs and local, regional and national authorities and time is taken up in identifying the competent authority for a particular case or problem. As is illustrated in one of the case studies in Annex 1, this conflict of powers between different levels of government, different conditions and priorities within local authorities, and all too frequent poor communication between agencies can result in sub-standard treatment of minors.

Health

The Reception Directive requires that all asylum seekers should have full access to the necessary health care. However, the links between immigration control and social services can make irregular migrants hesitant about seeking the treatment they need and in some MS there may be other barriers preventing them from exercising their rights to health care.

¹⁹ Opinion of the Committee of the Regions of 12 October 2006 on 'The situation of unaccompanied minors in the migration process – the role and suggestions of regional and local authorities', http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdr%5Cconst-iv%5Cdossiers%5Cconst-iv-005%5Ccdr136-2006_fin_ac.doc&language=EN

In a recent report from PICUM on access to health care for undocumented migrants in Europe, co-funded by the European Commission and covering 11 Member States (Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom), the point was made that, whilst most international instruments in human rights law have been ratified by EU member states and refer to the right of everyone to health care as a basic human right (regardless of one's administrative status), the laws and practices in many European countries are still shown to deviate from these obligations. Furthermore, the undocumented migrants' entitlements to health care are not always uniformly implemented by regional and local authorities.²⁰

Even when access to healthcare is achieved, there are further issues concerning the health care professionals' awareness of the special needs and health characteristics of unaccompanied minors, and their ability to identify health issues which the child might not recognise, or the potential these children may have to be suffering conditions and/or disease related to the circumstances of their journey and arrival or conditions or experiences in their native country. Examples include malnutrition, TB, malaria or exposure to HIV/AIDS as well as problems resulting from torture or other forms of maltreatment. Both awareness and investment are required to address these issues.²¹

Education

Normally, where education is compulsory for all minors, it is so, also, for children and adolescents who are asylum seekers or irregular migrants. In some cases this is preceded by intensive language training (in some cases obligatory) before joining the regular schooling system. In others, additional funding is provided for teachers in the teaching of children who are not competent in the language of the MS.

Despite these interventions, the transition into a mainstream schooling can often be difficult and associated with a reduction in the care and support that unaccompanied minors may previously have received. Their particular needs and the distress they may have suffered are often overlooked as they pass into the mainstream. A study in the Republic of Ireland noted a tendency to stay almost exclusively with the peer group and other unaccompanied minors, with a consequent lack of exposure to the culture, behaviours and values of the host country²².

20 PICUM: Platform for International Cooperation on Undocumented Migrants: *Access to Health Care for Undocumented Migrants in Europe*, 20 November 2007

21 See, for example *Report from Ireland – Separated Children Seeking Asylum Research Study 2004, Health, and Social Educational Needs – Final Report*, for the Health Service Executive formerly the East Coast Area Health Board, 2004

22 Ibid.

Return/Repatriation

There is an inevitable tension between the desire of a state to maintain the integrity of its borders through the speedy return of those who have entered illegally and ensuring that the interest of the child are placed first whether that means that the child should be allowed to stay in the host country or that return should be delayed until all steps have been taken to ensure that this can be done safely.

In its proposals for a Return Directive, the European Commission refers to a primary consideration of Member States when implementing this Directive as being the “best interests of the child”, in line with the 1989 United Nations Convention on the Rights of the Child.²³ At a more detailed level the European Parliament has stated that children should be returned to their country of origin only when their safety and security are assured, and emphasises the need for family tracing and family reunification. It also stresses that their return must be prohibited where there is a danger of serious harm being done, through, for example, child labour, sexual exploitation, violence or the risk of female genital mutilation, social exclusion or involvement in armed conflict.²⁴ Whilst these interventions are undoubtedly helpful in clarifying the broad parameters for the steps that need to be taken with regard to the return of children, they remain highly dependent on the level of effort, commitment and resources that MS are willing to put into ensuring that a child is being returned safely and that their best interests are being met. This includes the extent to which the voice of the child is heard through guardianship and other advocacy arrangements referred to above.

The country of origin is a key stakeholder in both returns and prevention. The European Parliament has called on the Commission to establish international co-operation and assistance procedures with the third countries of origin so as to ensure that minors are properly returned to these countries, and for mechanisms to be established to protect such minors once they have returned to their countries or origin, both within their biological families and through mechanisms or institutions that will offer them effective protection.²⁵

A number of MS have had considerable success in working with governments and NGOs in countries of origin to provide facilities such as foster homes, schooling and, where appropriate, job placements to facilitate the re-integration of unaccompanied minors on their return. The Netherlands, for example, supports reception centres in Angola and Congo for unaccompanied minors who return to their country of origin.²⁶ The United Kingdom operates a Voluntary Assisted Return and

23 Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals {SEC(2005) 1057} /* COM/2005/0391 final - COD 2005/0167, Ch.V(18), accessed via <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0391:EN:HTML>

24 European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child (2007/2093(INI)) (134), accessed via <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0012&language=EN>

25 Ibid. Paragraph 126

26 http://www.ind.nl/en/Images/Factsheet_ENG_UMA_tcm6-135197.pdf accessed 7/4/08

Reintegration Programme, partly funded by the European Refugee Fund, which in close cooperation with IOM ensures that appropriate assistance is given to illegal migrants, including children, who are prepared to return home voluntarily, as an alternative to forced removal.

Given the time, effort and resources required for each individual return, investment in reintegration projects in countries of origin appears a cost-effective approach to providing durable solutions.

Whilst there is a strong focus on the welfare of unaccompanied minors during their formative years, less attention is paid to the position of children reaching the age 18 and moving out of the “minors” category. UNICEF has commented on the problem of finding solutions for children that are durable and in their best interests; and that children are often granted discretionary leave to stay until 18 not because it is necessarily in their best interests but due to the cost and complexity of carrying out investigations to assess the options for family reunification in their home countries.²⁷ In most cases reaching 18 either triggers removal action without many or all of the safety net provisions associated with minors or the young person may be left in a state of limbo – remaining in the host country either illegally or in many cases without a clear status or rights.

²⁷ Response to Eurasyllum’s questionnaire used for this study

3.0 Conclusions and recommendations

Preamble

Whilst it is clear that much has been done at international, EU and MS levels to ensure the rights of irregular migrant and asylum seeking children and that many examples of good practice exist, there remains considerable variation between MS in their approach to, and the level and quality of, the support provided to these children.

Making protection of children meaningful requires a significant step beyond the current position of general, minimum standards. Recognising that it is time to raise the bar in terms of the standards expected there is a need for a more detailed legal framework within which MS can operate. This should build on the experience of implementing existing instruments, taking into account the views of MS, international organisations, NGOs and children themselves. Whilst acknowledging that there will need to be some allowance for variation between MS, the aim should be for sufficiently high standards and the achievement of a level of consistency through regulation which is sufficiently detailed to give confidence that the needs of the child will be met across the EU.

Regulations and Other Instruments

The European Parliament²⁸ has stated that the EU Strategy on the Rights of the Child should be rooted in the values and principles laid down in the CRC which creates an obligation on states to meet the special needs of children. At a minimum this requires a common child-focused mechanism to identify, refer and assist vulnerable children on the move who are at risk of exploitation and abuse, irrespective of their status.

Under the CRC, Member States have a legal obligation to make the best interests of children a primary consideration in all actions concerning them, regardless of their immigration status. The CRC Committee has also stated that appropriate and efficient measures should be taken in order to ensure that the principle of the best interests of the child forms the basis of the process and decisions in asylum cases involving children, and to adopt this principle as a paramount consideration in all legislation and policy affecting children in the juvenile justice system and in immigration practices.²⁹

28 European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child (2007/2093(INI)) (k)

29 Response to Eurasyllum's questionnaire used for this study

The problem is that “best interests” of the child remains ill-defined and there is no detailed guidance as to what the application of the principle means or how it should be applied in relation to different actions and steps in the immigration/ asylum procedures for irregular migrant children. UNHCR has produced Guidelines on Formal Determination of the Best Interests of a Child which could provide a useful starting point. Many MS are accustomed to applying these criteria in domestic child welfare cases but their usage in an immigration context is less common. In this respect, mention should be made of an on-going study by the EU Agency for Fundamental Rights which aims to develop a set of indicators for measuring regularly how children’s rights are implemented, protected, respected and promoted in the EU Member States. In particular, the core objectives of this project are:

- to develop a set of indicators for children’s rights based on a review of available sources and a structured consultation with experts and key stakeholders;
- to map and assess available data resources, on the basis of the indicators developed, at national, EU and international level regarding comparability, gaps and other issues; and
- to draft a report containing a comprehensive overview of the situation regarding data availability, reliability and comparability across the EU.

