

The protection of the rights and special needs of trafficked children

A thematic discussion paper prepared for
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by Eurasylum Ltd

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Executive summary

Trafficking in children is a complex issue, covering different areas in which there is some form of exploitation of the child, most notably prostitution, forced labour and commercial adoption. All of these components need to be taken into consideration in order to understand fully what child trafficking entails, and to raise awareness of the problem in a way that people can understand, whether they are professionals or members of the public, and to which they can relate in their daily/working lives.

Key players have varying perspectives on trafficking in children: whether they are victims in need of special care and support; criminals; or witnesses in the prosecution of the perpetrators. Unwillingness to deal with this complexity can lead to a failure to observe the best interests of the child which should be fundamental to all legislation, policy and activity in this area. Trafficked children are first and foremost victims who require special support and a durable solution which gives primacy to their best interests whether or not they have been coerced into committing a criminal offence or are willing to give evidence against the traffickers.

EU action in the field of human trafficking has gained considerable momentum since the early 2000s, with the adoption, in particular, of: a Council Framework Decision on combating trafficking in human beings (2001); a Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union (2002); a Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003); a Council Framework Decision on combating the sexual exploitation of children and child pornography (2003); a Resolution of the European Parliament on child trafficking and child soldiers (2003); a Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004); and the establishment in 2003 of the EU Experts Group on Trafficking in Human Beings.

However, a shift in emphasis is required to reinforce the position of children as victims and the special attention they require and deserve. This includes the development of legal instruments and policies directed specifically to the protection of trafficked children; the systematic collection of data which is consistent, robust and reliable; and the further dissemination of good practice examples. Stakeholders need to be made more aware of the nature of the problem and their own responsibilities for helping trafficked children through the traumas they have suffered. Whilst criminal sanctions must continue to be applied vigorously, there must equally be a recognition of the role that can be played by adopting a rights based approach to humanitarian aid.

Many of the pieces of the jigsaw are already available. What is now required is for them to be brought together with the child victim at the centre of the picture.

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

Recommendation 1: The EU should draw up a definition of trafficking in children to include the behaviours and activities which represent trafficking in children based on existing Conventions, Protocols and other material. The definition should be easily understood and meaningful to both practitioners and wider audiences.

Recommendation 2: The FRA or the Member States should conduct an analysis of good practice and what has been shown to have worked in (a) training and raising awareness amongst those likely to encounter trafficked children at both a primary and secondary stage of involvement; and (b) in the treatment of victims of child trafficking.

Recommendation 3: The European Commission should consider the possibility of proposing concrete guidelines to MS for the collection of comprehensive and robust data on child trafficking through development of a data framework and associated guidelines that Member States can use to gather data in a common and consistent manner. The competent European bodies, e.g. Eurostat, building in particular on the on-going work of the EU Experts Group on Trafficking in Human Beings, and the EC-ILO project on human trafficking indicators, should collate these data to allow for comparisons between Member States and the development of effective anti-trafficking policies. Full account should be taken of the need for data confidentiality.

Recommendation 4: The EU should consider the development of a specific, legally binding instrument setting out the rights of trafficked children and the protection they should receive in order to provide a child/victim centric approach to trafficking and counterbalance the current emphasis on security and law enforcement. This recommendation, however, would fall outside of the FRA's remit.

Recommendation 5: In accordance with a recent Resolution of the European Parliament, the Commission should consider developing 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.¹ The Commission should also 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'.²

1 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>

2 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>

Recommendation 6: Member States should support research into public opinion and awareness of all aspects of trafficking in children as a precursor to mounting an information campaign via the media or other means.

Recommendation 7: The EU should identify, with the help of international organisations and NGOs, the wide range of initiatives that have been proposed for helping to prevent children being trafficked by interventions in countries of origin and consider the options for future investment following a careful analysis of what is likely to have the greatest impact on a reduction in the trafficking of children. This recommendation, however, would fall outside of the FRA's remit.

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

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

The purpose of the present paper on “*The Protection of the rights and special needs of trafficked children*” is to identify, through desk research, at European and national level (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. It is also intended that 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

Special thanks are also due to Mr. Andreas Accardo, from the EU Agency for Fundamental Rights, for his assistance and support throughout this assignment.

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
CEOP	Child Exploitation and Online Protection Centre
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
ECPAT	End Child Prostitution and Trafficking
ERF	European Refugee Fund
FRA	EU Agency for Fundamental Rights
ILO	International Labour Office
IOM	International Organization for Migration
LIBE	European Parliament's Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of the European Parliament
MS	EU Member State(s)
SCEP	The Separated Children in Europe Programme
TEU	Treaty of the European Union
UNFPA	United Nations Fund for Populations Activities

UN.GIFT United Nations Global Initiative to Fight Human Trafficking

UNHCR United Nations High Commissioner for Refugees

UNICEF United Nations Children's Fund

1.0 Introduction

Trafficking in children is a global problem that affects all EU Member States. In an attempt to indicate its scale, the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) refers to figures from the ILO which estimate that there are 2.45 million trafficking victims currently under exploitative conditions, and another 1.2 million persons trafficked annually, worldwide.³ UNFPA reports that between 600,000 and 800,000 women, men and children are trafficked across international borders each year. Of these, the majority are girls and women, and over 50% are children. However, as with any other criminal activity, data available only refers to cases of traffickers apprehended and victims identified, and therefore does not reflect the exact magnitude of the problem. Key factors affecting the availability of data in this area are discussed in detail below.⁴

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 Fundamental Freedoms (subsequently referred to as the European Convention on 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

³ International Labour Organisation (ILO): *A Global Alliance Against Forced Labour, Report of the Director-General*, Geneva: ILO, 2005, p.14 (http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059)

⁴ See also Briefing Note 8, Statistics on Human Trafficking in South Asia http://www.giftasia.in/index.php?option=com_content&task=view&id=207&Itemid=347

- 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.

EU action concerning the trafficking of children is conducted within the broader framework of international law where arguably the most important instrument in respect of children is the UN Convention on the Rights of the Child (CRC) 1989, articles 35 and 39 of which refer respectively to states' responsibilities to prevent trafficking and to provide support for its victims, and the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁵

Initially, the EU approach to child trafficking had been primarily from the perspective of the fight against organised crime and was first introduced as a competence of the EU in the Treaty of Amsterdam in 1999. This was followed by the adoption of two Council Framework Decisions which are used to legislate in the area of child trafficking⁶. However, according to some commentators, both of these Framework Decisions have tended to focus more on common legal decisions and sanctions rather than on support for the child victim.⁷

Policy initiatives have been sparse in addressing child trafficking from a human rights perspective. The Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union (2002) focuses on illegal immigration rather than trafficking (although it does draw a useful distinction between the two); the Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003) includes girls but not boys. On a more positive note, the Resolution of the European Parliament on child trafficking and child soldiers (2003) makes some constructive proposals for population registers and safeguarding children's rights in countries of origin. Most importantly the Parliament urges the Commission and Council to draw up a common EU policy on child trafficking that would focus on the judicial and legal aspects as well as on prevention and victim protection; and recommends the appointment of a high-level representative for children's rights to both the Council and the Commission who would ensure overall co-ordination of all EU policies related to children.⁸

5 <http://www.unhchr.ch/html/menu3/b/33.htm>

6 Council Framework Decision on combating trafficking in human beings, 19 July 2001, 2002/629/JHA and Council Framework Decision on combating the sexual exploitation of children and child pornography, 22 December 2003, 2004/68/JHA.

