



Strategic approaches on migrants with irregular status in Europe, St Hugh's College, Oxford, 18-22 September 2017

**The situation of children with irregular
status**

19 September 2017



10th European Forum on the rights of the child on the protection of children in migration (November 2016)

Covered all third country national children in migration – see background paper, presentations, Forum report:
http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456

Why a Communication on protection of children in migration?

High numbers of children in migration arriving in Europe (2015/2016: 30% of asylum applicants).

Particularly vulnerable: risks and have often suffered from extreme forms of violence, exploitation, trafficking in human beings, physical, psychological and sexual abuse, go missing, exploited, forced marriages, etc. before and/or after their arrival.

Protecting children = upholding European values of human rights, dignity and solidarity and enforcing EU law and respecting EU Charter and IHRL on rights of the child



12 April 2017 Communication on the protection of children in migration

Link to all language versions:

<http://eur-lex.europa.eu/legal-content/DE/ALL/?uri=COM:2017:211:FIN>

Aims and scope of 12 April Communication

- Comprehensive approach
- Urgent actions but serve to strengthen systems in medium term
- Children should be treated as children and protected
- Bringing together asylum/migration and child protection services
- **All** non-EU children in migration (whether unaccompanied, separated or with parents)
- Sets out urgent EU actions and makes Recommendations to EU Member States

Main messages relevant to children with irregular status

«...Protecting all children in migration, regardless of status and at all stages of migration, is a priority. »
(p.2)

Communication drafted under two perspectives:
« migration management *and* child protection » (protection in the broad sense)

Six chapters

1. Root causes and protection of children along migratory routes: further stepping up the EU's external actions
2. Swift and comprehensive identification and protection
3. Providing adequate reception in the European Union
4. Ensuring swift and effective access to status determination procedures and implementation of procedural safeguards
5. Ensuring durable solutions
6. Cross-cutting: best interests of the child; data, research, training and funding

1. Addressing root causes and protecting children along migratory routes: further stepping up the EU's external action

Main messages

- Root causes (conflicts, forced displacements, inequalities in living standards, limited economic opportunities and access to basic services)
- Sustainable Development Goals
- 2015 Valetta Summit
- Child protection mechanisms in partner countries
- EU funded humanitarian operations
- EU Guidelines on the Promotion of the Rights of the Child
- Global Compact on Refugees/on Migration

1. Addressing root causes and protecting children along migratory routes: further stepping up the EU's external action

Key actions:

The Commission and the Member States should:

- prioritise actions aimed at **strengthening child protection systems** along the migratory routes, including in the context of the implementing the Valletta Summit political declaration and Action Plan and the Partnership Framework, as well as in the framework of development cooperation;
- support partner countries** in developing strong national child protection systems and civil registration services as well as cross-border cooperation on child protection;
- support projects targeting the protection of unaccompanied children** in third countries along migratory routes, in particular to prevent child trafficking or smuggling;
- actively implement of the **EU Guidelines on the Promotion and Protection of the Rights of the Child**.

2. Swift and comprehensive identification and protection

- Identified and registered as children, uniform data set (unaccompanied/separated/travelling with family, nationality/stateless, age, sex, etc.)
- children should be prioritised in all border-related procedures and receive adequate support from specialised staff
- Identify gender-specific protection needs (SGBV)
- Person responsible for child protection in early stage
- Family tracing and reunification processes
- Missing migrant children have same right to protection as missing national children (systematically report and respond – SIS, police, missing children hotlines)

2. Swift and comprehensive identification and protection

Key actions:

As of 2017, with the support of the Commission and the EU agencies, the Member States are encouraged to:

- collect and exchange **comparable data** to facilitate the cross-border tracing of missing children and the verification of family links;
- apply **child-friendly and gender-sensitive approaches** when collecting fingerprints and biometric data;
- ensure that a **person responsible for child protection** is present at an early stage of the identification and registration phase and that child protection officers are appointed in each hotspot;
- put in place the necessary procedures and protocols to **systematically report and respond to all instances of unaccompanied children going missing.**

3. Providing adequate reception in the European Union

- Reception = safe/appropriate accommodation + child protection support services + education, healthcare, psychosocial support, leisure and integration measures

- Individual needs assessment (incl psychological support)