The indicators should allow the Agency to contribute, if deemed necessary, to the European Commission’s future assessment, and subsequent updates every five years, of the effectiveness of its existing action (legislative and non-legislative, internal and external) affecting children.

Furthermore, the Resolution of the European Parliament of 16 January 2008, which is discussed in Annex 3 of this paper, requests the Commission to put forward a proposal to create a specific budget line for children’s rights, in order to finance child-specific projects, such as a European early warning system on child abductions, and a coordination body made up of representatives of the central authorities of Member States mandated to reduce the number of cases of child abduction. The Resolution also recommends that the Commission should establish an effective monitoring system backed with financial means and annual reports to ensure the implementation of the commitments set out in the communication ‘Towards an EU Strategy on the Rights of the Child and the forthcoming strategy on the rights of the child’. In particular, as was mentioned above, the Resolution calls for the protection of children’s rights to be included among the priorities of the Fundamental Rights Agency’s multi-annual framework, and for the Agency to set up a network for cooperation with international institutions and NGOs working in this area as soon as possible in order to take full advantage of their experience and the information available to them.³⁰

³⁰ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A6-2007-0520&language=EN>

Recommendation 1: The European Commission should consider the possibility of developing a framework for achieving higher standards in the treatment of irregular migrant and asylum seeking children, ensuring that their human rights are protected, and building on the experience of implementing previous instruments. The framework should be sufficiently detailed to ensure consistency of approach between Member States and thereby provide confidence that the needs of children in these circumstances will be met.

Data Collection

The European Commission has formally asked the FRA to develop indicators for monitoring the respect of the rights of the child. As was mentioned above, a study to establish such indicators is now under way. Furthermore, a number of commentators including IOM, UNICEF and the CRC Committee have called for systematic data collection, research and analysis to help identify problems and to find effective solutions for children vulnerable to exploitation and abuse in the context of migration, whether or not they are seeking asylum. Comprehensive, disaggregated data are required if they are to be capable of being used in a meaningful way, for example in the assessment of progress in implementation, the identification of problems and in informing policy development. Consistency in the collection and presentation of data is also required to allow for evaluation and comparison, and where possible data should provide a qualitative as well as a quantitative picture of the position in MS. Data on countries of origin might also allow for more proactive interventions for prevention or returns. At a more practical level it is essential to have a clear understanding of the nature of the problem based on objective data on the position within a MS as well as at the EU level, if is to allow for adequate planning and for the application of the appropriate level of resources (people, processes, facilities) to the problem.

Recommendation 2: The European Commission should consider the possibility of developing guidelines for MS to gather data on all irregular migrant and asylum seeking children in a consistent way and to collate and make that data available via Eurostat. The data should be disaggregated to a level sufficient to allow for meaningful usage including policy development, evaluation and comparison between MS. Individual MS should also re-examine the data they collect either singly or in cohorts with other MS to ensure that it is sufficiently comprehensive and robust to allow for practical use.

The Best Interests of Vulnerable Children

The key issue is how to design and organise the asylum procedure in a way that takes into account the specific rights and needs of children. Key areas include:

- The appointment, qualifications and role of a legal guardian including a co-ordination role between agencies with which the child interacts.

- Providing children with adequate information.
- The exemption of separated children from return at the border and other expedited procedures.
- Exemption from safe third country concepts.
- Availability of information on asylum and immigration procedures (including rights of appeal).
- Efficient processing of applications aimed at avoiding long delays which can cause uncertainty and stress and can obstruct the possibilities for future integration.
- Child-friendly complaints and appeals procedures.

Whilst these areas call for special treatment/exemption for children there are also other areas which commentators such as UNICEF regard as being of critical importance in the treatment of irregular migrant children. These include the ways in which the views of the child are taken into account both in respect of return and other matters relating to their care and welfare; and what MS are required to do in practice to ensure that their procedures are “child- friendly”.

Recommendation 3: The European Commission should examine the possibility for developing common criteria and guidelines for the determination of the best interest of vulnerable children on the move, based on UNHCR’s Guidelines and the general Comment No. 6 by the UN Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin. The criteria should consider best interests in both the short and long term and be consistent with the overall spirit of the CRC.

Processes and Procedures in Member States

Recommendation 4: MS should ensure that their processes and procedures in respect of asylum seeking and irregular migrant children are applied in a child friendly way, that they view cases of separated children individually and that they take into consideration the best interest of the child and the right of the child to have his/her views heard. This includes, in particular, that that better dissemination be made of good practice examples identified in a selected Member States whereby the person(s) appointed to the role of guardians not only take responsibility for the child’s legal position but also look after the child’s general welfare. It also includes, in line with the Reception Directive, that all persons coming into contact with children should have the appropriate training concerning their needs. This might include training in the interviewing of children, awareness of issues associated with culture, gender and religion and an understanding of the movement of children internationally.

Adequate Accommodation

As was evidenced by the recent European Parliament report on detention centres, in some countries, the detention conditions for unaccompanied minors are considered particularly worrying. In Cyprus it was reported that unaccompanied minors could be detained and were not separated from the adults. In Greece unaccompanied minors are not protected by Greek law against detention and expulsion, and they can be detained and removed without taking into account their situation, age or the situation in their country of origin. In France, associations have denounced the situation of unaccompanied minors in detention areas, from which they can be repatriated. Some Member States authorise the detention of unaccompanied minors over 15 years of age (e.g. Czech Republic) or 16 years of age (e.g. Portugal, Austria).³¹

Recommendation 5: All forms of detention for minors should be prevented, in line with Article 37b of the International Convention on the Rights of the Child. The benefits and possible challenges of alternative solutions tested in some countries, such as an obligation to report regularly to the police authorities, need to be examined in greater detail.

Education and Training

A holistic approach is required to develop strategies that ensure that, following an initial phase in a reception centre, children have access to education, vocational training and health care, on an equal basis to other children in the MS. The experience in Luxemburg reported in Case Study 2 of this paper documents how focused efforts can ensure that unaccompanied minors have access to education and training regardless of the likelihood of the ultimate success of their asylum application.

Recommendation 6: Central government, regional/local authorities, international organisations and NGOs should work together in a co-ordinated way to ensure that irregular migrant and asylum seeking children receive equal treatment in respect of education, health and other welfare services as children who are citizens of the host state. Where possible, a lead person should be identified within one of the relevant agencies to ensure that a clear and co-ordinated strategy is put in place which meets the best interests of the individual child.

³¹ 'The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states', European Parliament, Directorate-General Internal Policies, Policy Department C, Citizens Rights and Constitutional Affairs, 2008

Funding for Interim Care

The first part of this paper referred to some of the problems caused by the allocation of different responsibilities for the care and support of separated children between central and local government and NGOs. In some cases funding comes from central government, in others from regions or from/via NGOs or a mixture of all three. Distinctions may also be made dependent on whether an unaccompanied minor is an asylum seeker or in relation to the stage of the asylum consideration process. Regions and local authorities, in particular, may already have set their budgets and priorities for funding when they are unexpectedly asked to cater for the arrival in their area of irregular migrant or asylum seeking children and there is considerable risk of inconsistent quality of care and prejudice within the host community against the new arrivals. The various agencies, national, local and NGOs, need to complement one another and work in a co-ordinated way. Unaccompanied minors need to be able to make a smooth transition from reception facilities into the community whilst continuing to receive the special support and provision they require. As documented in Case Study 4 of this paper, local government authorities in areas that concentrate large numbers of unaccompanied minors can find themselves overwhelmed. Policy makers in different jurisdictions and at the central level should coordinate their efforts to ensure that the costs of dealing with the problem are shared out fairly, and are consistent with children's best interests.

Recommendation 7: MS should ensure adequate funding for interim care, in particular where regional and local authority structures lead to unclear accountabilities.