7 Lost Kids, Lost Futures: The European Unions Response to Child Trafficking, Mirjam Van Reisen and Ana Stefanovic, *Terre des Hommes*, 2004, pp.25-26

8 *Ibid.* P.33

A further highly positive move has been the establishment in 2003 of the Experts Group on Trafficking in Human Beings whose work includes building on the recommendations of the Brussels Declaration of September 2002 on protection for trafficked children. Equally worthy of notice is the adoption in 2004 of the Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.⁹

In 2005, the Council of the European Union issued an 'EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings', as required by Section 1.7.1 of the Hague Programme.¹⁰ The Plan indicates, in particular, that all EU Member states should ensure that the human rights of victims of trafficking are protected fully at all stages of the process, through such measures as: the introduction of an appropriate referral mechanism to enable the early identification and referral of trafficked persons; the development of an appropriate governmental coordination structure; the criminalization of human trafficking; the protection of potential victims; prevention strategies specific to vulnerable groups such as women and children; and political dialogue with third countries on the human rights dimension of anti-trafficking policies. The Plan further states that "member states and the Commission should ensure that EU anti-trafficking policy reflects a child rights approach based on globally recognized principles, respecting in particular the principles laid down in the UN Convention of the Rights of the Child and taking account of the Council of Europe Action Programme on Children and Violence."¹¹

In 2006, an 'EU Strategy on the Rights of the Child' was adopted, laying down the key principles of the future EU intervention in this policy area.¹² Although referring to rather than focussing on trafficking, the EU Strategy highlights some of the issues and should help support the right of trafficked children at EU level.

Against this background, this paper has identified five key policy challenges that need to be addressed when considering the rights and special needs of trafficked children in the EU. These relate to issues of definition; awareness and identification; data and statistics; protection under the law; and treatment of child victims of trafficking. 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 trafficked 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.

9 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities *OJ L 261, 6.8.2004, p. 3-3 (CS, ET, LV, LT, HU, PL, SK, SL) OJ L 261, 6.8.2004, p. 19-23* http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2004&nu_doc=81

10 EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_311/c_31120051209en00010012.pdf

11 Ibid. Para 3 (v).

12 *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

2.0 Current state of affairs and key policy challenges

What is Trafficking

Although there is no clear, all-embracing definition of child trafficking within the EU legal framework, a frequently used definition is that provided in the Palermo Protocol involving the illegal transportation of children for the purposes of exploitation.¹³ Trafficking can be internal to a country or between States. Transnational trafficking differs from other forms of illegal migration in that it is not done with consent, although the lack of consent often relates to the final aim rather than the journey itself. In some cases threats, coercion or even abduction may be used but in the majority of cases traffickers prey on the vulnerability of the poor or others living in extreme conditions. In many cases enticements of opportunities for education and employment are used to dupe the victim and/or their family into believing they are doing the best for their child by enabling him/her to escape their dire circumstances and head for a better life. In others, poverty stricken parents see their children as an asset that can be rented or sold to improve the quality of their own lives.

Trafficking comes in many different forms. The most frequently quoted cases are of children trafficked into prostitution, domestic service and forced labour. However, other reports refer to children being trafficked to take part in burglaries, pick pocketing and other activities organised by criminal gangs. Children are also recruited and trafficked to earn money for others by begging or end up in an informal economy earning money as street-dealers or car-window cleaners.

Children may also be trafficked for commercial adoption. For example, UNICEF estimates that 1,000 to 1,500 Guatemalan babies and children are trafficked each year for adoption by couples in North America and Europe. EN-ACT refers to Bulgarian babies being sold in foreign countries and in Particular

13 For a formal definition of trafficking see the UN “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children” (also known as the Palermo Protocol), 2000, Article 3, where trafficking is defined as:

- (a) recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Greece.¹⁴ Terre des hommes estimates that international adoption generates a turnover of some EUR 5 billion a year and that whilst started in a humanitarian spirit, is becoming today a business which takes the form of trafficking.¹⁵

Elsewhere, the UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda has identified forced marriage as trafficking and takes the view that the distinction between forced marriage and arranged marriage is a tenuous one.¹⁶

Awareness and Identification

Trafficking in children is a crime in which it is often as difficult to identify the victim as it is the perpetrator. Whilst in some cases children may be abducted by traffickers or their parents threatened, in others they may be handed over by parents in the belief that they will be given education or employment, unaware that their children are being trafficked or that the end result will be abuse and exploitation.¹⁷ There may be a similar lack of awareness on the part of border authorities regarding the signs to look for, or too strong a focus on trafficking for sexual exploitation which blinds authorities to other forms of trafficking.

Victims may be reluctant to report or describe their experiences for fear of being arrested and/or removed as an illegal entrant rather than being treated by the authorities as a victim. This might be as a result of unfounded fears instilled by the trafficker or based on experience of what has happened to others. They may also be fearful about repercussions and reprisals from the traffickers both for themselves and for their family in their country or origin, or the sexual abuse they may have suffered might mean that they are no longer acceptable within the culture of there. All of these factors combine to make trafficking in children extremely difficult to recognise. In a report by ECPAT UK the author Carron Somerset observes that many of the social workers interviewed (the research was conducted during 2003) felt that they may have missed cases of trafficking through not being aware of the issue.¹⁸ Some social workers did not know what child trafficking was or confused it with smuggling. However, when asked whether they had dealt with children who had been exploited, they recognised these as trafficked children. They were only aware of the issue if they had individual cases but because caseloads are not shared, that knowledge was not being spread amongst colleagues.¹⁹ The report also noted a poor response from the police when social workers approached them with con-

14 A Report of Child Trafficking : Bulgaria, Denmark, Italy, Romania, Spain, United Kingdom, European Network Against Child Trafficking (ENACT), 2004, p35

15 http://www.tdh.ch/website/tdhch.nsf/0/trafficking_adoptionE

16 Report of the Special Rapporteur on trafficking in persons, especially women and children, 5th Session of Human Rights Council, 2007. Accessed on 8/4/08 via http://www.ngoic.org/_upload/2007/6/A-HRC-4-23_ISHRsummary-220356.pdf

17 http://www.nspcc.org.uk/Inform/policyandpublicaffairs/policysummaries/trafficking_wdf50905.pdf accessed 8/4/08

18 ECPAT: *Cause for Concern? London Social Services and Child Trafficking*, London:ECPAT2004, <http://www.antislavery.org/homepage/antislavery/Cause%20for%20Concern.pdf>

19 Ibid.p21

cerns for a child's safety. Some social workers surveyed said that the police 'don't want to know' and officers treated the children as absconders or asylum seekers, particularly if they were over 16, rather than child protection cases.²⁰

Data and Statistics

Numerous sources consulted during the preparation of this report speak of the lack of reliable and robust data on trafficking in children.

In a report prepared with financial support from Terre des Hommes the authors refer to the "widely acknowledged" problem of data being either unreliable or unavailable, particularly in relation to child trafficking.²¹ Moreover, as an indicator of the lack of progress over the years, the authors go on to refer to a claim in 1998 by the International Organization for Migration (IOM) that no European country could provide reliable statistics concerning the scale of trafficked women and children within or into its territory. In a report published in 2003, UNICEF referred to the fact that there was still no substantial study based on empirical research into the trafficking of children in Europe.²²

Moving forward, a report in 2006 from the US Government Accountability Office (GAO) records strong caveats about the robustness of data, in this case at a global level, due to weaknesses in the methodology and gaps in the data.²³ The report also refers to country data frequently not being available, reliable or comparable and points to what it recognises significant discrepancies between estimates of the number of victims of trafficking and those actually observed.²⁴ Similar criticisms of data quality in this field are widespread and it is only appropriate in a report such as this to refer to a few examples as a sample. It is also noteworthy that the problems of data quality are still current as evidenced by the submission of papers to a recent 2008 conference in Vienna on trafficking in human beings.²⁵

There are numerous reasons for the poor quality of data in this area:

- A lack of standardised methods of data collection for the child victims of trafficking making it difficult to draw comparisons between states.
- Failures by authorities to recognise trafficked children as victims rather than criminals.

