



Protecting Migrant Children in a Freedom of Movement Area

Transnational monitoring of return procedures involving Romanian and Bulgarian migrant children in Greece and France



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Protecting Migrant Children in a Freedom of Movement Area

Research Report



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Table of Contents

Acknowledgements	4
Foreword	5
Executive Summary	7
I) Introduction to the research	8
Research rationale and research questions.....	10
Research Target Group, Definitions and Core Concepts	12
Research Methodology.....	14
Limitations of the research.....	16
II) Overview of the legislative and policy frameworks concerning the return of romanian and bulgarian children from France and Greece	17
A) Specialised legal, policy and procedural frameworks in countries of origin	17
Bulgaria	17
Romania.....	18
Conclusions.....	19
B) Diversity of procedures applicable in countries of destination	20
France	20
Greece	24
Conclusions.....	27
C) Inadequate legal and policy frameworks at regional level	28
Between cause and consequence: the EU's role in intra EU migration of children.....	28
Conclusion.....	30
III) Analysis of the bilateral practice in the return of romanian and bulgarian children to their country of origin	31
A) Structural difficulties hampering protection during the pre-decision phase	31
1) Lack of awareness of available frameworks.....	32
2) Challenges in providing interim measures of protection	33
B) Bridging social work and judicial decisions: a need for standardised tools and harmonised procedures	34
1) Weight given to the social inquiry information in the decision making process	34
2) Overlooking re-victimisation: the absence of risk and security assessments.....	35
C) Multiplicity of practices in the practical implementation of the return decision	37
D) Follow up in countries of origin and implementation of durable solutions	38
1) Limited understanding of the concept of durable solutions.....	38
2) Life projects as child migration flow management tools	39
IV) Conclusions and Recommendations	42
Annex 1	45
Annex 2.....	59
Annex 3.....	65

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Foreword

Migration of children worldwide poses increasing challenges to States regarding the protection that migrant children are entitled to. The United Nations Convention on the Rights of the Child (CRC) enjoin States Parties to always act in the best interest of the child and to treat all children within their territories equally without any distinction based on any of the prohibited grounds, including because of their age. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. Children on the move or migrant children, including children migrant workers are often not accorded deserved protection even though we are all too aware of their vulnerabilities to trafficking and all forms of exploitation, which their age and immaturity further exacerbates.

In my capacity as the United Nations Special Rapporteur on Trafficking in Persons, especially women and children, I have put at the forefront the issue of protection and assistance to victims, particularly their rights to effective remedy. If migrant children are to be returned home it must be with due regard to the principle of the best interests of the child. Affected children must be involved and participate in such decisions and their views given weight in accordance with the principles of evolving capacity, survival and development of the child. There must be prior and follow up care for returning children, including re-integration through life empowering skills.

States should ensure that robust, child-centred provisions exist in their legislation to combat trafficking of children and that these are implemented with the highest regard for the rights and well-being of the child. These child-centred policies should include child-friendly reporting systems, training for law enforcement to ensure that child victims are rescued and reintegrated in child-centred ways and not treated as criminals, and that national action plans and anti-trafficking policies and programmes include children as equal participants and partners. Participation of children in developing appropriate responses to reducing vulnerabilities is critical to the success of any policy or programme aimed at their protection and support.

The research conducted by Terre des hommes and its partners tackles a phenomenon that has received too little attention to date, that is the protection of children in an area where the freedom to movement is a right but where a cross border element hampers protection processes. It makes clear that the disparity of approaches in different States and the lack of international collaboration are having detrimental consequences on the situation of children, which may ultimately put them at risk of trafficking and secondary victimisation. In that sense, this study demonstrates that a regional child protection approach would also be instrumental in the fight against child trafficking.

As I recommended in my report to the Human Rights Council on regional and sub regional human rights centered approach to combating trafficking in persons, the regions are the closest and therefore best suited to develop anti trafficking initiatives that work and protect victims. At the sub-regional and regional levels, cooperation and partnership among States within a sub-region or region can advance the fight against trafficking in a strategic manner, as many cases of trafficking in persons are committed within the same region and the “push” and “pull” factors for such cases often arise out of the political, economic, social and cultural circumstances in the region. The vulnerability of Romanian and Bulgarian children to trafficking and exploitation is well documented and I have already devoted significant efforts to address the prevalence of the phenomenon of trafficking among marginalised communities in many of my previous work. The time is now for the European governments to take stock of this reality and join forces to afford enhanced protection to migrant children at the EU level, in countries of origin as well as countries of destination.

We hope that this research will guide decision makers to take the right steps in the near future. Recommendations expressed herein are a must if EU Member States are to fulfil their commitments to the protection of children’s rights.



