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on the situation of unaccompanied minors in the European Union

Committee on Civil Liberties, Justice and Home Affairs

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Introduction and background information

Every year, thousands of under-18-year-olds who are citizens of third countries or stateless persons arrive in the European Union alone or find themselves alone after arrival. There are many reasons why they come here: some are fleeing, for example from war, violence, persecution, violations of fundamental rights, natural disasters or poverty in their own countries, and some are victims of trafficking, sexual exploitation, organised crime etc. The latest available statistics – still somewhat limited – show that in 2011, throughout the EU27, there were 12 225 applications for asylum made by unaccompanied minors. The number of residence permits issued by Member States to unaccompanied minors totalled 4 406.

These children are by definition extremely vulnerable, especially on arrival in a foreign country, separated from their parents, families or guardians, so Member States must ensure that the fundamental rights of all children temporarily or permanently deprived of family are respected and that the children are afforded special protection.

The protection, reception and care of these children, officially termed ‘unaccompanied minors’¹, poses a considerable challenge for Member States and the EU. Although the problem affects all the Member States, the reception and care of such children varies considerably from one Member State to another (the authorities responsible – national government, local government etc. – also varying from country to country) and these significant disparities reflect the fact that the problem has not been addressed specifically at European level. Moreover, all the EU Member States are signatories to the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, yet in many cases, and particularly in national and European-level court rulings, the fundamental rights of these unaccompanied minors are not respected.

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Protecting children’s rights and their best interests is one of the EU’s priorities and is listed among its aims². The European institutions have, on numerous occasions, highlighted the importance they attach to children’s rights and the need to pay specific attention to the matter of unaccompanied minors in the context of the Union’s immigration and asylum policy³, pointing

¹ UNHCR – Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum, February 1997: an unaccompanied minor is defined as a person below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier, who has been separated from both parents and relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so. The EU defines unaccompanied minors as ‘third-country nationals or stateless persons 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 taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States’ – Council Resolution of 26 June 1997 on unaccompanied third-country minors (97/C 21/03); Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection.

² Article 3 of the Treaty on European Union states that the Union ‘shall [...] promote [...] protection of the rights of the child’; Article 24 of the Charter of Fundamental Rights stipulates that: ‘1. Children shall have the right to such protection and care as is necessary for their well-being’ and ‘ 2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.’

³ The Stockholm Programme – An open and secure Europe serving and protecting the citizen (2010/C 115/01): in paragraph 2.3.2, ‘The European Council calls upon the Commission to identify measures [...] to protect and

out that unaccompanied minors have particular needs and that all unaccompanied children on EU territory must be protected and must receive special assistance.

While there is much legislation that refers to unaccompanied minors (e.g. the Directive on Trafficking in Human Beings and the Asylum Package), there is no comprehensive binding instrument addressing their situation, the need to protect them and their reception and care. Rather than tackling the issue specifically, the EU addresses it piecemeal in a number of different texts. The need to make the European legislation on unaccompanied minors more coherent has been voiced more than once¹.

In May 2010, the Commission adopted the Action Plan on Unaccompanied Minors (2010-2014)², which was approved in the Council Conclusions of June 2010³. This document proposes a joint approach and sets out the main strands for action, including prevention, reception and the identification of durable solutions to be implemented through a series of practical measures. A mid-term report on the implementation of the plan was published in September 2012⁴.

Far from being a temporary phenomenon, the arrival of unaccompanied minors is one which will develop in the coming years. Recognising the importance and urgency of the issue, Parliament has decided to address it and to draft an **own-initiative report**.

Aims of the report and guiding principles

The rapporteur welcomes the publication by the Commission of the Action Plan on Unaccompanied Minors and the mid-term report. It is a pity, however, that the Commission's approach is more descriptive than active, and the rapporteur believes that the action plan does not adequately address the major underlying problems in relation to the fundamental rights of unaccompanied minors and to their protection.

The European Union should adopt high minimum standards of protection for unaccompanied minors and should be capable of guaranteeing that their rights will never be violated. It is essential that the EU should introduce a common, binding regulatory framework to address the situation of unaccompanied minors in its entirety and to correct both the current shortcomings in the protection of these children and the disparities which exist between Member States.

Two key principles must underpin any action here: firstly, the child's best interests must always take precedence and must be the primary consideration in any action taken in relation

promote the rights of the child [paying] special attention [to] unaccompanied minors', and paragraph 6.1.7 is specifically about unaccompanied minors.