20 Ibid pp.33-34

21 Lost Kids, Lost Futures: The European Unions Response to Child Trafficking, Mirjam Van Reisen and Ana Stefanovic, Terre des Hommes, 2004

22 Somerset, C. Donati, F. Plaza, P. & Gorton J. End Child Exploitation: Stop the Traffic, UNICEF UK, London, 2003.

23 HUMAN TRAFFICKING, Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad, GAO, 2006

24 Ibid p.10

25 Paper for the workshop 'quantifying trafficking, its impact and the response to it' in the context of the Vienna Forum of UN.GIFT, February 2008

- Failure to distinguish between children and adults in the data that is collected on trafficking.²⁶

Issues noted by GAO include:

- Victims being afraid to come forward.
- The lack of countries systematic data collection on victims.
- The focus on sexual exploitation/lack of attention paid to other forms of trafficking in data recording.
- The methods and sources used to estimate the number of unreported victims.
- The inclusion of national as well as transnational data.
- Recording by some agencies of events rather than the number of individuals.
- Different definitions of trafficking.
- Mixing of irregular migration and trafficking in official statistics.²⁷

These issues relate both to data assembled from criminal statistics as well as data on victims taken from reports, observation and other methodologies. UN.Gift, for example, notes issues affecting data quality as including the definition of trafficking, access to criminal statistics, whether investigations, prosecutions or convictions are being counted and the priority and resources being allocated to trafficking in a particular country at a particular time.²⁸ Meanwhile an IOM study conducted in 2005 provides a comprehensive overview of the problems of research into trafficking and in particular the problems of research into the “hidden population” of victims of trafficking and acquiring a representative sample.²⁹ Most research is small scale and conducted in relation to those who have come to the notice as in need of assistance but the extent to which they are representative of the population is unknown³⁰.

A report from ENACT provides an insight into how some of these issues manifest themselves in practice.³¹ The report looks, *inter alia*, at data on trafficking from countries of origin (Bulgaria, Romania), in countries of transit and destination

26 Lost Kids, Lost Futures: The European Unions Response to Child Trafficking, Mirjam Van Reisen and Ana Stefanovic, Terre des Hommes, 2004, p.11

27 HUMAN TRAFFICKING, Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad, GAO, 2006, pp.10-16

28 Background paper for the workshop ‘quantifying trafficking, its impact and the response to it’ in the context of the Vienna Forum of UN.GIFT, February 2008

29 Data and Research on Human Trafficking: A Global Survey, IOM 2005, Offprint of the Special Issue of International Migration Vol. 43 (1/2) 2005 edited by Frank Laczko and Elizbieta Gozdziaak

30 Ibid p.8

31 A Report of Child Trafficking ; Bulgaria, Denmark, Italy, Romania, Spain, United Kingdom, European Network Against Child Trafficking (ENACT), 2004

(Italy, Spain) and countries of destination (Denmark, UK). The report is presented from a human rights perspective and acknowledges the difficulty in assessing the size of the problem: it does not necessarily involve irregular entry; data may be based on different sources; and the lack of a unified system can lead to double counting³². Nor do criminal statistics provide reliable evidence as these focus on the perpetrator rather than the victim. Given these reservations, and as an indicator of the position in the above-mentioned countries, the report reaches, in particular, the following conclusions:

- Denmark: There was very limited knowledge about the number of minors that are trafficked to Denmark. There was knowledge on the part of individual police jurisdictions and NGOs about problems relating to trafficking in children and there had also been media reports of specific cases. But there were no counter-trafficking agencies in Denmark able to provide a general estimate of the number of trafficked children.³³
- Italy: The only reliable and available data came from the statistics compiled by the Equal Opportunity Department on the number of permits for social protection issued, which showed that in the period between March 2000 and February 2001 there were 240 cases of underage girls entering social protection programmes.³⁴
- Spain: Researchers identified recorded data for 274 sexually exploited children (2002).³⁵
- UK – The report records that there were no reliable statistics on trafficked children. However, based on limited reports from Social Services, NGOs, Police and immigration control it was estimated known that there were at least 250 known children victims of trafficking in the UK although the real figure was thought to be far higher.³⁶

Elsewhere a report from the German police flowing from investigations, with a strong focus on sexual offences, conducted during 2004, identified 79 child victims of trafficking including 26 German nationals.³⁷ Specific reference is made to this report as a further example of emphasis placed on sexual exploitation and the bias that inevitably emerge in drawing up figures and estimates.

Despite these problems, positive steps are being taken and examples of good practice can be seen in the Netherlands where a National Rapporteur on Trafficking in Human Beings provides quantitative data on trafficking drawn from the

32 Ibid p.33-34

33 Ibid p.42

34 Ibid p.54

35 Ibid p.73

36 Ibid. p.82

37 Trafficking in Human Beings, Bundeskriminalamt, Section OA37, August 2005) p.10

police and NGOs and including a breakdown showing minors.³⁸ UNDOC has also established a research project that aims at systematically collecting official crime and criminal justice related data on trafficking including victims.³⁹

In addition, mention should be made of the on-going activities and outputs of the 'EU Experts Group on Trafficking in Human Beings'.⁴⁰ The objective of this sub-group, which was established to assist the Commission in implementing the EU Action Plan 2006-2010 to develop an EU Strategy to measure crime and criminal justice [COM(2006)437], is to "develop harmonised definitions and associated indicators that will facilitate greater comparability of data across EU member states on the crime area under consideration". The outputs of the sub-group are provided to the Eurostat Working Group of producers of crime statistics.

In its report of December 2007, the Experts Group proposed ideas about how to prepare harmonised operational definitions of human trafficking, and in relation to this also looked at the development of indicators in this field. The sub-group emphasised the need for EU-wide statistics on human trafficking in order to assess trends and monitor progress in the implementation of policies. It also stressed the need for the collection of statistics that go beyond the collation of existing official crime statistics and for data to be collected from other relevant sources, such as NGOs or labour inspectorates. The Group also proposed that Member States should set up "national contact points", which may be embedded in national statistical offices or research centres to design a simple "template" to facilitate a coordinated collection of key aggregate statistics. The first step towards the development of such a tool is "consensus on the rough and ready operational definitions of trafficking applied in daily practice by police investigators, labour inspectors, prosecutors and relevant NGOs". The Group further recommended the use of the so-called DELPHI methodology to produce a European consensus on a set of operational definitions.

Protection under the Law

The UN Convention on the Rights of the Child requires State Parties to take all appropriate measures to prevent the trafficking of children for any purpose or in any form. The Treaty on European Union explicitly refers to trafficking in human beings and offences against children. Other EU legal and policy instruments addressing trafficking in children were referred to at the beginning of this Section and are described in further detail in Annexes 2 and 3 of this report. However, as referred to above, the majority of instruments have been orientated towards criminal matters rather than the treatment that should be accorded children as

38 See Trafficking in Human Beings, Supplementary figures, Fourth report of the Dutch National Rapporteur, Bureau NRM, The Hague, 2005.

39 UNODC Situational Analysis of National Responses to Human Trafficking: General Workplan, UNODC, Vienna, June 2007

40 COMMISSION DECISION of 25 March 2003 setting up a consultative group, to be known as the 'Experts Group on Trafficking in Human Beings' (2003/209/EC) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:079:0025:0027:EN:PDF>

victims. That is not to say that children do not receive protection under the law. Children are considered as vulnerable victims in the application of Article 2(2) of the Council Framework Decision on Standing of Victims in Criminal Proceedings. The Council Framework Decision on Trafficking in Human Beings also requires children to be given specific treatment. However, the problem remains that there is an absence of detailed child centric instruments relating specifically to the particular needs of child victims of trafficking.

Treatment of Child Victims of Trafficking

The need for special treatment of trafficked persons is recognised in the Council of Europe Convention on Action against Trafficking in Human Beings (2005) which provides a framework for consideration of the treatment of child victims of trafficking. The OSCE has also provided constructive recommendations for action.⁴¹ Amongst NGOs, good practice guidance has been produced by UNICEF⁴² and in Save the Children's Separated Children in Europe Programme "Statement of Good Practice"⁴³.

Trafficking deprives child victims of the exercise of a wide range of rights, including the right to preserve his or her identity, the right to education, to health-care, to rest and leisure as well as the right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment and not to be deprived of liberty unlawfully or arbitrarily.⁴⁴ Article 12 of the Council of Europe Convention sets the minimum care and support that should be provided to victims of trafficking including secure accommodation, medical treatment, translation and interpretation, counselling and information, and access to education for children. Article 15 provides for the right to information of judicial and administrative proceeding and the right to legal assistance.