Joy N'Gozi Ezeilo

United Nations Special Rapporteur on Trafficking
in Persons, especially women and children



Executive Summary

This research looks at the intra EU migration of Romanian and Bulgarian children to France and Greece in situations of vulnerability. It focuses on the return procedures that are used by countries and assesses the latter in the light of the principle of the best interests of the Child as enshrined in the Convention on the Rights of the Child to which all EU Member States have adhered. Although the research faced many limitations which have consequences for the accuracy of its findings, the present research conclusions and recommendations remain based on a 16-month data collection process which allowed the gathering of information on 97 individual cases of children for whom the authorities have or should have found durable solutions.

In the first part, the report analyses the legal and procedural frameworks that are applicable to the cases of EU migrant children. It uncovered an important child protection gap that was not foreseen at the time of the creation of a freedom of movement area within the EU and which has led to the paradoxical situation where EU migrant children do not benefit from the procedural safeguards that third-country national children can claim. Alone, Member States are today not able to mitigate the risks that freedom of circulation entail for children. Moreover, a multiplicity of international conventions, laws, regulations and procedures exist, which has brought relative confusion in their practical use. This diversity of laws tends to be the result of the categorisation of children, be they victims of trafficking, unaccompanied children or juvenile delinquents who have migrated abroad with the hope of finding a better life, which confuses authorities, who are not always using adequate frameworks to find long-lasting solutions for the children concerned.

The second chapter analyses the return practice of EU Member States from the pre-decision phase to the physical implementation of the return. It is clearly demonstrated that the exchange of information between EU Member States is hampered by the lack of common procedures, including the absence of a harmonized social inquiry process. Moreover, a kind of disbelief or mistrust between authorities has also been identified as thwarting the quality of the decision making that should

lead to the implementation of durable solutions for children. In that regard, the absence of future prospects for EU migrant children has proven to be fostering pendulum migration: in the absence of alternatives and a long-term plan/project, EU migrant children are less likely to remain in their environment of origin, from where they have already escaped due to lack of opportunities. It actually seems that the judiciary in countries of destination is operating in a conceptual vacuum in their attempt to identify durable solutions for children. At the same time, child protection authorities in countries of destination are facing practical difficulties in their work with this category of children, with language barriers and no practical means of offering adequate protection to EU migrant children.

As far as the practical implementation of return decisions is concerned, the research has identified a significant number of return modus operandi, some of which were in line with the legislation, while others were not. The operation of return can differ from State to State, but interestingly can also follow different procedures from one region to another in the same country.

As far as the follow up in countries of origin is concerned, the heavy workload of the child protection system in countries of origin, coupled with a lack of adequately skilled staff is also hindering the follow up that should be undertaken once a return procedure has been implemented.

The main recommendation of the research proposes the creation of a standardised procedure applicable in the 27 Member States that would foster internal and transnational coordination in order to properly assess the situation of children and find durable solutions that have been jointly designed with the children concerned, thereby leaving an important space for their participation.

As of today, the only certainty regarding the situation of EU migrant children is that they remain “suspended” between two necessities that Member States have not yet been able to reconcile: a search for opportunities in migration and a fundamental right to be protected.

1) Introduction to the research

The migration of children coming from third countries to the European Union (EU) occupies a significant space in today's research agenda. The foreign unaccompanied minors issue has received a lot of attention from international organisations and national governments, who were and still are confronted with a significant number of arrivals of unaccompanied and separated children. The European Union has put in place a solid legislative framework to address the phenomenon and developed policies and funding strategies targeting this category of children.¹

However, less attention is drawn to the issues raised by the intra EU migration of children, whilst a significant number of children possessing citizenship of, or having a lawful residence in, one or more EU Member States are found in countries other than their own or that of their habitual residence. Some of these children have migrated alone, seeking better opportunities than those they had at home, while others were forcibly removed from their environment of origin by ill-intentioned persons and trafficked to other EU Member States for various exploitation purposes. Some of them migrated together with members of their close or extended family, while others decided to take their chance alone.

A significant number of the latter children come from Romania and Bulgaria and figures also confirm that most child victims of trafficking in countries of destination also originate from these two countries.

Needless to say, the overrepresentation of Romanian and Bulgarian children in this intra EU migration flow may find an explanation in the structural poverty that affects these countries. It suffices to glance through the rate of children at risk of poverty, which rose significantly in 2011 with 32.9 % of all children in Romania and 27.9 % of all children in Bulgaria being at risk of poverty,² the highest rates in the European Economic Area. At the same time, the low reading literacy performance of pupils is at its highest in Romania and Bulgaria with rates of 40.4% and 41%³ respectively, while the percentage of the Gross Domestic Product allocated to education in these two countries is among the lowest of all European Union Countries.⁴

The 2012 Global Estimate of Forced Labour⁵ of the International Labour Organisation indicates that Central and South East Europe and the Commonwealth of Independent States is the region where the rate of Forced Labour is the highest in the world with 4.2 persons involved in forced or compulsory labour out of 1,000 inhabitants. Similarly, the 2012 US Department of State's Trafficking in Persons report highlighted the fact that a significant number of children from Bulgaria and Romania were trafficked into other EU Member States, which account for the majority of countries of destination.