Annex 1: Selected case studies of good practice interventions in support of irregular immigrant minors and asylum seeking children

This chapter provides a selection of potentially worthwhile and good practice case studies that illustrate some of the key issues, and possible policy or practical responses, related to the protection of rights and special needs of irregular immigrant minors and asylum seeking children. The selected case studies, which have fed into many of the observations and conclusions in Chapters 2 and 3 above, draw from various public sector or civil society initiatives implemented in recent years, or still in operation, in various Member States. In most cases the initiatives selected have benefited from a mix of policy and financial support from both national/local authorities and the EU.

Case Study 1

The Irish Refugee Council's 2006-2009 strategic plan for separated children / unaccompanied minors

An initiative of the Irish Refugee Council

Sound strategic planning in the field of children's rights protection is sometimes overlooked. The work of the IRC provides an excellent model of situation assessment, goal setting, and project formulation in the area of separated children.

The 2006 study, "Making separated children visible: the need for a child-centred approach," by IRC expert Nalanie Mooten collated data and indicators related to separated children refugees in Ireland:

- In 2005, 601 separated children were referred to the Health Service Executive (HSE), of which 416 were reunited with family members and 165 were put in care.
- In 2003, approximately 600 unaccompanied minors applied for asylum, amounting to 3 percent of the total applications.
- Whilst countries across the globe were represented, Nigeria, Somalia, and other African countries were among the most significant countries of origin.
- A little over 80 percent were aged 16 and 17, and almost all others were aged 14-15. Only a handful of children were aged 13 or less. Asylum applications were more or less evenly divided between boys and girls.
- Reasons for movement ran the gamut from severe economic deprivation to escape from the violence of war including forced conscription and the desire to reunite with family in Europe. Sexual violence, in the form of female genital mutilation, forced prostitution, and rape were common among girls.
- Three quarters of all applications for asylum heard at first instance in 2003-2006, and ninety percent of those heard at the appeal stage, were rejected. Many separated children expressed the view that their voices had not been heard as guaranteed under Article 12 of the CRC.
- To date, leading children's charities have not included such children in their advocacy work or service provision. 250 such children have gone missing from state care in the past four years. Hostels for separated children are insufficiently inspected and the level of care is inadequate. Issues such as female genital mutilation (FGM), forced marriage, forced recruitment as well as trafficking need to be better understood.

Based on this assessment, the IRC identified separated children as one of the seven strategic focal points in its 2006-2009 Strategic Plan. The IRC catalogued its strategic strengths in the area, which included an experienced children's officer on staff, good relationships with the HSE and other agencies as well as with leading organisations, strong contacts with the media, and general public sympathy for children's issues. It then defined short-, medium- and long-term ("legacy") goals. The last of these was aimed at creating a country where separated children enjoy the same rights as Irish ones, and Ireland is seen as a model of best practice in this area. The first-year goal was to make separated children's voices heard and to generate media attention to the relevant issues. Second-year goals were to achieve a common advocacy stance with major organisations and to raise awareness among decision makers. Only in the third year did the IRC aim to achieve tangible benefits to children, namely a reduction in missing children, provision of safe accommodation for victims of trafficking, an increase in the ratio of social workers to separated children, and a child-friendly asylum process. Using a logical framework matrix, these goals were tied to specific outputs, which were in turn linked to activities involving stakeholders ranging from separated children themselves to experts in the field, journalists, other civil society organisations, politicians at the ministerial level, and civil service staff. Outputs included the above research study, policy and advocacy statements, a regional seminar, media brochures and related information products.

For more information on this initiative please see:
<http://www.irishrefugeecouncil.ie/pub06/children.pdf>

Case Study 2

Supporting young asylum-seekers: the Passe-Partout Project

An initiative of Caritas-Luxembourg

Too often, after leaving school, young asylum-seekers find themselves in limbo - on the streets, with no occupation, and no prospects of social integration. Caritas Luxembourg, through its project Passe-Partout, decided to put in place a programme to support youth during the long months or years taken by the examination of their asylum application. The project was launched in July 2001 and is jointly funded by the European Refugee Fund and the Ministry of Family and Integration. For the period 2005-2007, the project has been in receipt of around 350,000 euros per year and funding is available through 2013.

Many barriers had to be overcome. Idleness and unemployment are potential invitations to young people to become involved in criminal behaviour, yet when the project began, persons aged 16-25 seeking international protection had to have a work permit to be able to enrol in training activities. The project's philosophy is that, even if the asylum application is ultimately rejected, the months or years of the process should be usefully employed to provide training and increase employability. Accordingly, in 2002, a project on vocational training was launched, in the form of an agreement between schools and Caritas and the different professional associations. To date this scheme has helped more than 180 young people to pursue training.

Newcomers who are too old to benefit from the education system are immediately placed in an „integration class“ where they learn French and Luxembourgish and become familiar with the culture of their host country. This course of 30 hours per week, which is spread over 6 months and which forms the basis of all future learning, includes classes in civics, music and sports education. Caritas offers, in addition to the integration course, various training workshops. A computer science course can lead to a Microsoft diploma, a guarantee of quality training. In the job-search workshop, youths learn to write a CV and to introduce themselves to a potential employer.

Unaccompanied minors present special challenges. Passe-Partout's social workers seek guardianship for them as soon as they arrive in Luxembourg. Minors must have a legal guardian in order to have an audience with the relevant authorities, a milestone that needs to be passed as soon as possible. Unaccompanied children are placed in a home where they are not housed together with adults, and where there is educational leadership. In agreement with the minor, the social worker also begins the tracing of his/her family. Social workers are in regular contact with the minors' teachers in order to ensure proper monitoring of school performance.

In 2006 the new law in Luxembourg on asylum and complementary forms of protection came into force and stipulates that asylum-seekers have access to a temporary work permit (AOT) and public training schemes if their case has not been dealt with within nine months of submission of their application. The experience of Passe-Partout contributed substantially to the passage of this law. Through its participation in the Separated Children in Europe Programme, Passe-Partout is also in close touch with other NGOs and authorities throughout Europe, giving hope that its positive experiences can be replicated elsewhere.

For more information on this initiative please see:
<http://www.caritas.lu/index.php?include=passepartout>

Case Study 3

Service provision for older unaccompanied minors

The activities of the German Federal Association for Unaccompanied Minor Refugees

The activities of the German Federal Association for Unaccompanied Minor Refugees (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge or BUMC) range from national (and European) lobbying to encouraging better service provision for older unaccompanied minors to making micro-grants to unaccompanied minors.

BUMC has served as a political networking and lobbying group for separated children since 1998. It is a registered national association representing over 100 reception centres, youth welfare institutions and homes, counselling centres, refugee councils, and other types of organisation working in the field. The BUMC has close ties to Federal authorities in the Office for Migration and Refugees, the Ministry for Family Affairs, the Children's Committee of the German Parliament, and various political parties and civil society organisations. It promotes professional exchanges among experts in the field by publishing expert statements and information brochures, represents the interests of professionals, carries out awareness-raising and publicity campaigns, and participates in European advocacy networks. Among issues where the BUMC has taken an active stance have been the monitoring of the fairness of asylum procedures, ensuring that there is no use of airport procedures or deportation detention, enforcing compulsory education, ensuring access to vocational training, and promoting equal treatment with German children in the welfare system.

With support from the European Refugee Fund and in cooperation with the UNHCR, the German Foundation for Refugee Aid, and Terre des hommes, BUMC supported, through lobbying and monitoring, the transposition of relevant European directives into German law. For example, Section 42 of the Youth Welfare Act was amended to require authorities to provide appropriate accommodation and appoint a legal guardian for all unaccompanied minors up to age 18. With the support of Aktion Mensch, from 2004 to 2007 the BUMC has implemented a three-year project to establish a countrywide network of volunteer representatives in all 16 federal states (Bundesländer). Through the work of these trained volunteers, information was exchanged and lobbying work at the state and local level was coordinated.

Older unaccompanied minors can present special challenges. The BUMC has formed associations of guardians and has devoted special attention to finding accommodation and guardianship for unaccompanied minors at the higher end of the age spectrum, i.e. 16 and 17. It has also established a micro-grant project, supported by the Sabine Christiansen-Kinderstiftung, which allows unaccompanied minors to apply for grants of up to Euro 500 for purposes such as participating in cultural or sporting events, purchasing sporting equipment or bicycle helmets, or medical care that is uncovered by social insurance but would result in a clear improvement in the quality of life.