However, speaking at a roundtable discussion in 2006, Judita Reichenberg, from UNICEF, took the view that current child protection systems were failing because they were "not sensitive and timely in the identification and response to risks". There was often no person or "guardian" appointed specifically to assist them and to protect and promote their best interests during the process. Nor do they receive adequate responses they from those who might also be expected to provide support whether they be teachers, social workers or law enforcement agencies.⁴⁵ Children have the right to education in the country to which they have been trafficked and the authorities into whose care they fall have an obligation to ensure that they

41 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of trafficking for Protection and Assistance, July 2005, http://www.osce.org/documents/pc/2005/07/15591_en.pdf

42 UNICEF: Reference Guide on the Protection of the Rights of Child Victims of Trafficking http://www.unicef.org/ceecis/protection_4440.html

43 http://www.savethechildren.net/separated_children/good_practice/index.html

44 Ibid. p.18

45 Terre de homes & UNICEF *Summary of the Roundtable Child Trafficking in Europe - How to Improve Prevention. Drawing Lessons from Field Practice for an Improved European Policy* Brussels, October 18th, 2006

are able to resume their education as quickly as possible and in accordance with the same arrangements as apply to all children who are citizens of the country in which they find themselves. They cannot be simply dropped into an educational system without their special needs and the harm they have suffered being taken into account, and addressed appropriately.

Similar challenges apply in health care. UNICEF points out that many of the physical problems suffered by trafficked children are as a result of ill treatment or neglect and that although the more obvious symptoms may be treated in the immediate post-trafficking phase, others may not manifest themselves until some time later.⁴⁶ An informed awareness of the problem and appropriate training are required if these needs are to be addressed effectively.

Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings requires each Party to provide a recovery and reflection period of at least 30 days, when there are reasonable grounds for suspecting that a person has been a victim of trafficking. The aim of this period is to allow victims to recover and escape the influence of traffickers and/or to make an informed decision on co-operating with the authorities. However, research for this paper has revealed that whilst some MS provide safe houses for trafficked people, children are more likely to be passed into the care of a local authority social worker and/or other accommodation for irregular unaccompanied minors or homeless children without the specialist support, security and safeguards which their particular circumstances require; or they may be fostered but again without the foster parents receiving the specialist training and support they require. UNICEF comments that many States look primarily at the activity as a crime focusing their efforts on the perpetrators rather than the victims. In some cases the provision of shelter may be dependent on whether the trafficked child co-operates with the authorities in mounting a prosecution. As UNICEF notes, 'in the case of children, law enforcement officials determined to detect, prosecute and punish criminals may be sensitive to the needs of the child, but unless the rights of the child are fully respected and protected, the requirements of the CRC are not met.'⁴⁷

Article 14 (1) of the Council of Europe Convention also states that victims should be issued with a renewable residence permit where authorities consider it necessary owing to their personal situation or for co-operation in an investigation or criminal proceedings. This has since been incorporated into the Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.⁴⁸ A second

⁴⁶ Ibid. p.19

⁴⁷ UNICEF: *Reference guide on Protecting the Rights of Child Victims of Trafficking in Europe*, p.13

⁴⁸ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities *OJ L 261, 6.8.2004, p. 3-3 (CS, ET, LV, LT, HU, PL, SK, SL)OJ L 261, 6.8.2004, p. 19-23* http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2004&nu_doc=81

clause refers specifically to child victims and states that such residence permits should be issued in accordance with the best interests of the child. In some cases this again raises the tension between viewing a child as a potential witness or a victim with the risk that an offer of protection becomes an inducement to testify.

There are, however, also examples of good practice. In Belgium, for example, short-term residency and work permits are available to trafficking victims and can be extended to permanent residency. Italian law provides a renewable six-month residence permit for severely exploited or abused foreign citizens whose safety is endangered by attempting to escape. Their access to the permit is not conditional on providing testimony and sets an important precedent. In both cases, specific provisions for child victims of trafficking ensure special protection for those below 18 years of age, including enrolment in school or access to vocational programs as an automatic element of recovery and psychosocial support.⁴⁹

Long-term assistance for trafficked children raises issues for and against return but whatever the outcome it must be durable and in the best interests of the child.⁵⁰ In many respects, the argument presented and procedures proposed are very similar to those that many human rights commentators would wish to see applied to all irregular migrant children⁵¹. However, there are also special factors that need to be taken into consideration as a result of the act of trafficking such as whether a child was abducted, whether the acts in which the child has been involved make him/her socially and culturally acceptable in the country of origin and capable of re-integration and whether he/she is safe from retribution and being re-trafficked. The Institute of Race Relations (UK) comments on the risks associated with return programmes that implicitly assume that it is safe to send trafficked children back to families/care facilities/state orphanages in the home country where they could well end up being re-trafficked.⁵² The relevance of these and other factors will vary from case to case but to apply them effectively requires a thorough understanding of the nature and impact of trafficking on children – not as participants but as victims.

49 See Lisa Kurbiel: *Reining in Child Trafficking in the New EU*, Washington: Migration Policy Institute, July 2004, <http://www.migrationinformation.org/Feature/display.cfm?id=238>

50 See UNICEF, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe

51 See Separated Children in Europe Programme et al

52 Response to Eurasyllum's questionnaire used for this study

3.0 Conclusions and recommendations

Issues of Definition

One of the fundamental problems in responding to trafficking is the lack of a clear definition on which there is international consensus. Although the Palermo Protocol does offer a high-level definition, it does not provide a sufficiently precise explanation of the phenomenon to give the reader a clear understanding of what is (and what is not) trafficking.⁵³ The need for a clear definition that can be communicated to legal and policy experts, practitioners in the range of fields concerned, and to wider audiences is critical to data collection, and to creating increased awareness of the problem and tackling trafficking in children effectively. In their work “Lost Kids, Lost Futures” the authors refer to the lack of definition as “the greatest impediment to an effective EU policy to fight trafficking in children” and offer an explanation for how the links identified between sexual exploitation and trafficking have shaped the policy response to trafficking in children leaving children who have been exploited for other purposes unprotected.⁵⁴

Recommendation 1: The EU should draw up a definition of trafficking in children to include the behaviours and activities which represent trafficking in children based on existing Conventions, Protocols and other material. The definition should be easily understood and meaningful to both practitioners and wider audiences.

Identification and Awareness

Awareness of child trafficking in its various forms is a pre-requisite to being able to tackle the problem. If victims are not identified as such they cannot be provided with the special care they require, nor can effective action be taken against the perpetrators. Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings sets out a requirement for the provision of persons trained and qualified in preventing and combating trafficking and in identifying and helping victims. The UN Global Initiative to Fight Human Trafficking has commented that to identify victims of trafficking requires special knowledge by law enforcement officials, such as the ability to distinguish trafficking from smuggling and knowledge of trafficking indicators.⁵⁵ The Italian Documentation Centre

53 UN Protocol of 2000: To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. Childhood and Adolescence Documentation and Analysis Centre: *Position paper on Draft report of the European Experts Group on Trafficking in Human Beings*, p.5, for discussion at the Consultative Workshop in the framework of the EU Forum for the Prevention of Organised Crime (Brussels, 26 October 2004).

54 Lost Kids, Lost Futures: The European Unions Response to Child Trafficking, Mirjam Van Reisen and Ana Stefanovic, Terre des Hommes, 2004, p.6

55 http://www.ungift.org/index.php?option=com_content&task=view&id=226&Itemid=574

has also referred to the need for immigration and other officials to be able to identify and look out for the ‘tell tale signs’ of trafficking.⁵⁶ Elsewhere, ECPAT UK has commented on the need to raise awareness amongst social workers and for them to be provided with the training and guidance material required to address the problem.⁵⁷ Similarly, a study conducted for the UK Home Office (cf. Case Study 2 in Annex 1 of this paper) calls for greater awareness at all levels, a more joined up approach between agencies, an improved will to tackle the problem of child trafficking and a change in culture and approach to migrant children at risk.⁵⁸

It is recognised that some MS have already done a lot of work in this area.⁵⁹ However, the challenge is the scale of the requirement: firstly in terms of the number of people involved (police, border officials, social workers, teachers, health workers etc); and secondly because of the breadth of the requirement as trafficked children move away from their initial care into mainstream education and health care where they may still have special needs. These issues of training and awareness cannot be addressed in an *ad hoc* way. They require MS to conduct an effective communications programme and a formal training needs analysis to identify the key players and their training requirements followed by the development of a strategy (and the allocation of appropriate funding) incorporating training and other interventions designed to meet the needs of particular groups. These will vary from broad awareness of the issues to more detailed and professional training, for example on the development of detailed indicators and child-friendly interview techniques for those in the vanguard of addressing the problem. Case Study 1 in Annex 1 of this report provides an example of what can be achieved in the area of law enforcement. The EU could also play a valuable role by drawing up a good practice methodology for training needs analysis and thus avoiding the need for re-inventing the wheel across MS.