1 See for example the Communication from the Commission to the European Parliament and the Council, Action Plan on Unaccompanied Minors (2010–2014), SEC(2010)534, 6 May 2010 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF> [accessed 11 November 2012]

2 Source: Eurostat, 2011 rates available at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>

3 Ibid, statistics of 2009

4 Ibid, 4.58% for Bulgaria and 4.24% for Romania, statistics of 2009

5 ILO Global Estimate of Forced Labour, Results and Methodology, 2012, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf [accessed 15 November 2012]

The report on Bulgaria provides that “[s]ome Bulgarian children are forced into street begging and petty theft within Bulgaria and also in Greece, Italy, and the United Kingdom”,⁶ while the chapter on Romania highlights the fact that “Romanians represent a significant source of trafficking victims in Europe” underscoring that “[...] Children likely represent at least one third of Romanian trafficking victims”⁷.

These rather worrying figures and conclusions from international organisations and government agencies shed light on the root causes of the migration of children, but little is known of the procedures and practice of EU Member States in handling the consequences of these child migration flows.

The silence of the EU towards a purely European phenomenon is striking. Member States are left to cope with this difficult challenge alone and too little coordination is taking place in order to offer adequate protection measures to these children.

Current research has endeavoured to thoroughly analyse, through desk-based and empirical research methods, the current situation and proposes evidence-based solutions to a complex phenomenon that has so far not been given sufficient consideration.

6 Trafficking in Persons Report, US State Department, 2012, Bulgaria

7 Ibid., Romania. The 2012 Trafficking Report of the Romanian Agency against Trafficking in Persons indicates that 30.5% of identified Romanian victims of trafficking are underage, accounting for 319 children.

Research rationale and research questions

The partners decided to embark on this research project due to the difficulties they encountered on a daily basis in their management of EU migrant children cases, as well as the challenges they experienced in trying to articulate their work (and working methods) with the authorities in such cases. It is evident that in both countries of destination that are subject to the scrutiny of the research, a significant migration flow of children from Bulgaria and Romania was and is still occurring.

Yet, the case management of EU migrant children is made more difficult due to their very status of being EU citizens. EU citizen children do not benefit from the variety of statuses and procedural safeguards that the European Union legislative framework provides to third country nationals.

This striking situation is well characterised in the body of legislation that was enacted in the establishment of a Common European Asylum System which explicitly excludes EU citizens from its scope of application. In a study commissioned by the Directorate General for Internal Policies of the European Parliament,⁸ the authors contend that the “Aznar Protocol” complementing the reforms brought by the Treaty of Amsterdam “ [...] reduces the right to asylum to a right of third country nationals and not to a right of nationals of the European Union, the latter not having the right to invoke it inside the EU”. The authors go on to explain that one could argue “[...] that the European Union assumes the right to deviate from the universality of international protection by unilaterally granting itself a certificate of compliance with fundamental rights”.⁹

A parallel can be drawn in that regard between procedures on return that apply to third country migrant children and those that apply to EU migrant children. Article 10 of the return directive¹⁰, which focuses on unaccompanied minors provides that:

“1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.”

8 European Parliament, Setting up a Common European Asylum System, August 2010, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/pe425622/_pe425622_en.pdf [accessed 12 July 2012]

9 Protocol on asylum for nationals of Member States of the European Union, available at <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> [accessed 3 November 2012]. The sole article of Protocol 24 states that “[g]iven the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. [...]”

10 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

On the other hand, the provisions of the freedom of movement directive, a text that, as far as return is concerned, sets some of the applicable rules on return of EU Migrant children, details in its Article 28 on the protection against expulsion that:

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous ten years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.

It could be noted that the provisions applicable to third-country nationals are not only substantial but also set a series of guarantees that have to be met before a decision on return is issued. In contrast, the freedom of movement directive leaves Member States a wide discretion in determining what the exception of “imperative grounds of public security” may include, and also offers Member States the possibility to return a child when that is necessary in the best interests of the child without giving further details on the determination of the best interests of an individual child.

