

**8TH EUROPEAN FORUM ON THE RIGHTS OF THE CHILD
(BRUSSELS, 17 AND 18 DECEMBER)**

**THE ROLE OF CHILD PROTECTION SYSTEMS IN PROTECTING CHILDREN ON THE MOVE
– BACKGROUND PAPER –**

1. INTRODUCTION

The Commission Communication "[An EU Agenda for the rights of the child](#)¹" was adopted in 2011 to ensure the effectiveness of children's rights and to step up efforts in protecting and promoting the rights of the child. It contains actions to make the justice system more child-friendly and to protect children when they are vulnerable and are subject to or at risk of violations of their rights.

The [EU Agenda for the rights of the child](#) recognises that children on the move are often in circumstances where they are vulnerable to harm and require and deserve special protection. Child protection systems² can play an important role in responding to the situation of children on the move, by ensuring that their protection needs *as children* are addressed, regardless of their nationality, migration or residence status.

This background paper does not repeat [last year's background paper on the same theme](#)³, but notes the main developments since November 2012, and the two papers could usefully be read together. The [2012 Forum concluding observations](#)⁴ were the starting point for a focus on operational and practical aspects in 2013.

2. OBJECTIVE OF THE SESSION

Following on from discussions at the 2012 European Forum on the rights of the child, and in the light of legislative and policy developments in the intervening year, the aim of this year's session is to focus on practical and operational steps to ensure that we take an integrated approach to protecting children on the move.

Taking due account of the role of the EU and its competences, the questions at the end of this document, as well as taking stock of achievements since last year, some of the envisaged session objectives are:

- to explore and identify practical means to ensure that child protection authorities are fully involved in decisions concerning children on the move
- to discuss how best to ensure that multidisciplinary individual assessments, evaluations and determinations of the best interests of the child are carried out in the light of UNCRC Article 3.1 and General Comment No 14

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:EN:PDF>

² See the 2012 Forum general background paper on child protection systems:
http://ec.europa.eu/justice/fundamental-rights/files/general_background_paper_en.pdf

³ 2012 background paper on children on the move: http://ec.europa.eu/justice/fundamental-rights/files/background_cps_children_on_the_move_en.pdf

⁴ See Forum Report, both individual workshop conclusions and overall concluding remarks:
http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/files/forum_summary_report_en.pdf

- to discuss how best to ensure transition from child protection to adulthood for children on the move (similar to 'children leaving care' considerations, and measures for EU nationals who are not on the move)
- to take account of projects underway within the EU and ensure that their findings and results can be replicated or otherwise built on
- to bridge gaps with other policy areas and actors - both at EU and national level and for policy as well as coordination - to ensure an integrated and multidisciplinary child protection system
- to reflect on content of EU guidelines on child protection systems, as per the EU Strategy towards the eradication of trafficking in human beings 2012-2016
- to provide input for the development of EU guidelines on child protection systems by end 2014
- to ensure that when we talk about children on the move, we take account of **all children in situations of migration or mobility**
- in the light of the session objectives outlined above, to discuss how best to ensure multidisciplinary and inter-agency coordination

A number of **cross-cutting principles and themes identified in the EU Agenda**, such as the best interests of the child, child participation and the need for better data will be addressed in each of the Forum sessions. Each session will also consider the role of the EU, with due regard to its competences.

3. STRUCTURE OF THE SESSION

The three-hour session on the role of child protection systems in protecting children on the move will be chaired by a representative of the Commission (**Zoi Sakelliadou, DG HOME**) and co-chaired by an NGO representative (**Salvatore Parata, Terre des Hommes International Federation**), with a panel of three experts representing a range of perspectives:

Georgia Dimitropoulou, Fundamental Rights Agency of the European Union, on mapping guardianship systems in EU28; **Thomas Dunning, Principal Social Worker (IE)**, where child protection takes primary responsibility for children in situations of international migration, and **a Member State representative of an EU-funded crossborder project**, seeking to tackle a particular child protection gap concerning children on the move going missing

We expect participation in this session of around 50 experts from all EU Member States. The session will take place in **English**. The intention is to have participation from a varied range of professionals who play a role in protecting children on the move.

Session participants should therefore include:

- Representatives of Member State ministries or agencies, including those with a coordination or oversight role within formal CPS;

- Representatives of public authorities with key roles in CPS, e.g. social affairs, justice, migration;
- International organisations that play a key role in protecting children on the move
- NGOs that are associated with CPS/migration frameworks in cooperation with public authorities;
- European/international NGOs specialising on the protection of children on the move;
- Professionals and academics with experience in dealing with protection of children on the move;

4. CONTEXT

Developments since last year include:

4.1. Adoption of recast EU legislation

EU asylum legislation has been recast, with clear provisions on the best interests of the child (UNCRC Article 3.1). [See Chapter 24 of this document](#)⁵, where changes are highlighted in yellow.

4.2. Case law

The recent ECJ Court Judgement C-648/11 (see [Section 23.6 of the Acquis compilation](#)) on the Member State responsible for examining the asylum application of unaccompanied children should also be borne in mind.