Recommendation 2: The FRA or the Member States should conduct an analysis of good practice and what has been shown to have worked in (a) training and raising awareness amongst those likely to encounter trafficked children at both a primary and secondary stage of involvement; and (b) in the treatment of victims of child trafficking

56 Ibid. p. 9

57 ECPAT: *Cause for Concern? London Social Services and Child Trafficking*, London:ECPAT2004, <http://www.antislavery.org/homepage/antislavery/Cause%20for%20Concern.pdf>

58 CEOP :*A Scoping Project on Child Trafficking in the UK*, London: Home Office and the Border and Immigration Agency, June 2007 <http://www.homeoffice.gov.uk/documents/ceop-child-traffick-report-0607>

59 www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm

Data Collection

The collection of robust data is crucial to the development of anti-trafficking policies and such data are currently not available.⁶⁰ At a macro level, data needs to be gathered in a consistent, systematic way to allow for comparisons between MS, and disaggregated to a level that makes its significance understandable and meaningful. For operational purposes it needs to be sufficiently detailed to enable authorities to develop indicators to aid identification of victims, their location and the type of exploitation they have suffered and to guide the most appropriate interventions. From a policy perspective, data is required to understand what works. In enforcement terms, it is needed to facilitate the development of an intelligence-led approach and thereby to tackle the problem on the ground. Data collection also needs to be comprehensive, covering all types of trafficking if it is to achieve these goals.

A number of steps are required to achieve these outcomes. The first relates back to Recommendation 1 above on the need for a comprehensive definition of trafficking in children. The broad headings under which data is collected should flow from this definition to ensure it covers all aspects of the problem. The second relates to the need for a clear set of guidelines on methodology and rules for the levels of disaggregation required (sex, age, etc). The key here is the need for a common approach amongst MS with regard to the type of data collected and the way it is gathered: reliable comparisons between MS will be impossible without consistency in their approach to data collection. These initial tasks and the development of a data framework should be undertaken at the EU level, and should take full account of the need for data confidentiality. The EU should also take on the role of consolidating and analysing returns from and between MS (for example via Eurostat). Robust data combined with detailed analysis will provide a far better understanding of the problem within individual MS and the basis for the development of policies to address it. Case study 2 in Annex 1 of this report indicates the benefits that can be achieved from a detailed analysis of the problem.

Recommendation 3: The European Commission should consider the possibility of proposing concrete guidelines to MS for the collection of comprehensive and robust data on child trafficking through development of a data framework and associated guidelines that Member States can use to gather data in a common and consistent manner. The competent European bodies, e.g. Eurostat, building in particular on the on-going work of the EU Experts Group on Trafficking in Human Beings, and the EC-ILO project on human trafficking indicators, should collate these data to allow for comparisons between Member States and the development of effective anti-trafficking policies. Full account should be taken of the need for data confidentiality.

⁶⁰ *Communication from the Commission to the European Parliament and the Council, Fighting Trafficking in Human Beings – an integrated approach and proposals for an action plan*, p.9, Brussels, 18.10.2005, COM(2005) 514 final

Assistance and Protection

The benchmark for dealing with trafficked children can be found in Guideline 8 of the UNHCR's "Recommended Principles and Guidelines on Human Rights and Human Trafficking".⁶¹ Articles 12, 13 and 14 of the Council of Europe Convention on Action Against Trafficking in Human Beings also describe in some detail the rights to be accorded to trafficked persons including access to services, a period of reflection and residence permits.

Trafficking in children is also covered in a number of EU policy and legal instruments including the Council Directive on the residence permit issued to third country nationals who are victims of trafficking (2004); Council Framework Decision on combating trafficking in human beings (2001); and the Commission Communication on combating trafficking in human beings and combating the sexual exploitation of children and child pornography (2001). However, most of these instruments focus on criminality and measures to suppress trafficking with reference to victims as a by-product. It is unsurprising therefore that despite the responsibilities placed on states via the Convention and other measures, research for this paper indicates that legislation and practice in many MS do not reflect a rights-based approach in the treatment of trafficked children. The UN Committee on the Rights of the Child, for example, has commented that trafficked children may be criminalized or penalised and not always treated as victims, especially when the trafficking is done for the purpose of prostitution or commercial sexual exploitation.⁶² The EC Experts Group on Trafficking has also stressed that States have concentrated on measures in the area of crime control and migration policies, rather than on victim assistance and protection.⁶³ It has also referred to children being treated by law enforcement authorities as illegal migrants and criminalized rather than being treated as victims of trafficking, and that they may be held in detention centres and finally deported to their country of origin.⁶⁴

The adoption in 2006 of the first ever European children's rights strategy is helpful in seeking to shift the balance towards a victim centric, rights-based approach. However, something more specific and focused is required if it is to address the particular problems of trafficked children effectively. Existing guidelines, conventions and instruments already refer to the safeguards required for trafficked children (residence permits, periods of reflection, appointment of guardians etc) but the EU needs a specific instrument on child trafficking covering both prevention and protection if it is to provide a new perspective in which security and the rights of children as victims are equally balanced. There is ample material internationally, within the EU and NGOs which could be considered for inclusion in such a document which would fit well with the environment being created by the "EU Strategy on the Rights of the Child" and the development of policy in support of children's rights. Categorical protection of basic rights also serves to

61 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=category&docid=3f1fc60f4>

62 Response to Eurasylum's questionnaire used for this study

63 *Report of the Experts Group on Trafficking in Human Beings*, Brussels 22 December 2004, p.8

64 *Report of the Experts Group on Trafficking in Human Beings*, Brussels 22 December 2004, p.8

raise the trafficked person's confidence in the State and its ability to protect her/his interests.⁶⁵

Recommendation 4: The EU should consider the development of a specific, legally binding instrument setting out the rights of trafficked children and the protection they should receive in order to provide a child/victim centric approach to trafficking and counterbalance the current emphasis on security and law enforcement. This recommendation, however, would fall outside of the FRA's remit.

The provision of effective initial assistance and counselling to trafficked children has a significant impact on their longer-term care and protection and in supporting their inclusion in the host country or re-integration into the country of origin. Case Study 3 in Annex 1 of this report highlights what can be achieved in this respect in dealing with the special problems of trafficked children. The considerations to be applied regarding a durable solution for the child have been discussed at some length in an associated paper by Eurasyllum for the FRA on irregular migrant children. Some specific issues emerge in relation to trafficked children such as whether their activities or behaviour in the host state may prevent their re-integration into their country of origin; whether, if returned, they or their family would be under threat from the traffickers, particularly if the child had given evidence against them; and whether there is any risk of the child being re-trafficked. However, having taken all of these variables into consideration, the fundamental issue should be the same for trafficked children as for irregular migrant children: whether the proposed course of action is in the best interests of the child – a point highlighted in Article 16(7) of the Convention. Wherever possible the decision should also be informed by the child's own views supported by advice from an independent guardian.

Recommendation 5: In accordance with a recent Resolution of the European Parliament⁶⁶, the Commission should consider developing 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 Commission should also 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'.⁶⁷

65 IOM's response to Eurasyllum's questionnaire used for this study

66 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>

67 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>

Addressing demand/prevention

The most effective action against trafficking in children is one aimed at preventing it happening in the first place. This can take two different forms: in the country of origin and in the receiving country. Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings sets out measures to discourage demand including information campaigns to raise awareness of the problem and educational programmes that emphasise the importance of gender equality and the dignity and integrity of every human being. Other commentators similarly stress the need to address the root causes of trafficking in both countries of origin and destination given their mutual impact on the “pull factors”.⁶⁸

There are many opportunities for improving this position and for raising awareness and influencing demand through schools, television including soap operas and cartoons and via other forms of communication and aspects of the media. The techniques are well known and are used regularly across MS for a wide range of different purposes but research for this paper has found little evidence of their use to promote awareness of trafficking beyond the sexual exploitation of women and children. Nor has it been possible to identify any recent research into public opinion or awareness of the wider definition of trafficking in children.