While other examples will be given in the following chapters, the partners have felt that the entire discretion left to EU Member States in matters related to the intra EU migration flows has created a disparity of practices that required harmonised pan-European solutions. This was also confirmed in empirical, street-based research that was undertaken within the framework of other projects.¹¹

11 See for instance: “Invernizzi, Antonella. Vulnerability to exploitation and trafficking of Bulgarian children and adolescents in Greece. A case study of street based survival strategies in Thessaloniki. Project Mario in collaboration with ARSIS, Budapest, 2011” available at <http://marioproject.org/documents/vulnerability-to-exploitation-and-trafficking-of-bulgarian-children-and-adolescents-in-greece> [accessed 3 November 2012]

Research Target Group, Definitions and Core Concepts

A) The **research target group** was thoroughly discussed during the inception meeting in Budapest and was made broad enough to encompass the variety of situations that children face when they are involved in a migration process.

As explained above, the research focused on children possessing the citizenship of one EU Member State and being found in another Member State. This leads to two different considerations:

- a) the first relates to the age of the target group: a natural person under the age of eighteen;
- b) the second concerns a specific foreign element that has to be fulfilled for the case to fall under the scope of the research: the child had to be a citizen of, or have a lawful residence in, one Member State of the European Union and be found in another Member State.

As far as the situation of the target group is concerned, the research team decided to retain the **criteria of migration as overarching** in order for the research and its recommendations to address the majority of child protection cases that can arise in a migration context within the European Union.

The research therefore looked at all situations that EU migrant children could fall into, including but not limited to:

- a) children that have been (potentially) trafficked or smuggled
- b) children migrating alone (unaccompanied minors) or with their families (on the latter point, children that were migrating with their families were only retained if a doubt arose as to whether the child and/or their parents had been or were being (potentially) trafficked for exploitation purposes)
- c) juvenile offenders (or children that could be deemed to constitute a threat to public order)
- d) children carrying out economic activities on the streets

Finally, the last element that was taken into account in order for the research and its recommendations to be accurate had to relate to the action(s) or omission(s) of State authorities. As a consequence, situations whereby authorities have decided upon cases of EU migrant children but also where they have not decided although they should have done so, form part of the research.

The research target group can therefore be defined as Romanian and Bulgarian children for whom a return procedure has (or should have) been considered by French or Greek State authorities. However, in an effort to be concise and also to extend the debate to a wider European scale, children corresponding to the definition given above will be called **EU migrant children**¹² throughout this publication.

B) The research focuses on the return processes and reads these processes through the prism of article 3(1) of the Convention on the Rights of the Child. Therefore, all return processes had to be analysed in the light of the consideration given to the principle of the best interests of the child.

The reference made to **return process** throughout the research includes all situations whereby the authority of a Member State decides for, proposes to, obliges or helps a child to go back physically to their country of origin or habitual residence. Therefore, all procedures termed return, removal, repatriation, deportation, expulsion, extradition and assisted voluntary return fall under the scope of the return process definition.

The **best interests of the child principle**¹³ as enshrined in article 3(1) of the Convention on the Rights of the Child is used throughout the study as the main compass guiding the analysis. Two different processes can flow from the best interests of the child principle: a best interests determination and a best interests assessment. Both processes were defined by the UNHCR in its guidelines on determining the best interests of the child.¹⁴ It reads as follows:

¹² A definition of the term EU migrant children is provided in the proposal for a directive that can be found in Annex II.

¹³ Article 3(1) of the Convention on the Rights of the Child states that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

¹⁴ UN High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, available at <http://www.unhcr.org/refworld/docid/48480c342.html> [accessed 12 November 2012]

“A best interests determination describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.

A best interests assessment is an assessment made by staff taking action with regard to individual children, except when a BID procedure is required, designed to ensure that such action gives a primary consideration to the child’s best interests. The assessment can be done alone or in consultation with others by staff.”

The concept of **Trafficking in Human Beings** is defined throughout the study along the lines of article 2(1) of directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims¹⁵, which reads as follows:

“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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”.

As far as children are concerned, article 2(5) further details that:

“When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.”

The term exploitation is defined in article 2(3):

“Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”

The concept of **durable solutions** is often referred to in the research. Different definitions of this concept can be found in a variety of documents and the one that is applied in this research can be found in the UNICEF guidelines on the protection of the rights of child victims of trafficking, where durable solutions are defined as:

“Long-term arrangements for child victims of trafficking as opposed to short-term solutions (such as reflection period, emergency assistance and temporary residence permits). More generally, the term takes three forms: local integration, return to the country or place of origin or third country resettlement. Durable solutions can also be seen as a prevention of re-trafficking.”

This definition is also valid for children who are not victims of trafficking and should be understood as such.

¹⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> [accessed 12 November 2012]

The project was designed following the interest expressed by all partner organisations in gathering a critically lacking knowledge on the return practices of Member States in cases of EU migrant children.¹⁶ In July 2011, all partners met in order to design the tools that would be used within the framework of the research. A qualitative research approach was preferred in the research since its aim was not to demonstrate the prevalence of a well-known phenomenon but rather to pave the way for a constructive debate on the vulnerability and lack of protection of EU migrant children.