- Family-based and foster care for unaccompanied children

Safe access to formal and non-formal education. - Children living in communities can face barriers accessing healthcare and education (p.8)

- Negative impact of detention on children: only, in line with EU law, in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation. If grounds for detention: must ensure viable and accessible range of alternatives to detention including through use of EU funds. **Commitment to devote Forum to alternatives to detention**

3. Providing adequate reception in the European Union

Key actions:

As of 2017, with the support of the Commission and the EU agencies, the Member States are encouraged to:

- ensure that **individual gender- and age-sensitive vulnerability and needs assessments of children** are carried out upon arrival and taken into account in all subsequent procedures;
- ensure that all children have **timely access to healthcare (including preventive care) and psychosocial support**, as well as to inclusive formal **education**, regardless of the status of the child and/or of his/her parents;
- ensure that a **range of alternative care options** for unaccompanied children, including foster/family-based care are provided;
- integrate **child protection policies in all reception facilities** hosting children, including by **appointing a person responsible for child protection**;
- ensure and monitor the availability and accessibility of a viable range of **alternatives to the administrative detention** of children in migration;
- ensure that an appropriate and **effective monitoring system** is in place with regard to reception of children in migration;
- make full use of the forthcoming **EASO guidance on operational standards and indicators on material reception conditions** for unaccompanied children.

4. Ensuring swift and effective access to status determination procedures and implementation of procedural safeguards

- Safeguards for all children present on the territory of the EU, including in asylum and return procedures
- Effective guardianship (need to step up recruitment, be appointed faster and better equipped)
- Reform Common European Asylum System
- Age assessment need to be reliable, multi-disciplinary and fully compliant with legal safeguards
- Family tracing and family reunification/unity procedures carried out irrespective of child's legal status
- Urgency principle for asylum and other proceedings – CoE guidelines CFJ (p.11)

4. Ensuring swift and effective access to status determination procedures and implementation of procedural safeguards

Key actions:

In 2017, the Commission and the EU agencies will:

- establish a **European guardianship network**, to develop and exchange good practices and guidance on guardianship in cooperation with the European Network of Guardianship Institutions;
- EASO will update its **guidance on age assessment**.

With the support of the Commission and the EU Agencies, the Member States are encouraged to:

- strengthen the guardianship authority/institution** to ensure that guardians for all unaccompanied children are swiftly in place;
- implement **reliable, multi-disciplinary age and non-invasive assessment procedures**;
- ensure **swift and effective family tracing**, within or outside the EU, by making full use of existing cross-border cooperation channels;
- give priority to processing cases (e.g. asylum applications) concerning children in line with the **urgency principle**;
- give priority to the **relocation of unaccompanied children** from Greece and Italy.

5. Ensuring durable solutions

- Normality and stability in long term
- Clear rules on legal status of children...avoid that children are left for prolonged periods of time in limbo as regards their legal status. (p.12)
- Best interests determination should be carried out in all cases
- Access to inclusive, non-discriminatory, education, healthcare, psychosocial support in waiting period
- Early integration (education, healthcare)
- Preparing children for transition to adulthood/leaving care
- Resettlement and other legal pathways for children
- In return must respect non-refoulement and BIC, cooperation with countries of origin is key

5. Ensuring durable solutions

Key actions:

In 2017, the Commission will:

promote the **integration of children through available funding and exchange of good practices** addressing non-discriminatory access to public services and targeted programmes.

The Member States are encouraged to:

ensure, within a short time span after arrival, **equal access to inclusive, formal education**, including early childhood education and care, and develop and implement targeted programmes to support it;

ensure **timely access to healthcare** as well as to other essential public services to all children;

provide support to enable children in the **transition to adulthood (or leaving care)** to access necessary education and training;

foster **social inclusion in all integration-related policies**, such as prioritising mixed, non-segregated housing and inclusive education;

increase **resettlement** to Europe for children in need of international protection;

ensure that appropriate **family tracing and reintegration** measures are put in place to meet the needs of children who will be returned to their country of origin.