Whilst the media and similar tools are of value and are seen to have been used effectively elsewhere, information on the current state of public opinion on these issues is a pre-requisite for mounting any type of awareness raising campaign: it informs where and how the messages should be targeted and provides a baseline against which improvement can be measured.

Recommendation 6: Member States should support research into public opinion and awareness of all aspects of trafficking in children as a precursor to mounting an information campaign via the media or other means.

Whilst the measures outlined above focus mainly on the demand side, action is also required on the supply side, in the countries of origin, in order to create a holistic approach that addresses the wider issues of trafficking. It is proposed that specific measures for preventive action should be taken in countries of origin. These might include:

- Programmes aimed at raising awareness for parents and children of trafficking and the risks involved communicated to and via local authorities and community groups involved in education;

⁶⁸ Childhood and Adolescence Documentation and Analysis Centre: *Position paper on Draft report of the European Experts Group on Trafficking in Human Beings*, p.5 for discussion at the Consultative Workshop in the framework of the EU Forum for the Prevention of Organised Crime (Brussels, 26 October 2004)

- Improved care and facilities for single mothers to reduce child abandonment; and improved care in shelters, homes or through fostering for children who have been abandoned including street children;
- Information on how to migrate legally;
- Training of staff in embassies and consulates to raise awareness of trafficking and the signs to look out for;
- Intelligence, training and other technical support on trafficking to source countries and countries of transit; and
- Help-lines for potential victims who may have been approached by traffickers.

More broadly, there is general recognition of the need to address the root causes of trafficking, such as poverty, unemployment, lack of opportunities, gender discrimination; intra family violence and abuse; and marginalisation in countries of origin. Moreover, the problems are not only economic. Cultural, social and educational needs also need to be addressed. The EC Experts Group on Trafficking in Human Beings has commented that prevention strategies should promote the well being of the people in the countries of origin through sustainable development in the social, economic, health and education sectors, with a particular emphasis on women, minorities and children. They should focus on the risk and protective factors associated with trafficking in human beings and victimisation of trafficked persons. All of this of course requires appropriate funds and the EC Experts group has commented that the European Union should allocate resources to finance actions specifically addressed at combating child trafficking both in external relations and within the EU. Prevention mechanisms should be both long- and short-term. Long-term prevention measures include EU aid and support measures to build properly functioning child protection systems within countries of origin, improving access to education particularly for girls, and raising the socio-economic conditions within countries of origin. Targeting children involved in organised crime and their families is also considered essential.⁶⁹

The paragraphs above provide a sample and summary of the wide range of proposals for preventing trafficking in children as a result of action taken in countries of origin. Some require major investment in social or cultural change; in other cases MS may see some improvement as a result of relatively small change in their own procedures. There are, however, inevitably competing priorities for available funds and an analysis of the options is required to ensure that funding is allocated to those areas which evidence suggests are most likely to produce results by reducing trafficking in children. The option and impact of investing larger sums in a smaller number of projects also requires examination in this context.

⁶⁹ *Report of the Experts Group on Trafficking in Human Beings*, Brussels 22 December 2004

Recommendation 7: The EU should identify, with the help of international organisations and NGOs, the wide range of initiatives that have been proposed for helping to prevent children being trafficked by interventions in countries of origin and consider the options for future investment following a careful analysis of what is likely to have the greatest impact on a reduction in the trafficking of children. This recommendation, however, would fall outside of the FRA's remit.

Working together

Tackling trafficking in children requires a multidisciplinary approach with effective co-operation and coordination between all agencies and stakeholders involved. Article 10 of the Council of Europe Convention calls for authorities to collaborate with one another as well as with relevant support organisations so that victims can be identified within the procedure and their special needs met.

The requirement is not only for law enforcement, border officials and prosecutors to work together, but also a range of other bodies, including local authorities, labour unions, labour inspections, employers, employees, international organisations and NGOs. Action is also needed at different levels (local, national, EU) and in different fields (law enforcement, labour standards and social policies) as well as within civil society.⁷⁰ In the UK a trafficking toolkit has been developed to increase awareness amongst the agencies responsible with the aim of helping those who deal with illegal immigrants and trafficking victims to distinguish victims in genuine need and to deal with them appropriately. This includes helping enforcement officers identify traffickers, obtain better evidence and bring successful prosecutions; as well as those with child protection responsibilities to understand the particular requirements of trafficked children.⁷¹ In the Netherlands there is a National Rapporteur on Trafficking in Human Beings who produces an annual report on trafficking; a national (co-ordinating) and specialised public prosecutor in the field of human trafficking; regular meetings of police to discuss trafficking; regional contact officers located within immigration offices; and state financed NGOs and victim assistance programmes.⁷²

Closer working between the key players will also facilitate the exchange of good practice. The Italian Childhood and Adolescence Documentation and Analysis Centre has commented on the need for a network into which all key players can input and obtain the benefits of others in their fight against trafficking.⁷³ The EC Experts Group on Trafficking in Human Beings makes a similar point by referring to the exchange of information at all levels facilitated by national co-ordinators

70 *Report of the Experts Group on Trafficking in Human Beings*, Brussels 22 December 2004, p. 63. See also Case Study No. 3 in Chapter 4 for the benefits of an integrated approach.

71 <http://www.crimereduction.homeoffice.gov.uk/toolkits/tp01.htm>

72 http://www.osce.org/documents/odhr/2002/09/1745_en.pdf

73 *The Italian Childhood and Adolescence Documentation and Analysis Centre: Position paper on Draft report of the European Experts Group on Trafficking in Human Beings to be discussed at the Consultative Workshop in the framework of the EU Forum for the Prevention of Organised Crime*, p.8, Brussels, 26 October 2004

contributing to a “European Anti-Trafficking Network”, built on existing co-operative structures at national and EU level.⁷⁴ There has also been a proposal for the EC to appoint a High-level Representative for Children to ensure the integration of measures in support of trafficked children into all relevant policy areas of the EU institutions.

⁷⁴ *Report of the Experts Group on Trafficking in Human Beings*, Brussels 22 December 2004, pp. 70 and 74

Annex 1: Selected case studies of good practice interventions in support of trafficked 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 trafficked children. The selected case studies 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

Providing law enforcement officials with basic skills

The IOM-Austrian Interior Ministry

“Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking”

The Austrian Federal Ministry of the Interior in cooperation with the International Organization for Migration (IOM) in Vienna, implemented the project “Comprehensive Training for Law Enforcement Authorities responsible for Child Trafficking / Minors” (June 2005-May 2006) with financial support of the European Commission under the AGIS Programme 2005. Good practices on combating child trafficking were collected from law officials with practical experience and presented in the form of a Resource Book containing information on four aspects of dealing with child trafficking: age assessment/identification; investigative methods; interviewing techniques; and cooperation between law enforcement authorities and NGOs/ social service providers.

Many victims of child trafficking will have false documents or none at all. The start of any investigation must be to take all possible steps to determine a child’s identity. Children may be unsure of their age, and if trafficked will in all likelihood have been instructed by their trafficker to lie about their circumstances. Yet age will be a crucial variable for determining their status as victims and for deciding on the best care strategy. This entails a combination of psychosocial and other approaches (dental examination, X-rays, etc.) that should allow the age of a child to be ascertained within a reasonable margin of error within a maximum of two days.

Investigative methods must address multiple concerns: the needs of the (possible) victim; the need to identify other victims; and the need to identify and investigate those responsible for the (alleged) trafficking. Fundamental principles dictate that the needs of the child and the need to identify other possible victims come first. When interviewed appropriately, children can be a credible and highly informative source of information. Interviews are not, however, to be confused with interrogations, and should be carried out only by appropriately trained personnel. Cultural sensitivity, language skills, neutral child-friendly surroundings, and absence of uniforms or other trappings of officialdom are necessary. On the other hand, interviewing officials should never make false promises and must be candid, in a pre-interview briefing, about the purposes of the interview. The Resource Book proposes model questions and lists signs of trafficking ranging from untidy, cheap clothing to precisely the opposite, i.e. inappropriately expensive or stylish attire. Intake interviews, devoted mainly to establishing the circumstances of the case, are to be strictly distinguished from evidentiary interviews, which gather evidence for use in legal proceedings, immigration matters, child protection issues and/or the prosecution of offenders.