The main analysis grid that was used flowed from General Comment Number 6 of the United Nations Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin.¹⁷

The Committee on the Rights of the Child in this comment set authoritative guidance as far as the return of unaccompanied and separated children is concerned. It states that:

“Return to the country of origin is not an option if it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall inter alia take into account:

- ↳ Safety, security and conditions, including socio-economic conditions awaiting the child upon return, including through home study, where appropriate, conducted by social network organisations.
- ↳ Availability of care arrangements for that particular child.
- ↳ Views of the child expressed in exercise of his or her right to do so under article 12 and those of the caretakers.
- ↳ The child’s level of integration in the host country and the duration of absence from the home country.
- ↳ The child’s right ‘to preserve his or her identity, including nationality, name and family relations’ (art. 8).
- ↳ The ‘desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’ (art. 20).

In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.

85. Exceptionally, a return to the home country may be arranged, after careful balancing of the child’s best interests and other considerations, if the latter are rights based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non rights-based arguments, such as those relating to general migration control, cannot override best interests considerations.

86. In all cases, return measures must be conducted in a safe, child-appropriate and gender sensitive manner.

87. Countries of origin are also reminded in this context of their obligations pursuant to article 10 of the Convention and, in particular, to respect ‘the right of the child and his or her parents to leave any country, including their own, and to enter their own country’.”

¹⁶ For a project description, see Annex 3

¹⁷ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at <http://www.unhcr.org/refworld/docid/42dd174b4.html> [accessed 12 November 2012]

Following all these considerations and based on partners' experience in this field, an initial **research hypothesis** was drawn and the research team assumed that "the official decision on the return of a Romanian or Bulgarian child (whether or not they are a victim of trafficking, exploitation or abuse, unaccompanied or delinquent) was not always based upon adequate information sent by the country of origin's authorities in a timely fashion, thus not allowing an adequate design, implementation and **follow up** of a durable solution for them".

In order to verify this initial hypothesis, research questions were compiled addressing three different areas that needed to be explored:

1. In the pre-decision making phase, the main question was to find out whether the quality of the social inquiry, both in its substance and dissemination, is adapted to the purpose of its being conducted.
2. In the decision making phase, the partners tried to find out whether the current procedures applied in practice by authorities in France and Greece prior to return could be considered adequate best interests determination procedures.
3. Following a decision on local integration or return, were there any follow up actions foreseen (especially undertakings between the child and authorities) that could be associated with the concept of "life project" potentially drawn in countries of destination prior to return?

In order to collect data that would enable the research to take place and ultimately provide answers to the questions raised, **individual files were drafted** and further refined in order to match the research questions.¹⁸

Since the individual files may contain sensitive information that could fall into the hands of ill-intentioned persons, a **protocol of communication was also drawn up** detailing steps that had to be taken by partners prior to exchanging sensitive information.

Common encryption codes together with exclusive-use mailboxes were created and accessed only for the purpose of exchanging the individual files.

The following 16 months were devoted to **data collection and the sensitisation of professionals**. Project coordinators with a social work background gathered information both in countries of destination on (to be) returned children and in countries of origin on already returned children.

This information was then exchanged with their counterparts in the other country, who were asked to cross check the data that was gathered in the country of destination or origin, either through **interviews with local stakeholders** or with **children and families** that were themselves (to be) returned.

The fact that the partners' organisations in countries of destination have established daily contact and relationships with children and families belonging to the target group through street work and provision of services (such as accommodation or daily centre activities including meals) has considerably helped the data collection process, since a significant number of the beneficiaries of their activities were (or should have been) involved in procedures that have led to a decision on their stay in the country of destination or return to their country of origin or habitual residence.

The **16-month data collection exercise allowed 3 researchers to analyse 97 cases of children** that have been in contact with the authorities in countries of destination and for whom a decision was or should have been taken between January 2009 and November 2012. Out of the 97 individual cases of children individual files could be thoroughly completed in 22 cases, while in the remainder, the identity of the child could not be verified, which made it difficult to gather additional information on the cases. However, data relevant to their cases were collected and could in many instances be cross checked between countries of origin and destination.

Researchers also conducted more than **30 semi-structured interviews** – through field visits and exchanges in countries of origin and destination – aimed at obtaining more information not only on individual cases but also on general child protection challenges that authorities have to cope with in their daily activities.

¹⁸ The template of individual files used throughout the project can be found in Annex 1.

Limitations of the research

The findings of this research have to be interpreted in the light of the limitations that are brought to the analysis.