¹ See European Parliament Resolution of 25 November 2009 on the Stockholm Programme, paragraph 79.

² Commission communication to the European Parliament and the Council of 6 May 2010 – Action Plan on Unaccompanied Minors (2010-2014)-COM(2010)213 final.

³ Council conclusions on unaccompanied minors, 3018th session of the Justice and Home Affairs Council, Luxembourg, 3 June 2010.

⁴ Mid-term report on implementation of the Action Plan on Unaccompanied Minors (COM(2012) 554 final).

to a child¹; secondly, child protection, rather than immigration control, must be the major consideration for governments when dealing with unaccompanied minors.

The rapporteur intends to present a brief, incisive report that will make for progress towards a genuinely European approach on the question of unaccompanied minors. She proposes not only that the report should contain recommendations for minimum standards of protection for unaccompanied minors, but also that it should be of practical value to the Member States in relation to the reception and care of these children.

Substance of the report

The first point to make is that it is currently very hard to estimate how many unaccompanied minors there are in the EU Member States: the *available statistics* are limited, covering only unaccompanied minors who seek asylum and those obtaining residence permits. Yet proper statistics are vital for assessing the scale of the problem and developing an overview. It is therefore essential that the Member States supply detailed information on unaccompanied minors and the measures taken in relation to them. A first step could be to introduce a coordinated EU-wide method of data collection – observing the principle of privacy protection – with the involvement of the European Migration Network.

It is the responsibility of each Member State to *identify unaccompanied minors* arriving or ‘discovered’ on its territory. The individual circumstances of each child need to be assessed and Member States must identify those children in need of specific protection, paying particular attention to girls and to victims of trafficking and organised crime. There should be special, needs-oriented procedures for identifying, receiving and protecting children who have been victims of trafficking.

All unaccompanied minors who arrive alone at the EU’s borders *must be admitted* unconditionally and no child should be refused access to EU territory or summarily returned². Moreover, the detention of unaccompanied minors is contrary to international law and EU rules³.

The next step is for *minors to be directed, on arrival or immediately following an interview, to specialist services* where they can be provided individually with all the information they need, in a language and form that they can understand, and including where appropriate information on their right to apply for asylum or other forms of international protection, the relevant procedures and their consequences. Unaccompanied minors should be offered legal, social and psychological assistance without delay.

Guardianship is a crucial aspect of child protection. Although there is no common procedural model here, it is necessary, as soon as an unaccompanied minor arrives, to appoint a ‘person responsible’ for him/her, with training in migration and asylum law and children’s rights, to

¹ Article 3, International Convention on the Rights of the Child, United Nations, 20 November 1989; Article 24.2, Charter of Fundamental Rights of the European Union, 2000/C 364/01.

² Committee on the Rights of the child, General Comment No 6: Treatment of Unaccompanied and Separated Children outside their country of origin, paragraphs 26, 27 and 28.

³ Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe on the detention of asylum seekers and irregular migrants in Europe, January 2010.

encourage decision-making in the child's best interests and to assist and represent the child as necessary under the legal system of the Member State in question.

The '**age assessment**' of unaccompanied minors is a sensitive issue: the medical tests currently in use are often inappropriate and inaccurate and the medical assessment is sometimes carried out at the expense of the child's privacy and health and without any guarantee of his/her protection. The EU should therefore support the introduction of a common method of age assessment based on a multidisciplinary, non-intrusive and child-friendly approach and carried out by independent authorities¹. Furthermore, any non-national who declares himself/herself to be a minor must be treated as such – the principle of the benefit of the doubt applying².

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Access to basic social services³ and enjoyment of economic, social and cultural rights are vitally important to all unaccompanied minors on EU territory. All unaccompanied children, irrespective of their status as migrants, must be guaranteed access to appropriate accommodation (not in a closed detention centre and ensuring, in any centre, that they are accommodated separately from adults), as well as to education and vocational training and medical and psychological care, on the same conditions applicable to children who are nationals of the host country.

In all the **relevant procedures** the child's views should be listened to and taken fully into account⁴. In their administrative and legal procedures and in providing information to minors, Member States should adopt an approach appropriate for the child. The conditions in which interviews take place must be suitable for the child, and interviewers must be trained in, and suitably familiar with, child development and children's behaviour.