For more information on this initiative please see:
<http://www.b-umf.de/pdf/English%20Version.pdf>

Case Study 4

Paying a fair share: ensuring geographical balance in the costs of serving unaccompanied minors

The experience of the Kent Council's Safe Case Transfer project

Unaccompanied minors tend to concentrate in core regions, thus causing major geographical imbalances. In the UK, where more than 15,000 unaccompanied minor asylum-seekers have entered the country since 2000, as of August 2006, London councils cared for about 2,700 unaccompanied minors and councils in the South East region of the country cared for another 1,000. This has placed a major financial strain on these councils.

To redress this imbalance, the UK Home Office has decided to create between 50 and 60 specialist authorities throughout the country to care for up to 100 unaccompanied asylum-seeking children each.

The experience of the Kent Council's Safe Case Transfer pilot project is instructive. In February 2002, Kent Council wrote to all local authorities in the UK to explain that it was facing a crisis in coping with large numbers of arriving unaccompanied asylum-seeking children. Three councils in Manchester agreed to help and a steering group was set up consisting of Manchester, Kent, the Home Office, and the Department for Education and Skills. In the six months that the safe case transfer project ran it transferred 30 unaccompanied young males.

However, once the successful pilot project finished, a change in policy made the approach no longer feasible. When the project was running, the law stated that the receiving authority would have no obligations once the minor turned 18. When the law changed, local authorities found themselves faced with the prospect of continuing to incur costs after the unaccompanied minors "aged out." The result was that the pilot project was never replicated. The government has now promised to reduce post-18 costs by expediting returns, but this has raised protests in the advocacy community, due to the fact that such a policy may appear to assume implicitly that children asylum seekers have no legitimate claims.

Assuming that the problem of post-18 costs can be solved, achieving geographical balance by transfer still poses special challenges. There will be an increased need for information-sharing as local authorities become involved in transfer arrangements. The National Register for Unaccompanied Children, launched in November 2004, will be likely to facilitate such sharing of information. Staff will also need to be available to travel with children moving between authorities. Finally, the possible sources of funding for such arrangements, especially when they entail that a child moves between several authorities before settling, need to be properly defined.

For more information on this initiative please see:
<http://www.communitycare.co.uk/Articles/2007/03/22/103880/unaccompanied-asylum-seeking-children-councils-reaction-to-dispersal.html#Kent>

Case Study 5

Good government practice in new Member States: a Compendium from “The risk group of unaccompanied minors: protection measures in an enlarged European Union” project.

An EU Daphne project

From April 2006-April 2007, the European Commission supported, through its Daphne programme, the project “The risk group of unaccompanied minors: protection measures in an enlarged European Union”. This project, coordinated by the University of Primorska Science and Research Centre Koper (Slovenia) in partnership with the University of Florence department of the Economy of Education (Italy) and the Berlin Institute for Comparative Social research (Germany), provides the first comprehensive view of the situation regarding unaccompanied minors in ten new EU member states.

Country reports contain a compendium of good practices observed by the experts. Some examples of these include the following:

After the deliberations of an inter-ministerial commission and consultations with NGOs, the Ministry of Education of the *Czech Republic* opened two institutions devoted to unaccompanied minors, as well as other foreign children who cannot be cared for by their parents. The Blue School (Modra Skola) provides immediate diagnosis of developmental or psychosocial problems, counselling by lawyers and social workers, and educational services, including Czech language training. After 2-3 months, about 40 percent of children at the Blue School are transferred to the second institution, the Home for Foreign Children education facility at Permon (where reports of conditions are reported by the experts to be mixed). The Ministry of Education has also established a Special Elementary School and a Two Years Practical School aimed especially at unaccompanied minors with the goal of promoting access to the mainstream education system and preparation for integration into Czech society.

In *Poland*, the Office for Foreigners signed a contract with Warsaw Municipality to establish a specialised Children’s Home for unaccompanied minors in Warsaw. Since the opening of the home, it has hosted approximately 20 unaccompanied minors in an environment that encourages integration. Unfortunately, most unaccompanied minors are still accommodated within reception centres until transfer to general foster homes.

In *Slovakia*, as well, a specialised foster care house for unaccompanied minors has been established. It features a high ratio of specialised staff to residents, allowing immediate processing and counseling. It is generally possible to appoint a guardian within 24 hours of an unaccompanied minor being identified by the Aliens and Border Police, thus minimizing the period during which a child is without representation.

In Slovenia, researchers highlighted the excellent cooperation between government and NGOs despite divergent interests, government being primarily interested in defending borders and NGOs be primarily interested in defending the welfare of the child. One point of this cooperation is immediate notification by police of the NGO Slovene Philanthropy, the NGO which has taken the lead in arranging for guardians.

The situation in the New Member States was by no means reported to be one of universal improvement. The country report on *Cyprus* was not able to identify any good practices at all; in *Estonia*, unaccompanied minors are not regarded as a significant problem. In *Lithuania* and *Malta*, experts did not identify specific examples of good practice, but noted that overall trends regarding access to education, awareness of legal system representatives and government officials was on the rise. A problem with all these interventions is the difficulty of quantifying impact. The number of unaccompanied minors not receiving appropriate housing and support continues to be substantial (e.g. in the *Czech Republic*) and the costs of providing high-quality interventions are high. However, as measured against the template of defending the rights of the child to appropriate care and education, all of these government initiatives should be regarded as steps in the right direction.

For more information see the project website <http://www.zrs-kp.si/EN/Projekti/Daphne.htm> for country reports as well as a summary of the end-of-project international European conference at which results were disseminated. The ‘blue school’s website is: http://www.uprchlici.cz/ppu/docs/PPU_VZ_2004.pdf

Annex 2: Legal standards and relevant EU financial instruments

Legal Standards

Under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes in accordance with its competences. This includes compliance with the provisions of both the European Convention of Human Rights and the United Nations Convention on the Rights of the Child (UNCRC). Articles 24 and 32 of the Charter of Fundamental Rights also foresee that children shall have the right to such protection and care as is necessary for their well-being; that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration; that every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests; and that child labour is prohibited.

With such issues in mind, the EU has actively promoted legislation and measures to support children's rights, including the special rights of children in immigration and asylum procedures. A review of the main EU and international legal instruments of relevance to the rights of children, including illegal migrant and asylum-seeking children, is provided in Annex 3 of this paper.

The European Commission has further identified children's rights as one of its main priorities in its Communication on Strategic Objectives 2005-2009, stating that 'a particular priority must be effective protection of the rights of children, both against economic exploitation and all forms of abuse, with the Union acting as a beacon to the rest of the world'.³² In this context, the Group of Commissioners on Fundamental Rights, Non-discrimination and Equal Opportunities decided in April 2005 to launch a specific initiative to advance the promotion, protection and fulfilment of children's rights in the internal and external policies of the EU. In 2006, an 'EU Strategy on the Rights of the Child' was also adopted, laying down the key principles of the future EU intervention in this policy area.³³

The EU Strategy indicates, in particular, that 'violence against children has been of increasing concern within the EU in recent years. It takes a range of forms, from violence in the family and in schools, to issues with a transnational dimension, including child trafficking and exploitation, child sex tourism and child pornography

32 Strategic objectives 2005-2009. *Europe 2010: A Partnership for European Renewal, Prosperity, Solidarity and Security* - COM(2005) 12, 26.1.2005, http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0012en01.pdf

33 *Communication from the Commission: Towards an EU Strategy on the Rights of the Child, Brussels, 4.7.2006* COM(2006) 367 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0367en01.pdf

on the internet. Another challenge is to ensure that the rights of children as immigrants, asylum seekers and refugees are fully respected in the EU and in Member States' legislation and policies'. The Strategy suggests that in order to maximise the value of EU action on children's rights, it is necessary to address a number of challenges, in order to produce: more comprehensive analysis of the needs and priorities and of the impact of relevant EU actions undertaken so far; more efficient mainstreaming of children's rights in EU policies, strategies or programmes and enhanced coordination within the European Commission; better cooperation with key stakeholders, including children; and stronger communication and increased awareness of children's rights and of EU actions in this field.