First and foremost, not all 97 individual files could be thoroughly completed due to several obstacles. The first was the very legitimate data protection concerns which partners have faced when collecting information from national authorities. The latter were in some instances not able to share personal information about individual cases of children that were or should have been involved in a return process due to the obligations stemming from their domestic legislation and procedures.

A second obstacle can be found in the limited information that can be gathered on cases where partners could not cross check information with the children themselves. In cases where partners were directly involved through service provision, they could rely on their already existing relations with the children and their families thereby benefiting from their trust and the positive relationship they had established. In that case, the willingness to share enabled the gathering of accurate and thorough information on the sequence of events that occurred and procedures that were followed in the management of their cases by the authorities. Where this positive relationship did not exist, the data gathered was scarce and the information provided in the individual files relied on interviews with authorities, with limited information provided by the child and/or their relatives.

The third problem relates to the conflicting information often scattered between different services, provided by State authorities, which can be deemed to be a research finding in itself. Child protection authorities may have come across a case which was not referred to the police, while the police may have investigated a case with no referral made to the child protection authorities. It goes without saying that the absence of coordination mechanism and of a central data collection system in countries of destination not only hampered the research team in providing an accurate picture of the prevalence of the phenomenon but also hinders the capacity of countries of destination to plan and implement adequate policies based on evidence.

Despite these limitations, the research is built on a solid empirical basis as a significant part of the individual files could be completed and the main laws, procedures and regulations were made accessible to the research team.

II) Overview of the legislative and policy frameworks concerning the return of Romanian and Bulgarian children from France and Greece

All countries subject to the research have developed a set of legislative and non legislative measures in order to address the specific question of EU migrant children and their protection. Since the situations faced by countries of destination differ from those in countries of origin, the laws and procedures at stake have been analysed in different chapters in order to better reflect and compare the challenges they have to cope with in a given context.

A) Specialised legal, policy and procedural frameworks in countries of origin

Romania and Bulgaria have developed a solid legislative and procedural framework aimed at protecting children from violence, abuse and neglect. Clear child protection procedures are in place for national children, including those that were returned from other EU countries.

More specifically, both Romania and Bulgaria have enacted specialised legislative and procedural frameworks that address the vulnerability of national migrant children once they are identified abroad and returned to their respective countries. The question as to whether the child protection systems in these countries are effectively protecting national migrant children is addressed in the third chapter of the research.

Bulgaria

Bulgaria, apart from the provisions of its general child protection law, which are applicable to all children including non nationals, has developed a “Coordination mechanism for referral, care and protection of repatriated Bulgarian Unaccompanied Minors (UAM) and children – victims of trafficking returning from abroad”.¹⁹

The mechanism is designed not only to foster a better coordination of services at national and international levels but also to offer a multidisciplinary and cross-sectoral response to the needs of Bulgarian children that have been returned from abroad due to their migration status or their being trafficked.

The coordination mechanism in Bulgaria was developed in 2005 and further refined in December 2010. Bulgarian and English versions are available, which allows foreign authorities to become acquainted with their practices.

¹⁹ Bulgarian State Agency for child protection, Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children – victims of trafficking returning from abroad. Available at http://www.stopech.sacp.government.bg/?sid=professional_eng&pid=0000000046 [accessed 25 November 2012]

The Coordination mechanism for referral, care and protection of repatriated Bulgarian Unaccompanied Minors and children victims of trafficking returning from abroad describes a “system of bodies on the central and local level, which repatriate, meet, identify, remove from family environment, rehabilitate and reintegrate the child and monitor the case”. The Coordination Mechanism encompasses a broad category of Bulgarian migrant children, including children that have migrated willingly or children that were trafficked.

The Coordination Mechanism is well detailed and gives a central role to the State Agency for Child Protection, while identifying all actors, their mandates, roles and responsibilities concerning the return of a Bulgarian child from abroad.

The Coordination Mechanisms essentially describes the procedure to be followed in communicating with other institution but does not address the substance of the case management. It foresees a mandatory one year follow-up of individual cases and its website offers a specific online system to report cases of verified or suspected abuse on a child (which remains focussed on sexual exploitation, however).

Somewhat surprisingly, the system seems to work in autarky as it does not project itself outside the borders of Bulgaria. For instance, it does not describe the steps that must be undertaken in the pre-return phase, such as the need for international exchange on a given case, through conducting a social inquiry for instance. This is best represented by the acceptance of the return of a child under “minimal notice”.

The National Referral Mechanism was passed as an inter-institutional agreement which required the commitment of all institutions involved but does not make it a text that can be invoked before a Court of Law in order to make the Bulgarian administration accountable for its actions or omissions.

Romania

As in the Bulgarian case, Romania has a well-developed legislative framework in terms of child protection, and authorities benefit from clear guidance and methodological frameworks guiding them in their prevention, protection and reintegration efforts for returned children that are vulnerable to exploitation, abuse and/or neglect.