4.3. European Parliament report on the situation of unaccompanied minors in the EU⁶

This own initiative report, for which the *Rapporteur* was MEP Nathalie Griesbeck, takes stock of the situation of unaccompanied children in the EU, and suggests certain measures to improve their situation and strengthen their protection within the EU. In the context of child protection systems, the report:

recalls that an unaccompanied minor is above all a child who is potentially in danger and that child protection, rather than immigration policies, must be the leading principle for Member States and the European Union when dealing with them, thus respecting the core principle of the child's best interests

...

calls on the Commission and the Member States to integrate child protection and the issue of unaccompanied minors into combating trafficking in human beings and

⁵ Compilation of EU acquis and policy documents on the rights of the child: http://ec.europa.eu/justice/fundamental-rights/files/eu_acquis_2013_en.pdf

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0387&language=EN&ring=A7-2013-0251>

strengthening child protection systems are matters to be discussed in the EU's regular dialogues with partner countries and must form an integral part of the agenda of the European External Action Service and of the Commission delegations; development and cooperation policies

considers it regrettable that child protection is significantly and consistently underfunded in comparison with other humanitarian sectors

The recommendations and guidelines contained in the report are in line with most of the aims and commitments of the EU's existing Action Plan⁷ and the recommendations of the mid-term report⁸ on its implementation.

4.4. Data collection

Since last year's Forum, data for 2008-10, as published in April 2013⁹, indicates that there were 9528 identified and presumed victims of trafficking in the EU, of whom 12% are girls and 3% are boys. This may be only the tip of the iceberg, as collection of comprehensive, reliable and comparable data is not yet systematic. From the data available, the most prevalent form of exploitation of victims is that of sexual exploitation followed by labour exploitation. EU data further show that internal trafficking is on the rise. This means that child trafficking is not always about migration and crossing international borders, but is generally linked to mobility. The question of data collection to support respect of the rights of children on the move is to be considered throughout this session. In a broader context, [September 2013 UN Agency figures](#)¹⁰ indicate that, globally, there are some 35 million migrants below 20 years of age, constituting about 15% of the total migrant population.

4.5. UNCRC publications

The UN Committee on the rights of the child published the [Committee's Report of the 2012 Day of General Discussion on the rights of all children in the context of international migration](#)¹¹. The report calls for **all** children in situations of international migration to be treated as children first and foremost, without exception. Particular sections on child protection systems include Paragraphs 15, 16, 27 and 35. The first recommendation included in Paragraph 57 is cited here:

"States should ensure that the rights enshrined in the Convention are guaranteed for all children under a State's jurisdiction, regardless of their own or their parents' migration status and address all violations of those rights. Child care and protection agencies/bodies

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0554:FIN:EN:PDF>

⁹ http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/infographics/index_en.htm#0801262488c18d4a/c

¹⁰ UN Agency September 2013 figures: <http://esa.un.org/unmigration/migrantstocks2013.htm?msax>

¹¹ Published in 2013: http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

rather than immigration agencies take primary responsibility for all children in situation of international migration."

In 2013, the UN Committee on the Rights of the Child also published [General Comment No 14 \(2013\) on the rights of the child to have his or her best interests taken as a primary consideration \(Article 3.1\)](#)¹², which provides guidance on best interests determination and elements to consider when assessing and determining best interests. Furthermore, it invites States and all persons who are in a position to assess and determine the child's best interests to pay special attention to procedural safeguards to guarantee the implementation of the child's best interests (See Section B), and these are worth discussing from the perspective of practical and operational improvements.

Finally, in 2013, the UN Committee on the rights of the child published [General Comment No 15 \(2013\)](#) on the right of the child to the enjoyment of the highest attainable standard of health (Article 24)¹³, emphasising the importance of non-discriminatory access to primary healthcare.

4.6. Joint UNHCR-UNICEF best interests determination guidance

The guidance referred to at least year's Forum is in the process of being finalised (to take account of recent developments). It will not be available at the Forum, but at that point the authors should be able to inform participants of its expected publication date.

4.7. Overview of EU legislation on the rights of victims of trafficking¹⁴

This overview, available in all EU languages, provides a practical and comprehensive overview of victims' rights based on the Charter of Fundamental Rights of the European Union, EU directives, framework decisions and European Court of Human Rights case law.

¹² http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

¹³ http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc

¹⁴ http://ec.europa.eu/anti-trafficking/EU+Policy/EU_rights_victims

5. QUESTIONS FOR SESSION PARTICIPANTS

- a. How can the EU better support the development of integrated child protection systems in relation to children on the move?**
- b. What should be the key elements for the future EU guidelines on child protection systems in relation to children on the move?**

6. THE WAY AHEAD

The Commission seeks to address the issues outlined in the 8th Forum background papers in cooperation with Member State authorities, international organisations, ombudspersons for children, civil society, practitioners and academics.

Session participants are invited to explore how the EU and other actors can contribute to ensuring an integrated approach to child protection, in relation to children on the move, in the Member States. Concrete suggestions and contributions are sought with a view to developing future EU guidelines on child protection systems¹⁵.

¹⁵ The EU Strategy towards the eradication of trafficking in human beings 2012-2016 provides for development of guidelines for child protection systems by 2014 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:EN:PDF> .