In a report on the 'EU Strategy on the Rights of the Child' adopted by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) in December 2007, MEP Roberta Angelilli further calls 'for the protection of children's rights to be included among the priorities of the Fundamental Rights Agency's multi-annual framework, and for the Agency to set up a network for co-operation with international institutions and NGOs working in this area as soon as possible in order to take full advantage of their experience and the information available to them'. In addition, the report suggests that 'special attention be given to the situation of migrant children whose parents are asylum seekers, refugees or illegal immigrants, to ensure that such children do not suffer from the adverse effects of a situation for which they bear no responsibility'.³⁴ The report led to the adoption on 16 January 2008 of a European Parliament Resolution on the Rights of the Child, the key excerpts from which are provided in Annex 3 of this paper.³⁵

There is a range of international and regional (EU and Council of Europe) legal instruments of relevance to this target group, a list of which, and excerpts from which, are provided in Annex 1. This includes ten EU directives on various immigration, asylum and human trafficking policy areas, which include the particular situation of children and unaccompanied minors; three major UN Conventions, on the Rights of the Child, the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the Protection of the Rights of All Migrant Workers and Members of their Families; UNHCR's Guidelines on Formal Determination of the Best Interest of the Child; and two Council of Europe Conventions on Action against Human Beings and on the Protection of children against sexual exploitation and sexual abuse, in addition to the Council of Europe's Recommendation on life projects for unaccompanied migrant minors.

It is also worth mentioning that at the last Council of Europe's 28th Conference of the European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007), the Ministers further requested the Council to examine the specific issue of access

³⁴ *Towards an EU strategy on the rights of the child* (2007/2093(INI)), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Roberta Angelilli, 20.12.2007, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0520+0+DOC+PDF+V0//EN>

³⁵ European Parliament Resolution of 16 January 2008: Towards an EU strategy on the rights of the child (P6_TA(2008)0012) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0012&language=EN&ring=A6-2007-0520>

to justice, legal representation, age assessment and deprivation or limitation of liberty of unaccompanied and separated children. The ministers of justice invited the Council of Europe to develop cooperation activities for the training of judges, prosecutors, civil servants and other persons dealing with requests for asylum, granting residence or managing complaints.

EU financial instruments

The EU has developed a range of financial instruments to support actions by Member States and NGOs to protect the rights and special needs of children in immigration and asylum procedures. All these programmes identify children, together with other vulnerable categories, as a priority for action.

The Daphne II Programme³⁶

The Daphne II programme, which runs from 2004 to 2008 with a budget of EUR 50 million, aims to support organisations that develop measures and actions to prevent or to combat all types of violence against children, young people and women, and to protect the victims and groups at-risk. The activities that can be supported are:

- identification and exchanges of good practice and work experience with a view in particular to implementing preventive measures and assistance to victims;
- mapping surveys, studies and research;
- field work with the involvement of the beneficiaries in all phases of project design, implementation and evaluation;
- creation of sustainable multidisciplinary networks;
- training and design of educational packages;
- development and implementation of treatment programmes and support for victims and people at risk, as well as for perpetrators; and
- development and implementation of awareness-raising activities targeted to specific audiences

³⁶ *Decision No 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a programme of community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk* OJ L 143 of 30.04.2004, p. 1 http://ec.europa.eu/justice_home/funding/daphne/funding_daphne_en.htm

The ARGO programme³⁷

The ARGO programme was established in 2004 to support administrative co-operation in the fields of external borders, visas, asylum and immigration. The Programme aims, in particular, to promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions; to promote the uniform application of Community law; and to encourage transparency of actions taken by the national authorities and to improve the overall efficiency of national administrations in their tasks.

The AGIS Programme³⁸

The AGIS Programme ran from 2003 to 2006 and aimed to help the police, the judiciary and professionals from the EU Member States and candidate countries to co-operate in criminal matters and in the fight against crime. In particular, the Programme aimed to support legal practitioners, law enforcement officials and representatives of victim assistance services from the EU Member States and Candidate Countries to set up Europe-wide networks, as well as to exchange information and best practices. It also aimed to encourage Member States to step up co-operation with applicant and third countries.

The AENEAS Programme³⁹

The AENEAS Programme (2004-2008) funds projects that support co-operation with third-countries in the field of asylum and immigration. The general objective of the new instrument is to provide specific and complementary financial and technical assistance to third countries in support of their efforts to ensure more effective management of all aspects of migration flows. The Programme supports, in particular, five major migration policy areas: the development of immigration policies in third countries; the promotion of legal migration channels; international protection; the fight against illegal immigration, including human trafficking; and readmission and sustainable reintegration of returnees in their countries of origin.

37 Council Decision of 13 December 2004 amending Decision 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme), 2004/867/EC http://ec.europa.eu/justice_home/funding/argo/funding_argo_en.htm

38 Council decision 2002/630/JHA of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters OJ L 203, 01/08/2002, p. 5 http://ec.europa.eu/justice_home/funding/agis/funding_agis_en.htm

39 Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum http://ec.europa.eu/external_relations/migration/coop_third_countries/reglement_en.pdf

The European Refugee Fund (ERF)⁴⁰

The ERF was established in 2000 with a view to contributing to ‘promoting a balance in efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons’. In particular, the objectives of the Fund are: to grant appropriate reception conditions to refugees and displaced persons, including fair and effective asylum procedures so as to protect the rights of persons seeking international protection; to support action by the Member States intended to promote the social and economic integration of refugees, in so far as it contributes to economic and social cohesion, the maintenance of which is one of the Community’s fundamental objectives referred to in article 2 and 3 (1)(k) of the Treaty; and to create or improve conditions enabling refugees and displaced persons to take an informed decision to leave the territory of the Member States and return home, should they so wish.

Migration Management – Solidarity in Action: Preparatory Action for 2007⁴¹

This budget line was created in December 2006 on the initiative of the European Parliament to finance a number of actions in the area of migration which are complementary to the general framework programme entitled ‘Solidarity and Management of Migration Flows’ for the period 2007-2013, but which have the potential to provide additional responses to the challenges posed by migratory flows. Under this budget line, a call for proposals was launched in July 2007 on “Assistance to reception challenges”. This call aimed to support Malta, Italy, Greece, Sweden and Spain in coping with the particular reception challenges of irregular maritime immigration and the influxes of Iraqi asylum seekers.

⁴⁰ Council Decision of 28 September 2000 establishing a European Refugee Fund http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_252/l_25220001006en00120018.pdf; and Council Decision of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0904:EN:NOT>

⁴¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1691&format=HTML&aged=0&language=EN&guiLanguage=en>

Annex 3: Excerpts from key EU and international legal standards

This Annex provides selected excerpts, relating to the rights of children, from key EU, Council of Europe and international legal instruments.

The Annex summarises, successively, the relevant provisions of:

- Five EU directives, two Resolutions and one Council Framework Decision, one Council Regulation, one Council Resolution and one Council Framework Decision, in addition to the Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals;
- The European Parliament Resolution on the Rights of the Child, adopted on 16 January 2008;
- Two Council of Europe Conventions, in addition to the Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors; and
- Three UN Conventions and associated instruments, in addition to UNHCR's Guidelines on Formal Determination of the Best Interest of the Child

A. EU INSTRUMENTS⁴²

1. 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 (Official Journal L 212, 07/08/2001, p. 12)⁴³

Selected excerpts:

- The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence (Article 13 (4)).
- The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection 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 (Article 16 (1))
- During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:
 - (a) with adult relatives;
 - (b) with a foster-family;
 - (c) in reception centres with special provisions for minors, or in other accommodation suitable for minors;
 - (d) with the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child (Article 16 (2))

- The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period (Article 23 (2))

⁴² For a more exhaustive inventory of EU instruments affecting children's rights, see also: *Commission Staff Working Document accompanying the Communication from the Commission 'Towards an EU Strategy on the Rights of the Child' - Preliminary Inventory of EU Actions affecting Children's Rights*, Brussels, 4.7.2006, SEC(2006) 889 http://ec.europa.eu/civiljustice/docs/sec_2006_889_en.pdf. For a comprehensive analysis of the state of implementation by all the EU Member States of the relevant provisions of the Convention on the Rights of the Child, see ChildONEurope Secretariat: *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, June 2006 <http://www.childoneurope.org/activities/pdf/su00-Survey.pdf>

⁴³ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_212/l_21220010807en00120023.pdf

2. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Official Journal L 031, 06/02/2003, p. 18)⁴⁴

Selected excerpts:

- Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centers (Article 10)
- Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom (Article 14 (3))
- Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care (Article 17 (1))
- The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors (Article 18 (1)).
- 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 when needed (Article 18 (2))
- Member States shall as soon as possible take measures 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. Regular assessments shall be made by the appropriate authorities (Article 19 (1)).
- Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:
 - (a) with adult relatives;

⁴⁴ http://ec.europa.eu/commission_barroso/frattini/archive/DIR_2003_9_EC.pdf

- (b) with a foster-family;
- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

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. (Article 19 (2))

- Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her 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 taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety (Article 19 (3))
- Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work (Article 19 (4)).

