



Addressing the Protection Gap for Unaccompanied and Separated Children in the EU:

The Role of the Stockholm Programme, Brussels September 15, 2009

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Save the Children Sweden is pleased to be supporting this event on unaccompanied and separated children of third country origin in EU policy, organized by the Save the Children Brussels Office under the auspices of the Swedish Presidency.¹ The Save the Children Europe Group has member organizations in thirteen European countries and its Brussels office carries out EU advocacy work, including in the field of asylum, migration and trafficking. Save the Children's advocacy in the field is borne out of both its programme and policy work nationally within Europe and in third countries. Save the Children founded the Separated Children in Europe Programme (or "SCEP") which brings together NGOs working in 30 countries in Europe.

We strongly believe that the time has come for further EU action in relation to unaccompanied and separated children of third country origin; indeed action in the field should be a **political priority of the EU**. The EU has a clear and very necessary role in reducing the gap in protection for all unaccompanied and separated children throughout Europe.

Of course no one can deny that the situation of unaccompanied and separated children in Europe is complicated.

Although we believe there are at least 100,000 such children in the EU today, **our discussion should acknowledge that we don't have enough data and indeed available data often relates only to those children who seek asylum.**

However, from our work, it is clear that some Member States are dealing with significant numbers of arrivals every year. We also see that we are dealing with a **transnational** phenomenon within Europe. Children frequently cross Member States to reach other Member States and indeed children may be transferred by national authorities between Member States. We have observed **great diversity** in the circumstances of children coming and the reasons for their being in Europe: the children can be asylum

¹ Elisabeth Dahlin would like to acknowledge the contributions of Rebecca O'Donnell, Policy & Advocacy Officer, Save the Children, Brussels Office to this paper and also to thank Save the Children colleagues around Europe, whose experiences and input have informed this paper.

seekers, they may be trafficked, they may seek escape from situations of deprivation or they may seek out better opportunities; they may indeed move from one of these situations to another.

There is growing public awareness of the issues confronted by unaccompanied and separated children across the EU, with increasingly frequent reports of the alarming situations in which children find themselves reported in the European press. To name just a few, we think of the reports on the difficult situation in which Afghan children often find themselves, children in Nord Pas du Calais or indeed children in boats in the Mediterranean being pushed back to Libya. The press also reports on children dying while attempting dangerous crossings between Member States. We hear of unaccompanied children on hunger strike in detention centres, children disappearing from State care, children being trafficked into situations of exploitation and children being returned to countries of origin without any real child protection safeguards.

And our experience has revealed that, despite a degree of harmonization of laws on the treatment of unaccompanied children at EU level, there are **considerable divergences in Member States' practices and sometimes these divergences exist even within Member States**. An unaccompanied or separated child may have a completely different experience depending simply on where he or she is in Europe. For example, in some countries, the unaccompanied or separated child normally has access to accommodation, health and education services; in other countries, the only option for unaccompanied children who do not seek asylum, or indeed even for asylum seeking children, might be to survive on the streets. The child may be detained pending return in some Member States; in others they are rarely returned and they essentially have a right to remain until they are 18. These kinds of fundamental disparities in treatment exacerbate movements of children from one country to another without protection of any real kind.

In our analysis of EU policy, we see that, **even where provisions in relation to unaccompanied and separated children of third country origin exist at EU level, they appear only in a fragmented way across policy areas and often to a different degree. And in our experience this lack of coherence causes difficulties**. Pointing to just a handful of examples, under EU policies today:

- An unaccompanied or separated child has access to guardianship only once the child has made an application for asylum; there are scant provisions to ensure protection and assistance in advance of filing an application despite the fact that unaccompanied or separated children may need care and support in order to make the application;
- Asylum seeking children benefit from minimum EU standards on protection and assistance, whereas trafficked children receive considerably less care under current EU policies; other unaccompanied and separated children do not benefit from a common EU approach save as regards the procedures by which they will be returned;
- And the EU procedures by which they are to be returned take migration control as the starting point, thereafter making some accommodation for the rights and vulnerabilities of the children.

What type of response is needed at EU level?

Against this backdrop, we very much welcome the fact that the Stockholm Programme could provide an opportunity to focus on a more effective and coherent approach at EU level to the situation of these children. The Commission itself has recognized the need to address the situation in its statement in its Communication concerning the next five year plan: *“Unaccompanied minors entering the EU territory illegally present another challenge that needs to be studied in depth. This will be followed by an action plan to underpin and supplement the relevant legislative and financial instruments and strengthen forms of cooperation with the countries of origin, including cooperation to facilitate minors’ return to their country of origin.”*

What should be the general orientations of any EU approach to the issue?

Save the Children recommends that **EU policy should recognize that child rights and child protection, rather than migration control, should be the starting point for designing responses to the situation of unaccompanied and separated children who arrive in the EU.** Since unaccompanied and separated children have common rights and needs for special protection and assistance, regardless of whether they are asylum seeking, migrant or trafficked children, **EU policy should recognise that measures for all separated children across the EU asylum, migration and trafficking policies should be coherent.**

What are the key elements of a child rights and child protection approach?

We believe that **proper care, assistance and status determination for all unaccompanied and separated children are essential.** Where these children are provided with appropriate proper interim care and assistance, this tends to promote the future prospects of the child, whatever society they ultimately live in.