The nature of trafficking places a premium on international cooperation, which may involve agencies such as Interpol, the Europol / Eurojust complex, the Shengen Information System, and the Eurodac fingerprint system, in addition to bilateral task forces and regional organisations such as the Southeast European Cooperation Initiative and the Baltic Sea Region Task Force on Organized Crime. Equally important is cooperation between law enforcement officials and NGOs and social service providers having specialised skills related to identification and referral, victim assistance, victim-witness assistance and protection, assessment of the feasibility and preparation of a potential voluntary return, and return to and reintegration in the country of origin if it is in the best interests of the child. The Resource Book presents case studies of good-practice collaboration drawn from France, Italy, Belgium, and Albania.

For more information on this initiative, please see:
http://iom.ramdisk.org/en/artikel.php?menu_id=43&artikel_id=473&history_back=true

Case Study 2

Scoping the problem: a profile of trafficked or likely trafficked children in the UK

An initiative of the UK Home Office

In the context of its Action Plan on Tackling Human Trafficking, the UK Home Office in mid-2006 commissioned the Child Exploitation and Online Protection Centre (CEOP) to conduct a preliminary assessment of child trafficking in the UK. The research team collected and collated information and data from 41 police forces and law enforcement agencies, 20 Children's Services, 21 Border and Immigration Agencies and eight NGOs in the UK. The period covered was March 2005 to December 2006, and where the victim was still under the age of 18 years in March 2005.

The team identified 330 unique cases of children that fitted a profile developed from the London Area Child Protection Committee (LACPC) profile. These cases were categorised into four levels: 70 children were categorised as level 1 (low probability of trafficking), 70 as level 2 (medium probability), 85 as level 3 (high probability) and 105 as level 4 (very high). Forty-four source countries in total were identified in the study and varied in regions, mainly consisting of the Far East, South East Asia, Central Asia, South Asia, West Africa, Eastern Europe and the Baltic states.

Children falling into Levels 3 and 4 are of greatest interest because of the high probability that they were trafficked. While boys and girls were almost equally represented in the dataset as a whole, girls predominated in Levels 3 and 4 -- 87% in the latter class. Of these Level 4 girls, 65% were trafficked or suspected to have been trafficked for the purpose of sexual exploitation, 23% were trafficked or suspected to have been trafficked for the purpose of domestic servitude, and the remainder were trafficked or suspected to have been trafficked for purposes of drug trafficking, cannabis cultivation, and other forms of criminal activity, adoption, servile marriages, benefit fraud and other forms of labour exploitation such as in restaurants. The nature of exploitation for boys was generally less clear. In 183 (55%) of the 330 cases identified, the children were found to be missing. In a handful of cases, the children were suspected to have been re-trafficked.

The study concluded that traffickers of children range from those that are highly organised and linked with other organised crime such as vice, and those who are opportunistic and operate on an informal basis. Informal trafficking tends to be mainly in regard to exploitation in domestic servitude, as well as some instances of sexual exploitation. Trafficking for domestic servitude is often carried out by families that bring over children from source countries in order to look after their children and family members. Many children trafficked into the UK claim asylum during and as part of the trafficking process. Systems and procedures for child safeguarding, protection and asylum are exploited by traffickers.

One of the challenges in addressing child trafficking is that data are often little more than speculative, giving no solid foundation for policy recommendations. The CEOPS study stands out as an excellent example of how research can deepen our understanding of child trafficking and provide decision makers with a reliable basis on which to design responses.

For more information on this initiative, please see:
www.homeoffice.gov.uk/documents/ceop-child-traffick-report-0607

Case Study 3

Dealing with the needs of trafficked children: Lessons from the Utrecht Perspective Project

An initiative of the Refugee Council of Utrecht

Utrecht Perspective was founded in 2003 by the Refugee Council of Utrecht with funding from the municipality of Utrecht, the Province of Utrecht, and the European Refugee Fund (ERF). Working with both former unaccompanied minors and trafficked children, the centre has amassed a wealth of experience on how to deal with the special problems of children who have been trafficked.

Many minors are trafficked to the Netherlands from China, West Africa, and East Africa for purposes of prostitution. They have little awareness of their rights or their status as victims. Experience with unaccompanied minors shows that, in the absence of targeted awareness raising and counselling, such awareness often comes only with prolonged exposure to the Dutch educational system. Yet, through counselling and fostering peer-to-peer relations, Utrecht Perspective has developed an approach that addresses the urgent problems of trafficked children without waiting for the long-term process of social integration to run its course.

Among the features of the approach are: an integrated approach (as opposed to one section for legal advice, another for social work, etc.); an emphasis on culturally sensitive approaches to counselling as opposed to a typically Western individualistic style; and, above all, an open-ended and inclusive approach to client service. Some trafficked children will wish to obtain a residence permit and stay in the Netherlands, some will wish to return to their country of origin, and all have the right to the best advice and support facilities that are available to fit their special case.

Many trafficked children were associated with child-soldiers or were child soldiers themselves. A major component of Utrecht Perspective's work has been to encourage a social bond between these potentially unstable and even dangerous children and the centre and its work. In four years, there have hardly been any problems with unleashed aggression or threatening behaviour. Criminality is low and long-term compliance is high. Ethnic clustering, extreme when the centre started, is no longer a problem.

In counselling trafficked children, Perspective was also able to build its own awareness and knowledge base regarding the vulnerable position of the youngsters and the mechanics of the victimisation and trafficking process. These insights were disseminated, thus raising awareness and improving competences throughout the country and Europe as well. The support centre received the prize for social work in the City of Utrecht in 2004 and the prize for safety in 2005; in 2007, the centre was nominated for the Eurocities Award in Gdansk. Costs are low – about Euro 1,000 per client per year – far lower than the potential costs of the social pathologies that can arise from the presence trafficked children left to their own devices and prey to re-trafficking and criminal exploitation.

For more information on this initiative, please see:
<http://www.vluchtelingenwerk.nl/46-English.html>

Case Study 4

Special measures for dealing with trafficked children: UNHCR Guidelines

UNHCR's "Recommended Principles and Guidelines on Human Rights and Human Trafficking"

The state of the art in dealing with trafficked children can be found in Guideline 8 of the UNHCR's 2002 "Recommended Principles and Guidelines on Human Rights and Human Trafficking," devoted to "Special measures for the protection and support of the child victims of trafficking." Citing the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation, the Guideline calls for children to be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

In particular, the Guideline calls for:

- Ignoring evidence of deception, force and coercion when defining trafficking where the person involved is a child.
- Rapid identification of victims
- Ensuring that child victims are not subjected to criminal procedures or sanctions for offences related to their having been trafficked.
- In cases where children are not accompanied by relatives or guardians, identifying and locating family members; facilitating reunion of trafficked children with their families where this is deemed to be in their best interest and, where it is not or reunion is impossible, establishing care arrangements that respect the rights and dignity of the trafficked child. Where a child is capable of forming his or her own views it is to be ensured that he or she enjoys the right to express those views freely in all matters affecting him or her, particularly concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
- Adopting specialised policies and programmes to protect and support child victims, including appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
- Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
- Protecting, as appropriate, the privacy and identity of child victims.
- Ensuring the adequate and appropriate training of persons working with child victims of trafficking

Of special importance are the measures to prevent re-victimisation, through the criminal justice system, of trafficked children. As also stressed in the Optional Protocol to the Convention on the Rights of Children related to the sale of children, child prostitution, and child pornography, children victims of trafficking should never be criminalised for illegal activities related to the fact that they have been trafficked.

For more information on UNHCR's Recommended Principles and Guidelines, please see: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=category&docid=3f1fc60f4>

Case Study 5

European international cooperation on child trafficking in the Baltic Sea region

An initiative of the Council of Baltic Sea States

Child trafficking has a decidedly regional dimension; thus, the nature of the problem in Southeastern Europe may be different to that in Eastern Europe or other parts of Europe. The Working Group for Cooperation on Children at Risk (www.childcentre.info) is a working body depending on the Children's Unit of the Council of Baltic Sea States (www.cbss.st). Created in 1992, the CBSS is comprised of the eleven states having a Baltic seacoast (Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia, Sweden) plus the European Commission. The CBSS is responsible for overall co-ordination of intergovernmental cooperation in the Baltic Sea Region. Its secretariat is located in Stockholm.