2.1 Evaluation of the Reception Directive

In a recent evaluation of the Reception Directive,⁴⁵ the following shortcomings were identified.

In the field of *education*, and while Article 10 of the Directive foresees that minor asylum seekers or children of asylum seekers (including those in detention) have the right to access to education at the latest within 3 months of the application for asylum, the evaluation has determined that in some Member States access to secondary education was often dependent on places available or the decisions of local authorities (AT, SI, FI, HU). In other Member States (PL, FR), minors might only be granted access to schooling at particular times in the school year, which might, in practice, cause delays. Furthermore, contrary to the provisions of the Directive, many Member States deny detained minors access to education or make such access very limited in practice (AT, BE, FI, FR, HU, IT, PL, SK, SI, UK, NL). Only in a few Member States is this right recognised or special classes organised in detention centres (LV, CZ, LT, SE).

⁴⁵ *Report from the Commission to the Council and to the European Parliament on the Application of Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, Brussels, 26.11.2007 COM(2007) 745 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0745:EN:HTML>

The evaluation has further identified a lack of effective access to *medical services or specific care* for minor victims of torture and violence, and insufficient cost cover. What is more, although minors are generally hosted with their parents or other relatives, a number of deficiencies were detected regarding minors with special needs. In particular, the evaluation has determined that most Member States authorise the detention of minors and many of them even authorise the detention of unaccompanied minors.

In some cases no specific *legal provisions* have been adopted (EE, FR, HU, LV, LU). A number of other Member States have practical problems – e.g. under-valuation of needs, lack of specialised human resources, that make effective access to special arrangements for minors more difficult. However, unaccompanied minors are guaranteed legal representation by virtually all Member States. They are generally hosted with foster families or in special centres, and tracing of their family members is also legally or practically ensured. Only three Member States (DE, SE, PT) choose to host unaccompanied minors aged over 16 in accommodation for adults.

3. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Official Journal L 251, 03/10/2003 p. 12)⁴⁶

Selected excerpts:

Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification (8)

Article 4

The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

- (a) the sponsor's spouse;
- (b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- (c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

⁴⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

- (d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:
 - (a) access to education;
 - (b) access to employment and self-employed activity;
 - (c) access to vocational guidance, initial and further training and retraining.

4. Council Directive 2004/83/EC 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 (Official Journal L 304, 30/09/2004 p. 12)⁴⁷

Selected excerpts:

- It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution (20)

- When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (Article 20 (3)).

- The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors (Article 20 (5)).

⁴⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

- Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals (Article 27 (1)).
- Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict (Article 29 (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.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity (Article 30 (3))

- 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 (Article 30 (4))
- 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 taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis (Article 30 (5))
- Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs (Article 30 (6))

5. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting or withdrawing refugee status (Official Journal L 326 , 13/12/2005 p. 13)⁴⁸

Selected excerpts:

- Specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States (14)
- With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:
 - (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
 - (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present (Article 17 (1))

- Member States may refrain from appointing a representative where the unaccompanied minor:
 - (a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or
 - (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or
 - (c) is married or has been married (Article 17 (2))
- Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative (Article 17 (3))

⁴⁸ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_326/l_32620051213en_00130034.pdf

- Member States shall ensure that:
 - (a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
 - (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor (Article 17 (4))

- Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum. In cases where medical examinations are used, Member States shall ensure that:
 - (a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
 - (b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and
 - (c) the decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for asylum (Article 17 (5))

6. Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (Dublin II) (Official Journal L 50 of 25 February 2003)⁴⁹

Selected excerpts:

- For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for

⁴⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>

asylum of that parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them. (Article 4 (3))

7. Council Resolution on unaccompanied minors who are nationals of third countries, 26 June 1997 (Official Journal C 221 , 19/07/1997, p. 23)⁵⁰

Selected excerpts:

Article 2 Admission

1. Member States may, in accordance with their national legislation and practice, refuse admission at the frontier to unaccompanied minors in particular if they are without the required documentation and authorizations. However, in case of unaccompanied minors who apply for asylum, the Resolution on Minimum Guarantees for Asylum Procedures is applicable, in particular the principles set out in paragraphs 23 to 25 thereof.
2. In this connection, Member States should take appropriate measures, in accordance with their national legislation, to prevent the unauthorized entry of unaccompanied minors and should cooperate to prevent illegal entry and illegal residence of unaccompanied minors on their territory.
3. Unaccompanied minors who, pursuant to national provisions, must remain at the border until a decision has been taken on their admission to the territory or on their return, should receive all necessary material support and care to satisfy their basic needs, such as food, accommodation suitable for their age, sanitary facilities and medical care.

Article 3 Minimum guarantees for all unaccompanied minors

1. Member States should endeavour to establish a minor's identity as soon as possible after arrival, and also the fact that he or she is unaccompanied. Information on the minor's identity and situation can be obtained by various means, in particular by means of an appropriate interview, which should be conducted as soon as possible and in a manner in keeping with his age.

The information obtained should be effectively documented. In requesting, receiving, forwarding and storing information obtained, particular care and confidentiality should be exercised, in particular in the case of asylum seekers in order to protect both the minor and the members of his family. This early

⁵⁰ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0719\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0719(02):EN:HTML)

information may in particular enhance the prospects of reunification of the minor with his family in the country of origin or a third country.

2. Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law.
3. Member States should, with a view to reunification, endeavour to trace the members of the family of an unaccompanied minor as soon as possible, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence.

Unaccompanied minors may also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organizations, or other organizations for the purpose of tracing their family members. Particularly, in the case of asylum seekers, whenever contracts are made in the context of tracing family members, confidentiality should be duly respected in order to protect both the minor and the members of his family

4. For the purposes of applying this Resolution, Member States should provide as soon as possible for the necessary representation of the minor by:
 - (a) legal guardianship, or
 - (b) representation by a (national) organization which is responsible for the care and well-being of the minor, or
 - (c) other appropriate representation.
5. Where a guardian is appointed for an unaccompanied minor, the guardian should ensure, in accordance with national law, that the minor's needs (for example, legal, social, medical or psychological) are duly met.
6. When it can be assumed that an unaccompanied minor of school age will be staying in a Member State for a prolonged period, the minor should have access to general education facilities on the same basis as nationals of the host Member State or alternatively, appropriate special facilities should be offered to him.
7. Unaccompanied minors should receive appropriate medical treatment to meet immediate needs. Special medical or other assistance should be provided for minors who have suffered any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.

Article 4 Asylum procedure

1. Every unaccompanied minor should have the right to apply for asylum. However, Member States may reserve the right to require that a minor under a certain age, to be determined by the Member State concerned, cannot apply for asylum

until he has the assistance of a legal guardian, a specifically appointed adult representative or institution.

2. Having regard to the particular needs of minors and their vulnerable situation, Member States should treat the processing of asylum applications by unaccompanied minors as a matter of urgency.
3. (a) In principle, an unaccompanied asylum-seeker claiming to be a minor must produce evidence of his age.
(b) If such evidence is not available or serious doubt persists, Member States may carry out an assessment of the age of an asylum-seeker. Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.
4. Member States should normally place unaccompanied minors during the asylum procedure:
 - (a) with adult relatives,
 - (b) with a foster-family,
 - (c) in reception centres with special provisions for minors, or
 - (d) in other accommodation with suitable provisions for minors, for example such as to enable them to live independently but with appropriate support.

Member States may place unaccompanied minors aged 16 or above in reception centres for adult asylum seekers.

5. (a) During any interview on their asylum application, unaccompanied minor asylum-seekers may be accompanied by a legal guardian, specially appointed adult representative or institution, adult relative or legal assistant.
(b) The interview should be conducted by officers who have the necessary experience or training.

The importance of appropriate training for officers interviewing unaccompanied minor asylum-seekers should be duly recognized.

6. When an application for asylum from an unaccompanied minor is examined, allowance should be made, in addition to objective facts and circumstances, for a minor's age, maturity and mental development, and for the fact that he may have limited knowledge of conditions in the country of origin.
7. As soon as an unaccompanied minor is granted refugee status or any other permanent right of residence, he should be provided with long-term arrangements for accommodation.