We also believe that procedures by which States identify secure and concrete arrangements for the individual child should always be informed by a proper best interests’ assessment. Looking carefully at the overall situation in the case of each child will usually be the best way to ensure a solution that is sustainable and effective for the child, whether it be integration in the destination country, transfer to a third country or return to a county of origin.

We thank Lothar Krappman of the UN Committee on the Rights of the Child for his presentation on how the UN Convention of the Rights of the Child should be applied in this field. All States should greatly benefit from the interpretative guidance of the Convention offered by General Comment No 6 on the treatment of unaccompanied and separated children outside their country of origin. And the European Court of Justice in Luxembourg has clearly acknowledged that EU law must take due account of the Convention.

We often hear that smugglers or traffickers must be stopped and that this should be done through stricter migration and crime control. Under this approach, Member States sometimes set aside proper procedures to address child rights and child protection. For example, children may be denied access to,

or deported from, EU borders, just to send a signal to traffickers. Obviously EU Member States must remain concerned about reducing unsafe migration as well as trafficking and smuggling, but they should do so primarily by addressing root causes, and never at the expense of individual children. Migration and crime control considerations can never override the safety and best interest of the child.

Certainly we acknowledge that a system of proper care and status determination will take expertise and resources in each Member States, something perhaps not politically easy in the current economic climate.

So the key question is what EU policy could support this approach?

Clearly, the EU could engage in a whole host of actions to support Member States in achieving better protection of these children. We have a number of concrete recommendations that we will present at the end of today and these recommendations are endorsed by [...] But already this morning we will outline some of them. Whilst considering all of this range of actions, we bear firmly in mind the issue of subsidiarity and the scope for discretion needed at national level to ensure the best implementation of common principles and tools into the national systems.

The revision and implementation of existing EU laws should focus on improving the situation of these children and ensuring a coherent child protection agenda is pursued. Save the Children has issued a range of detailed recommendations concerning the revision of the asylum and trafficking instruments and returns. Our suggestions for improvements include the need for the appointment of independent guardians with a clear mandate to act in the best interests of the child and assist the child; we have also addressed the need for legal aid, the need to avoid detention and to put in place child friendly procedures. We have emphasized the need for best interests' assessments to inform decisions and child participation. We are heartened by the Commission proposals in the field and urge the Council and Parliament to continue making progress in their discussions. We recommend that discussions concerning the implementation of the Returns Directive should focus on how to ensure proper assessments of best interests, including in analyzing reception conditions in the country of return.

Ultimately, an EU framework of general obligations for all unaccompanied and separated children might be considered. This would have the benefit of establishing a more coherent approach to child rights and child protection.

Putting aside legislative change, there is much the EU could do as regards practical measures of support.

We see that the EU could foster **good practices** on a regional level through exchange of good practices at regional level in the EU. We think of the Swedish system of guardianship and the Belgian announcement that unaccompanied and separated children will no longer be detained as well as experience throughout Europe, including anti-trafficking prevention work in the Balkans and Russia.

Guidance could be formulated on certain key issues, including, for example, age assessment. The EU could also create **tools** to facilitate best interest assessments in Member States (for example, by creating an EU mechanism to analyse conditions in countries of origin). The EU could help leverage regional **expertise**, for example, through training or other expert support.

Through the EU, Member States could collectively and efficiently engage with countries of origin on relevant child protection issues to ensure reintegration of children where appropriate and prevention of unsafe migration in the first instance.

The EU also must *invest* in the necessary data collection and research, involving key actors in the design and review of research. More quantitative and qualitative information at a regional level – showing from where these children travel, how they travel, why they travel and to what countries they travel - is critical.

We believe the voices of the children themselves should be heard in the process – Save the Children Sweden ran a hotline for undocumented children for several years and learned very directly about their experiences and concerns.

In short, if the Stockholm Programme puts the issue firmly onto the EU agenda, there are many steps that can be taken to achieve progress in the field. ***As we explore this issue today, let's also be aware of possible risks and how to avoid them.***

In establishing minimum standards in EU asylum policy generally, Member States have sometimes been accused of engaging in a race to the bottom. (Indeed, the ongoing revision of the EU asylum rules is prompted by the recognized need for improved standards.) Clearly, any common EU approach to the care, assistance and status determination of unaccompanied and separated children should avoid the worsening of the situation in any country at all costs; the primary motivation for a common approach must be to close the protection gap, rather than pursue a migration control agenda.

A balanced prevention of unsafe migration and development agenda will of course be necessary as well. Indeed, some of our programmatic experience shows us that often children do not wish to migrate at all but migration is in fact seen as a last and necessary resort.

So what will we look at specifically today?

We look forward to sharing experiences and insights into the situation of separated and unaccompanied children in the EU and exploring what aspects of the situation call for common action at EU level.

Some of the discussion will focus on particular aspects of the situation, asylum seeking children, trafficked children, guardianship and care, procedural safeguards and dealing with countries of origin. We are grateful to Zaina Karekezi for joining to give her own individual experiences, coming from Rwanda at 16 into Europe.

Some of the presentations will show how a start has been made in addressing unaccompanied and separated children at EU level. We will hear about ongoing processes at EU level, from the Commission migration team, the Parliament and from the EU Childs' right Coordinator. We look forward to insights into the ongoing Fundamental Rights Agency research later today. We will also hear about regional initiatives from the Council of Europe. We will gain particular perspectives on national situations in Spain, Belgium, the UK and Italy.

We welcome you and look forward to a lively and open exchange!