It must be ensured at all times, through the systematic provision of appropriate information, that unaccompanied are guaranteed access to **asylum procedures** and such procedures must be suitably adapted for minors. The advances achieved in the negotiations on the Asylum Package are significant but there is a need for an asylum system genuinely tailored to children's requirements, with procedures that take account of the additional difficulties minors may face. Applications for asylum made by unaccompanied minors must be prioritised and processed as quickly as possible, while giving the applicants sufficient time to understand the process and prepare themselves for it.

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The ultimate aim of all measures for unaccompanied minors is to identify, having regard to

¹ Committee on the Rights of the Child, General Comment No 6, Treatment of Unaccompanied and Separated Children outside their country of origin, paragraph 31.

² Resolution 1810 (2011) of the Parliamentary Assembly of the Council of Europe, paragraph 5.10.

³ Articles 23-30, International Convention on the Rights of the Child, United Nations, 20 November 1989.

⁴ Article 24 (1) of the Charter of Fundamental Rights stipulates that: '*Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*'

the child's best interests, a **lasting solution**, which may be return to the country of origin, integration into the host country or resettlement in a third country with a view to family reunification. The first step in seeking a lasting solution must be to undertake family tracing¹ in the child's country of origin or a third country, but family reunification must be pursued only where it presents no risk to children or their families, the process being dependent on cooperation with countries of origin and transit. Member States' family tracing practices should be improved and should, in every case, be based on an individual assessment of the child's best interests. Where a relative² is identified, the decision to return a child to his/her country of origin or to a third country must be accompanied by a clear justification and must demonstrate that proper account has been taken of the individual circumstances. If no relative is identified, a decision to return the child should be taken only where prior agreement has been reached on secure, specific and suitable care arrangements, with measures for the child's reintegration in the country of origin. In no case, however, should a return procedure go ahead if there are risks of the child's fundamental rights being violated, or indeed risks to his/her life or safety³. Children who are the subject of a return procedure must not only be represented by a person responsible for them but must also have legal representation. A monitoring plan must be drawn up, in cooperation with the country of origin and any transit country, to ensure the child's protection after his/her return. The third possible solution is the unaccompanied minor's integration in the host country, and it is important in this case that the public authorities, the guardian and the minor should jointly draw up an individual life plan for the child.

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When an unaccompanied minor **reaches 18 years of age**, he/she loses, from one day to the next, entitlement to accommodation in a children's home, to specific assistance and to guardianship. To address this sudden gap in provision, it should be recognised that the young people concerned go through a transition phase, and this should entail the collaborative preparation of meaningful individual life plans.

Action to combat trafficking in human beings and to prevent illegal immigration is a vital prerequisite in addressing the issue of unaccompanied minors. Action needs to be taken in the third countries from which the victims come, or through which they are transferred, with a view to attacking the root causes of human trafficking and helping the third countries in question to introduce effective laws against it.

The EU and its Member States need to step up their **efforts at cooperation with non-EU countries of origin, transit and destination** on advancing a common EU approach to unaccompanied minors and finding suitable lasting solutions for them. These cooperative efforts should focus not only on prevention but also on the issues around, for example, re-establishment of family ties, return, and combating trafficking in human beings – all matters which must be the subject of further discussion in the EU's regular dialogues with the third countries concerned, and which must be included in the remit of the European External

¹ Committee on the Rights of the Child, General Comment No 6, Treatment of Unaccompanied and Separated Children outside their country of origin, paragraph 31.

² A member of the child's extended family.

³ Convention relating to the Status of Refugees, United Nations, 28 July 1951, Article 33.

Action Service and of the Commission's delegations.

Lastly, there is a clear need for part of the EU's asylum and immigration budget to be devoted to measures for unaccompanied minors, in order to ensure that they are properly protected.

Issues to address

- How much influence do we want this own-initiative report to have? Do you agree that the Commission should be asked to prepare a legal instrument specifically addressing the question of unaccompanied minors?
- Do we want to ask the Commission for common standards or guidelines on the concepts of the guardianship or representation of unaccompanied minors and on what the role of a guardian or 'person responsible' should be?
- How can relations with third countries be improved with regard to the reception and care of unaccompanied minors and measures to prevent their arrival?
- Should the Commission draw up guidelines on the concept of the child's best interests, or at least a set of criteria whereby those interests can be determined? In what circumstances is return in the child's best interests?
- How can unaccompanied minors be integrated most effectively in the host countries?
- Against the current background of revision of the financial instruments for asylum and immigration, would you support an increase in funding to address the issue of unaccompanied minors? What scope is there for drawing on the European Social Fund, given that minors are the target group here?