6. Cross-cutting actions: respect and guarantees for the best interests of the child; more effective use of data, research, training and funding

- Best interests of the child, a primary consideration in all actions or decisions that concern him or her
- Children need to be informed (e.g. with help of cultural mediator) on their rights, on procedures and on services available for their protection.
- Training for those working with and for children (RoC, protection, communicating with children in a gender-, age- and context appropriate manner
- Making data more visible and more detail
- EU Funding (AMIF, ISF, ESF, FEAD, EaSI, REC) + child safeguarding
- Exchange of good practices

6. Cross-cutting actions: respect and guarantees for the best interests of the child; more effective use of data, research, training and funding

Key actions:

In/as of 2017, the Commission and the EU agencies will:

- provide additional training, guidance and tools on **best interests of the child assessments**;
- launch consultations** on possible improvements to current EU-level data collection relating to children in migration including based on the Migration Statistics Regulation and the 2011 Guidelines, and the Commission's Knowledge Centre on Migration and Demography will compile a data repository on children in migration;
- require that organisations in direct contact with children have in place internal child protection policies in order to be granted EU funding**;
- collect and disseminate good practices** on the protection of children in migration via an online database.

6. Cross-cutting actions: respect and guarantees for the best interests of the child; more effective use of data, research, training and funding

The Member States are encouraged to:

- ensure that **all children are provided with relevant information** on their rights and on procedures, in a child-friendly and age- and context- appropriate manner;
- ensure that those working with children in migration – from arrival at EU borders to their integration or return – **are appropriately trained and child protection professionals** are involved where relevant;
- prioritise children in migration under AMIF and ISF national programmes**; make use of any other available complementary EU funding, ensure that organisations to be funded have child protection policies in place;
- enhance **collection of more disaggregated data** and statistics on children in migration.

Return Recommendation 7 March 2017

Renewed focus on returns

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

EU Ombudsman complaint 4.7.2017 on the protection of children in migration and returns:

https://www.ombudsman.europa.eu/en/cases/case.faces/en/50028/html_bookmark

NB: Revised Return Handbook to be adopted 27 September 2017

Investing in children (2013)

2013 Recommendation Investing in children – breaking the cycle of disadvantage

<http://ec.europa.eu/social/main.jsp?catId=1060>

Ensure a focus on children who face an increased risk due to multiple disadvantage such as Roma children, some migrant or ethnic minority children, children with special needs or disabilities, children in alternative care and street children, children of imprisoned parents, as well as children within households at particular risk of poverty, such as single parent or large families;

2017 Social Pillar 11a and 11b

https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

11a Children have the right to affordable ECEC of good quality

11b Children have the right to protection from poverty. Children from disadvantaged backgrounds have to right to specific measures to enhance equal opportunities.

(But recital 15:

https://ec.europa.eu/commission/publications/commission-recommendation-establishing-european-pillar-social-rights_en The principles enshrined in the European Pillar of Social Rights concern Union citizens and third country nationals with legal residence.)

Follow-up to the Communication

Communication conclusion: "The Commission will closely monitor the follow-up of the actions set out in this Communication and will regularly report to the European Parliament and the Council."

Multi-stakeholder effort needed: Member States remain at the forefront, and the Commission will support them (training, guidance, operational support, funding), but also need reinforced cooperation with/among, EU agencies, national authorities, UN agencies and civil society organisations

Council Conclusions 8 June 2017

<http://data.consilium.europa.eu/doc/document/ST-10085-2017-INIT/en/pdf> ... "Emphasise that protecting all children in migration is a priority at all stages of migration." Reminders on BIC, international obligations, etc.



11th European Forum on the rights of the child 6-8 November 2017

Children deprived of their liberty and alternatives to detention

Children in conflict with the law

Children in immigration detention

Children in institutions

Children of parents in prison

Side event: pathways – vulnerabilities of children concerned by deprivation of liberty

Focus throughout on alternatives to detention! 280 stakeholders, EU funding programme managers invited also.

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=128349

EU funding:

**Structural Funds focus on community- and family-based care
(« de-institutionalisation »)**

Rights, Equality and Citizenship Programme (rights of the child)

2017 call preparations for leaving care:

<http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/rec/topics/rec-rchi-prof-ag-2017.html> e.g.

"There should be a very clear focus on inclusive services and community involvement that also take account also of minority groups, children with disabilities and third-country nationals in alternative care. For third-country nationals, status determination procedures may need to be addressed and the child's status resolved in a timely manner as a matter of routine and an integral part of an integrated approach."



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Rights of the child newsletter: http://ec.europa.eu/newsroom/just/newsletter-specific-archive-issue.cfm?newsletter_service_id=529

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