Governmental decision 49/2011²⁰ contains provisions aimed at offering a methodological framework on issues related to the care and assistance provided to Romanian children that are victims of trafficking or, similar to what is provided in the Bulgarian Coordination Mechanism, Romanian minors that were repatriated from abroad.

The purpose, scope and format of the Romanian methodological guidance contained in decision 49/2011 is slightly different from the Bulgarian Referral Mechanism in that it goes into the substance and does not circumscribe itself to the procedures of communication within and between institutions.

20 Hotararea 49/2011, Guvernul Romaniei, Monitorul Oficial 117 din 16 februarie 2011 (M. Of. 117/2011) available at <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/HOTARARI-DE-GUVERN/HG49-2011.pdf> [accessed 12 November 2012]

Government decision 49/2011 of 19 January 2011 aims at approving two methodologies:

- 1) The methodological framework on prevention and intervention in multidisciplinary teams in cases of violence against children and domestic violence, and,
- 2) The methodology on multidisciplinary and inter institutional intervention on exploited children and children at risk of labour exploitation, child victims of human trafficking, and migrant Romanian child victims of other forms of violence on the territory of other States.

The two sets of methodological guidance that are presented as annexes of the government decision detail in a substantial manner the line of action that must be followed by the state in the categories indicated above. It also identifies the authorities responsible for implementing the actions foreseen in the guidance and goes into great detail as far as the content of the work that has to be undertaken is concerned.

The details to be featured in social inquiries are also indicated and provide a suitable format for the exchange of information at international level. The latter are however regulated by the Order 107/14.03.2005 of the National Authority for the Protection of Children's Rights approving the model of social assessment regarding the social and family situation of the unaccompanied Romanian child found on the territory of another state, in view of his return, and approving the framework plan preparing the social reinsertion of the unaccompanied child who is to be returned which includes an assessment of risks and security. In principle, should the latter reveal any significant risks that may be faced by the child after return, special protection measures are foreseen and indicated in a reintegration plan.

Follow up of cases of children and families that have been returned is also foreseen, and the child protection authority at local level has a duty to draft the aforementioned plan for the reintegration of the child and follow up on individual cases for a minimum of six months.

Furthermore, the document encompasses various categories of children, thereby avoiding categorisation.

As the guidance was validated through a governmental decision, it is opposable against the State and can be invoked in a dispute arising between a child and/or their representative and the State in the case of its actions or omissions.

Conclusions

It is interesting to note that both Bulgarian and Romanian governments have taken stock of the migration reality that their national children face in designing procedures and substantive guidance that encompass different categories of migrant children.

Procedures are equally applicable to all types of migrant children, be they victims of trafficking or unaccompanied minors that are being returned to their countries, thereby avoiding confusion in applying different procedures for different types of cases. It must be noted that these streamlined procedures do not impede the authorities in adopting an approach that is sensitive to the specificities of a case as the protection measures can – after referral – be tailored to the needs of each individual migrant child once they have been returned.

This laudable approach may, however, be undermined by the situation in countries of destination where categorisation of children still occurs and where there is relative confusion regarding knowing what the applicable procedures are.

Moreover, the main channel of communication and reporting seems to remain, on paper and in countries of origin, the respective Ministries of Foreign Affairs, through their diplomatic mission abroad. However, the main stakeholders in countries of destination are the judicial authorities in charge of taking decision to return the children concerned. It may be important to consider streamlining the channel of communication and try to avoid involving yet another authority within the communication channels.

This has certainly been detrimental to both the pace and the quality of exchanges, as it will be demonstrated in Chapter III.

Both countries have addressed in their legislation issues related to international cooperation and, in particular in Romania, have substantially outlined the duties of local child protection authorities following the return of a child. It should however be noted that the Bulgarian coordination mechanism remains vague in its substance even if it provides interesting procedural elements. Exchanges with the child protection counterpart in Romania could be envisaged to share their experience on this issue. Finally, follow up and reintegration plans are also foreseen in the legislation but remain difficult to implement in practice due to the structural difficulties faced by countries of origin.