Article 5 Return of unaccompanied minors

1. Where a minor is not allowed to prolong his stay in a Member State, the Member State concerned may only return the minor to his country of origin or a third country prepared to accept him, if on arrival therein - depending on his needs in the light of age and degree of independence - adequate reception and care are available. This can be provided by parents or other adults who take care of the child, or by governmental or non-governmental bodies.
2. As long as return under these conditions is not possible, Member States should in principle make it possible for the minor to remain in their territory.
3. The competent authorities of the Member States should, with a view to a minor's return, cooperate:
 - (a) in re-uniting unaccompanied minors with other members of their family, either in the minor's country of origin or in the country where those family members are staying;
 - (b) with the authorities of the minor's country of origin or with those of another country, with a view to finding an appropriate durable solution;
 - (c) with international organizations such as UNHCR or UNICEF, which already take an active part in advising governments on guidelines for dealing with unaccompanied minors, in particular asylum-seekers;
 - (d) where appropriate, with non-governmental organizations in order to ascertain the availability of reception and care facilities in the country to which the minor will be returned.
4. In any case, a minor may not be returned to a third country where this return would be contrary to the Convention relating to the status of refugees, the European Convention on Human Rights and Fundamental Freedoms or the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment or the Convention on the Rights of the Child, without prejudice to any reservations which Member States may have tabled when ratifying it, or the Protocols to these Conventions.

Article 6 Final provisions

1. Member States should take account of these guidelines in the case of all proposals for changes to their national legislations. In addition, Member States should strive to bring their national legislations into line with these guidelines before 1 January 1999.
2. Member States shall remain free to allow for more favourable conditions for unaccompanied minors.
3. The Council, in conjunction with the Commission and in consultation with UNHCR in the framework of its competences, shall review the application of the

above guidelines once a year, commencing on 1 January 1999, and if appropriate adapt them to developments in asylum and migration policy.

ANNEX

MEASURES TO COMBAT TRAFFICKING IN MINORS

Member States, mindful of the particular vulnerability of minors, should take all measures to prevent and combat the trafficking and exploitation of minors, and cooperate in this regard.

MEASURES TO PREVENT ILLEGAL ENTRY

Measures which Member States may take to prevent the unauthorized arrival in the territory of the Member States of unaccompanied minors who are nationals of third countries may include:

- (i) collaboration with competent authorities and bodies including airline companies in the countries of departure, in particular through the use of liaison officers;
- (ii) observation at airports of arrival of flights from sensitive countries;
- (iii) consequent application of international obligations including carriers' liability legislation where unaccompanied minors who are nationals of third countries arrive without the appropriate documentation.

8. Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)⁵¹

Selected excerpts:

- Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.
- Children are more vulnerable and are at risk of falling victim to trafficking.
- Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (Article 7(2))

⁵¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML>

- Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to (Article 7 (3))

9. Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals COM(2005) 0391 final⁵²

Selected excerpts:

- 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 on Human Rights, respect for family life should be a primary consideration of Member States when implementing this Directive.
- When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national’s family relationships, the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin. They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child (Article 5)
- Member States shall postpone the execution of a removal order in the following circumstances, for as long as those circumstances prevail:
 - (c) lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned (Article 8)
- Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child’s best interest not to do so (Article 15)

⁵² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0391:EN:HTML>

10. European Parliament Resolution of 16 January 2008: Towards an EU strategy on the rights of the child (P6_TA(2008)0012)⁵³

On 16 January 2008, the European Parliament adopted a Resolution on the Rights of the Child following the report by MEP Roberta Angelilli 'Towards an EU strategy on the rights of the child' (2007/2093(INI)).⁵⁴

In relation to 'Children of immigrants, asylum seekers and refugees', the Resolution:

- Calls for special attention to be given, and in the best interests of the child, to the situation of refugee, asylum-seeking and migrant children, and children whose parents are asylum seekers, refugees or illegal immigrants, to ensure that such children can enjoy their rights regardless of the legal status of their parents and that they do not suffer from the adverse effects of a situation for which they bear no responsibility, and that their special needs are addressed; taking special care to preserve family unity in case it is the best interest of the child;
- Calls for unaccompanied minors to be paid special attention in the context of all forms of immigration, since organised crime makes use of every opportunity to bring a child into a country in order to exploit it; takes the view that Member States should therefore be vigilant and ensure that there are child protection policies for every imaginable situation;
- Is concerned at the multiple violations of rights affecting girls from a migrant background; urges Member States to ban headscarves and hijab at least at primary school, in order to anchor more firmly the right to be a child and to ensure genuine and unenforced freedom of choice at a later age;
- Calls for access to education for immigrant children and for the establishment of programmes and resources, from an intercultural perspective, with particular focus on situations of vulnerability and unaccompanied minors;
- Points out that international standards on child protection are applicable to unaccompanied minors arriving in European Union territory via irregular immigration procedures; calls on all local, regional and national authorities and on the EU institutions to cooperate as far as possible in protecting these unaccompanied minors; calls on the Commission to establish international cooperation and assistance procedures with the third countries of origin so as to ensure that minors are properly returned to these countries and calls for mechanisms to be established to protect these minors once they have returned to their countries

53 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0012&language=EN&ring=A6-2007-0520>

54 <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=INI/2007/2093>

or origin, both within their biological families and through mechanisms or institutions that will offer them effective protection;

- Calls, in the context of the adoption, under the codecision procedure, of new instruments on which the common asylum system will be based, for the protection of children's rights to be given a prominent position and for specific measures to be drawn up for them, taking due account of their vulnerability and providing, in particular, adequate access for children to the asylum system, guidance to child-related procedures, due regard to the individual grounds for asylum of a child within an asylum seeking family and broader scope for family reunification within the asylum process;
- Draws attention to the particular situation of migrant children separated from both their parents or their previous legal or customary primary caregiver and calls to consider the need for a dedicated EU measure addressing the right to assistance of all lone children, addressing access to the territory, appointment and role of guardians, the right to be heard, conditions of reception and family tracing measures and potentially might also address durable solutions;
- Draws attention to the fact that children unaccompanied by adults, stateless children, as well as children not registered at birth, are at particular risk and calls on the Member States to take special measures on the basis of what is best for the individual child, as defined, in particular, by the UN Convention on the Rights of the Child and by the Office of the United Nations High Commission for Refugees;
- Draws attention to the role of education, which should be egalitarian and without the use of violence or corporal punishment; urges the Commission to allocate the resources needed to prevent violence of any kind in refugee communities, especially gender violence and sexual exploitation, by setting up programmes for education and awareness-raising on gender issues, human rights, sexual and reproductive health, female genital mutilation and HIV/Aids, targeted at minors of both sexes;
- Stresses that there is a discrepancy between what the law requires and what is actually practised as regards the implementation of European asylum instruments and that huge differences remain in the way children with refugee status are treated in the different Member States;
- Highlights the fact that 5% of asylum seekers are unaccompanied minors, which indicates the need to appoint well-trained legal guardians for unaccompanied children to represent their best interests following their arrival in the host country; calls for an improvement in living conditions for children in reception facilities; is disappointed by the lack of child-sensitive asylum procedures;
- Notes that many of the risks faced by refugee children are equally faced by children who have been forcibly displaced within the borders of their own countries;

- Insists that children should only be returned to their country of origin when their safety and security are assured, and emphasises the need for family tracing and family reunification; stresses that their return must be prohibited where there is a danger of serious harm being done, through, for example, child labour, sexual exploitation, violence or the risk of female genital mutilation, social exclusion or involvement in armed conflict;
- Stresses the need to improve the data collection on children seeking refugee status, children residing illegally in the territory of another state but not seeking refugee status and the outcome of asylum procedures and the future of such children following the adoption of a final positive or negative decision on their asylum request, in order to ensure that such children do not disappear into obscurity or become the victims of crime;
- Underlines the negative consequences of emigration and the precarious situation of children left alone in their countries by parents who have emigrated; stresses the need to ensure comprehensive care, integration and education for such children, as well as family reintegration whenever possible;
- Calls on the Commission to make a study on the possibility of offering European citizenship to children born in the EU regardless of the legal status of their parents;
- Recalls that administrative detention of children should be an exceptional measure; stresses that children accompanied by their families should be detained only as a last resort, for the shortest possible period of time and only if such detention is in their best interests, pursuant to Article 37(b) of the International Convention on the Rights of the Child, and that unaccompanied minors should not be detained or sent back;
- Recalls that migrant children have a right to education and to enjoy themselves.