The WGCC was established at a meeting of CBSS high officials responsible for Children's Issues on 31 October 2001 in Stockholm. The WGCC is tasked with identifying, supporting and implementing cooperation on children at risk with the states and partner organisations in the region. The WGCC has set five priorities for its work: child sexual exploitation; separated and trafficked children in the region; children in institutions; children in the street; and children that commit crimes and lead a self-destructive life. The WGCC plan of action for work with unaccompanied and trafficked children was reinforced and prolonged, and its importance again re-affirmed by the Heads of Government at the Baltic Sea Summit in Reykjavik in June 2006.

The WGCC programme on unaccompanied and trafficked children has identified government agencies to serve as National Contact Points (NCPs) in all member countries except Russia and Germany. Given their importance as countries of origin, NCPs have also been identified in Belarus, Ukraine and Moldova. NCPs serve as an information resource and assist officials, as well as NGOs, who are attempting to deal with the cases of individual children. They are also a natural source of information in assembling a comprehensive regional picture of the situation.

With the NCPs as its main partners, the WGCC project "Baltic Sea Region Comprehensive Assistance to Children Victims of Trafficking" (BSR CACVT), supported by the European Commission through the Daphne II programme, seeks to fill expertise gaps and form capacity in countries that need it. For the training to include also countries outside of the EU, Save the Children Sweden and Oak Foundation have financed training in four countries neighbouring the EU.

In order for capacity building to be effective, more needs to be known about the phenomenon of child trafficking and the responses to it. Among the most ambitious initiatives of the WGCC was a mapping project designed to compile and synthesise information on all known child victims of trafficking in the region over the reference period 1 November 2006 to 31 October 2007. Having been notified of a case of child trafficking, researchers affiliated with the NCP documented what actions were taken over the reference period as well as the victim's personal views on the usefulness and appropriateness of assistance provided (when it is appropriate to interview the victim). Data collection was conducted in ways that protect the victim's identity and, via randomisation procedures, make it impossible to track down and identify an individual case.

When data have been synthesised and made available, the result is expected to be a major new resource for identifying good practices, gaps in the response to human trafficking, and badly-needed data on the scope and nature of the problem in one region of the European Union and the neighbouring countries.

For more information on this initiative, please see:
<http://www.childcentre.info/projects/traffickin/dbaFile12009.html>

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 Court of Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). 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 on 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 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.

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.

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'.⁷⁵ 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.⁷⁶

⁷⁵ *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

⁷⁶ *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

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 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 called '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'.⁷⁷ 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 1 of this report.⁷⁸

There is a range of EU legal instruments of relevance to this paper. This includes ten EU directives on various immigration, asylum and human trafficking policy areas, which include the particular situation of children. These are reviewed in Annex 2 of this paper.

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.

⁷⁷ *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>

⁷⁸ 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>

Financial instruments that may support actions on trafficking in human beings include:

The Daphne II Programme⁷⁹

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 of trafficking. 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.

The ARGO programme⁸⁰

The ARGO programme was established in 2004 to support administrative cooperation 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

⁷⁹ 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

⁸⁰ 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

taken by the national authorities and to improve the overall efficiency of national administrations in their tasks.

The AGIS Programme⁸¹

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 Programme⁸²

The AENEAS Programme (2004-2008) funds projects that support co-operation with third-countries in the field of asylum and immigration. Its general objective 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.

The European Refugee Fund (ERF)⁸³

The ERF was established in 2000 with a view to contributing to 'promoting a balance in efforts made by the Members 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 refu-

81 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

82 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 (AENEAS) http://ec.europa.eu/external_relations/migration/coop_third_countries/reglement_en.pdf

83 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>

gees, 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 2007⁸⁴

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.

84 <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 INSTRUMENTS⁸⁵

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)⁸⁶

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))

⁸⁵ 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>

⁸⁶ 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)⁸⁷

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;

⁸⁷ 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,⁸⁸ 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).

⁸⁸ 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

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)⁸⁹

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 spon-

⁸⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

sor 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;

- (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)⁹⁰

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)).

⁹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

- 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)).
- 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)⁹¹

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))

⁹¹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_326/l_32620051213en00130034.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)⁹²

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

⁹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>

be a matter for the Member State responsible for examining the application for 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)⁹³

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 in-

⁹³ [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)

formation 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)⁹⁴

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))
- 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 Mem-

⁹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:EN:HTML>

ber 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 final⁹⁵

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)

⁹⁵ <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)⁹⁶

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)).⁹⁷

In relation issues related, directly or indirectly, to trafficked children, the Resolution:

- Calls on the Commission to incorporate into the impact assessment provided for in its communication of 27 April 2005 on 'Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring' (COM(2005)0172), a section devoted to the extent to which children's rights are taken into account legally.
- Calls on the Commission to put forward a proposal to create a specific budget line for children's rights, in order to finance work to implement the communication from the Commission 'Towards an EU Strategy on the Rights of the Child', and 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 budget line should also include subsidies for NGO networks working in this field and assure children's participation in the work to implement that communication and those projects.
- Calls for 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.
- Calls for the protection of children's rights, as laid down in the UN Convention on the Rights of the Child, to be included among the priorities Multiannual Framework of the European Union Agency for Fundamental Rights (hereinafter "the Agency"), and for the Agency to set up a network for cooperation with international institutions, particularly ombudsmen for children 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.
- Calls on the Commission, the Agency and the Member States to work in cooperation with relevant UN agencies, international organisations and research centres towards improving the gathering of comparable statistical data on the

⁹⁶ 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>

⁹⁷ <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=INI/2007/2093>

situation of children in the EU, if necessary by extending Eurostat's mandate, with a view to developing and including a larger number of indicators relating specifically to children on child poverty and social exclusion, for example; children's participation in the collection of data should be ensured.

- Asks the Commission to provide a breakdown by gender and age of data on all types of discrimination and violence against children, to integrate equality between women and men into all the policies and instruments of its future strategy, including the activities of the Forum on Children's Rights, and to follow up and evaluate these policies, inter alia, by means of gender budgeting.
- Calls on the Commission to redouble its efforts to assist developing countries in translating the provisions of the UN Convention on the Rights of the Child and the optional protocols thereto into their national legislation.
- Calls for consideration to be given to the EU's accession to the UN Convention on the Rights of the Child and the two optional protocols thereto, as well as the Council of Europe conventions on the rights of the child, including the ECHR, and those on the exercise of children's rights, adoption, exploitation and sexual abuse, and calls on the Council to adopt a position of principle to enable the EU in future to take part in negotiations on conventions relating in particular to children's rights.
- Calls on the Member States to implement serious measures to ban all different forms of exploitation of children including exploitation for prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, use of children associated with begging, illegal activities, sport and related activities, illicit adoption, forced marriage or any other forms of exploitation.
- Strongly condemns all forms of child labour, slavery and bonded labour and other forms of work which adversely affect children's health and safety; calls on the Commission and the Council to link the European Union's trade with, and development aid to, third countries more closely to such countries' implementation of the ILO Convention on the prohibition of, and immediate measures to eliminate all forms of child labour.

B. COUNCIL OF EUROPE

1. Council of Europe Convention on Action against Trafficking in Human Beings [CETS No. 197], 200598

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.

98 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)⁹⁹

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

⁹⁹ [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 minors¹⁰⁰

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,

¹⁰⁰ 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)¹⁰¹

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

¹⁰¹ <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

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.

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)¹⁰²

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

¹⁰² <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=type&docid=42dd174b4&skip=&type=GENERAL>

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 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)¹⁰³

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 ;

¹⁰³ <http://www.unhchr.ch/html/menu3/b/33.htm>

- (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.

5. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹⁰⁴

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:

¹⁰⁴ http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

- (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;
 - (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 traf-

ficking 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 2003¹⁰⁵

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 Child¹⁰⁶

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

¹⁰⁵ http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm

¹⁰⁶ <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=447d5bf24>

- 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?
- 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