B. COUNCIL OF EUROPE

1. Council of Europe Convention on Action against Human Beings [CETS No. 197], 2005⁵⁵

This Convention is open for signature not only by Council of Europe member states but also the European Community which took part in drawing it up. The signature and ratification of the Convention by the EC has been solicited on numerous occasions.

The Convention asks the Parties to:

- draw up special preventive measures taking into account the vulnerability of children, and special measures to reduce the demand for child victims
- develop procedures to identify victims of trafficking adapted to children and train personnel accordingly
- issue resident permits for child victims in accordance with the best interest of the child
- provide for child-friendly court proceedings
- protect the private life and identity of child victims
- guarantee access to education for children victims of trafficking
- avoid repatriation if there is an indication that the return would not be in the best interest of the child and ensure that repatriation programmes are specifically designed for children, including measures to secure adequate care by the family or appropriate structures
- finally, governments are requested to reinforce measures and international co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that they may be victims of trafficking in human beings.

⁵⁵ http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf

2. Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (adopted by the Committee of Ministers on 12 July 2007 at the 1002nd Meeting of the Ministers' Deputies)⁵⁶

Selected excerpts:

Article 4 – Principles

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

Article 6 – Education for children

Each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.

Article 9 – Participation of children, the private sector, the media and civil society

1. Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children.
2. Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.
3. Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.
4. Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse

⁵⁶ [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2007\)1002/10.1&Language=lanEnglish&Ver=annexe13&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackC](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2007)1002/10.1&Language=lanEnglish&Ver=annexe13&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackC)

Article 10 – National measures of co-ordination and collaboration

1. Each Party shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.
 2. Each Party shall take the necessary legislative or other measures to set up or designate:
 - a. independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;
 - b. mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.
 3. Each Party shall encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.
3. Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors⁵⁷

Selected excerpts:

Unaccompanied migrant minors

4. This recommendation concerns unaccompanied migrant minors who are outside their country of origin, regardless of their status, irrespective of the reasons for their migration and whether or not they are asylum seekers. The expression ‘unaccompanied migrant minors’ includes separated children and minors who have been left to their own devices after entering the territory of the member state.
5. Unaccompanied minors are children under the age of 18 who have been separated from both parents and other relatives and are in the care of an adult who, by law or custom, is responsible for doing so.
6. Separated children are children under the age of 18 who have been separated from both parents, or from their previous legal or customary primary caregiver,

⁵⁷ [http://www.coe.int/t/dg3/migration/Source/Recommendation%20CM%20 Rec_2007_9_en.pdf](http://www.coe.int/t/dg3/migration/Source/Recommendation%20CM%20Rec_2007_9_en.pdf)

but not necessarily from other relatives. They may, therefore, be children accompanied by other adult family members.

7. Every life project is based on a comprehensive, integrated and therefore multi-disciplinary approach.
8. Drawing on a holistic approach, every life project should take account of the child's specific situation.

It should take account of several elements, in particular:

- i. the minor's personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills;
 - ii. the minor's migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe;
 - iii. the minor's family environment and particularly the nature of his or her family relations;
 - iv. the minor's expectations, wishes and perceptions;
 - v. the situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception;
 - vi. the special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding *non-refoulement* and the identification of durable solutions;
 - vii. the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country.
9. Unaccompanied migrant minors should be able to enjoy all rights recognised by the relevant international and European standards and in particular the United Nations Convention on the Rights of the Child, which are preconditions for the realisation of their life projects. In order to ensure effective access to these rights the member states should take action, in particular, in the political, legal, social, health, educational, economic and cultural areas.
 10. In order to contribute to the full realisation of life projects, the co-ordination of policy and practice should be a priority. Accordingly, member states should take the action set out below:
 - i. establish and/or support national bodies for co-ordinating the various agencies dealing with unaccompanied migrant minors and, where appropriate, allocate the requisite material, human and financial resources for creating such bodies;

- ii. create and operate European networks for information exchange involving not only origin, transit and host countries but also the relevant international organisations and representatives of civil society;
 - iii. strengthen co-operation with the non-member states representing the main countries of origin of unaccompanied migrant minors with a view to establishing long-term relations of trust based on a clear definition of the respective responsibilities in implementing the minors' life projects.
11. Bilateral agreements should set out minimum conditions under which unaccompanied migrant minors can implement their life projects in their countries of origin and provide for exchanges between social workers specialising in the care of minors.
 12. Within the framework of their co-operation, the member states should refrain from divulging information on asylum seekers and refugees.
 13. Alongside national schemes for co-operating with the countries of origin, exchanges between local authorities or NGO representatives directly involved in providing for unaccompanied minors should be supported and further developed.
 14. Member states, along with countries of origin, should foster public information and awareness-raising campaigns on the risks linked to child migration, particularly the dangers of networks involved in clandestine immigration, exploitation of minors and organised crime.

C. INTERNATIONAL INSTRUMENTS

1. Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989) (entry into force 2 September 1990, in accordance with article 49)⁵⁸

Selected excerpts:

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

⁵⁸ <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

2. Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (Thirty-ninth session, 2005), U.N. Doc. CRC/GC/2005/6 (2005)⁵⁹

Key issues addressed by the Comment:

- (a) Legal obligations of States parties for all unaccompanied or separated children in their territory and (b) measures for their implementation
- (c) Non-discrimination
- (d) Best interests of the child as a primary consideration in the search for short and long-term solutions
- (e) The right to life, survival and development
- (f) Right of the child to express his or her views freely
- (g) Respect for the principle of non-refoulement
- (h) Confidentiality

3. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol requires State Parties to prohibit the sale of children, child prostitution and child pornography. According to the Optional Protocol, “sale of children” is any act or transaction whereby a child is transferred by any person or group to another for remuneration or any other consideration. “Child prostitution” means the use of a child in sexual activities for remuneration or any other form of consideration. “Child pornography” is any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of a child’s sexual parts for primarily sexual purposes.

Each State Party is also required to ensure the full coverage of certain acts and activities under its criminal or penal law, whether the offences are committed domestically or transnationally, or on an individual or organized basis. The offences include: offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child, transfer of its organs for profit, or its engagement in forced labour; and improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable international legal

⁵⁹ <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=type&docid=42dd174b4&skip=∓type=GENERAL>

instruments on adoption. Other offences include offering, obtaining, procuring or providing a child for child prostitution; and producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography for the above purposes.

4. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (approved by General Assembly resolution 317(IV) of 2 December 1949) (entry into force 25 July 1951, in accordance with article 24)⁶⁰

Selected excerpts:

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

- (1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route ;
- (2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;
- (3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;
- (4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

⁶⁰ <http://www.unhcr.ch/html/menu3/b/33.htm>

5. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children⁶¹

Selected excerpts:

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

⁶¹ http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

6. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force 1 July 2003⁶²

Selected excerpts:

Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children [Article 17(6)].

States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children [Article 44(2)].

7. UNHCR's Guidelines on Formal Determination of the Best Interest of the Child⁶³

Key issues addressed:

- How to identify the best interests of the child
- Best interests assessment
- Formal Best Interests Determination (BID)
- Decisions by States and UNHCR's role
- BID to identify durable solutions for unaccompanied and separated children
- Purpose of the BID for durable solutions
- When to undertake the BID for durable solutions
- How to prioritize
- Exceptional measures in cases of very large numbers
- Decisions on temporary care arrangements for unaccompanied and separated children in
 - particularly complex situations
- Purpose of the BID for temporary care arrangements
- When to undertake the BID for temporary care arrangements
- Decisions which may involve a separation of the child from parents against their will
 - Purpose of the BID for separation
 - When to undertake the BID for separation
- Precedence given to the interests of the child
- Who undertakes the BID?

⁶² http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm

⁶³ <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=447d5bf24>

- Gathering Information
- Verification of existing and documented information on the child
- Interviewing and exploring the views of the child
- Interviews with family members and other persons close to the child
- Background information
- Seeking the views of experts
- Making the decision
- Procedural safeguards
- Balancing competing rights of the child
- Views of the child
- Views of family members and other persons close to the child
- Safe environment and risk of harm
- Family environment and alternative care
- Development needs of the child
- Best interests of the child and rights and interests of others
- Informing the child of the decision
- Filing
- Reopening and reviewing the BID decision