B) Diversity of procedures applicable in countries of destination

The procedural issues that arise in addressing the vulnerability of EU migrant children in France and Greece are far more complex, as a foreign element is involved. Since both countries are parties to the Convention on the Rights of the Child, a general principle of non discrimination applies and non national children are entitled to the same rights as nationals.²¹

However, and as it has been demonstrated in the introduction of the research, the management of cases related to EU migrant children raises a series of challenges owing to their right to freedom of circulation within the borders of the EU. Since EU migrant children possess citizenship of or lawful residence in one EU Member State, they automatically benefit from the provisions of the freedom of movement directive²², which entails the right to circulate freely in France and Greece as well as to reside there for a period of up to three months without “any condition or formalities other than the general requirement to hold a valid identity card or passport”.²³ Therefore, the tension between security control and the status of a child does not really exist in the context of EU children migrating within the borders of

21 Article 2(1) of the Convention on the Rights of the Child provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.

22 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

23 Ibid, Article 6(1)

the EU. They already benefit from a right of stay allowing them to circulate, and the absence of border checks within the Schengen Area does not allow Romanian and Bulgarian children’s duration of stay to be verified even if the border controls have not yet been removed due to the pending accession of Romania and Bulgaria to the Schengen Area.²⁴

Though this situation raises child protection concerns, it should not be interpreted or used as an argument to restrict the right to freedom of circulation that EU migrant children decide to exercise. Limiting their freedom of circulation would not stop the migration flow and it would make these children fall into illegality as far as their migration status is concerned, which would not help in solving this situation nor in bringing them enhanced protection.

It is, nevertheless, evident that relative confusion in the applicable legal framework relating to their protection and status arises.

France

Entitlement to protection measures for EU migrant children

France has adopted a series of laws and regulations to ensure the protection of children’s rights in the country. Furthermore, the provisions of the International Conventions, once signed and ratified, have an authority that is superior to national laws and regulations and shall prevail over any contrary provision of the law,²⁵ among which is the Convention on the Rights of the Child (CRC).

Moreover, some provisions of the Conventions ratified by the French Parliament have a direct applicability under French law and may be invoked should a dispute arise. In that regard, the CRC was signed and ratified by the French Parliament and entered into force on 2 September 1990. Three articles of the Convention on the Rights of the Child have been recognised as having a direct effect, among which is article 3(1), which establishes that the best interests of the child shall be a primary consideration in all actions concerning children.²⁶ This bears important consequences on the national level, as article 3 can directly be invoked before a Court of Law to

24 A simple I.D. is sufficient for children and families to cross the borders. The situation is slightly different for unaccompanied or separated children, who will need a certificate signed by both parents in front of a public notary in order to be allowed to cross the borders alone or with adults other than the holders of parental custody.

25 Article 55 of the French Constitution of 4 October 1958

26 See the decision of the French $\text{\textcircled{D}}$ Cour de Cassation $\text{\textcircled{D}}$, Cass. 1 $\text{\textcircled{e}}$ re Civ 18 mai 2005, n $\text{\textcircled{o}}$ 2-16336



oppose the actions or omissions of French authorities, including regarding EU migrant children. The Council of Europe Convention on Action against Trafficking in Human Beings²⁷ was also ratified by France and entered into force on 1 May 2008.

EU migrant children, in application of the non discrimination principle as enshrined in article 2 of the CRC, are therefore entitled to protection measures on the same basis as national children.

Under French domestic law, two types of protection are made available to children that are in a vulnerable situation: judicial protection²⁸ and administrative protection²⁹. These two types of protection procedures are complementary and can partly rely on each other.

- a) The administrative protection flows from the Code on Social Action and Families and gives that competence to the French General Councils following the decentralisation reform of 1993. The law on the reform of child protection of 2007 indicates that the General Councils must “prevent the difficulties that may arise for children that are temporarily or permanently deprived of the protection of their family, and ensure their care”. The need for protection is based on the notions of “danger” as provided by Article 375 of the Civil Code that will be explained below. These protection measures are applicable to all children, regardless of their nationality.
- b) Article 375 is the legal basis upon which judicial protection measures are ordered and implemented in France. Article 375 can be deemed to be the cornerstone of the judicial protection mechanism within the French overall child protection system. The French Civil Code stipulates in article 375 that “if the health, safety or morals of a non-emancipated minor are in danger or if the conditions of his education or his physical, emotional, intellectual and social development are seriously compromised, educational assistance measures can be ordered by the judiciary [...]”. The provisions of this article apply to all children as the reference is made to “non-emancipated minor”, which includes both national and foreign children.

Legal Status of EU migrant children in France and general return procedural frameworks

In France, the right of stay and residence of any minor is guaranteed. Article L 311-1 of the Code of Entry and Stay of Foreigners and on Asylum (CESEDA) obliges “any alien of more than 18 years of age” to hold a residence permit. Children are excluded from this provision and do not have to comply with this obligation.

Moreover, French law expressly excludes the possibility of an expulsion of a foreign child, in line with the provisions of the freedom of movement directive. Article L 521-4 provides that “the foreign child below eighteen years of age cannot be subject to an expulsion measure”. Article 20-4 of the ordonnance of 2 February 1945 on juvenile delinquents also makes it clear that foreign juvenile delinquents cannot be subject to an expulsion measure.³⁰

It remains possible, however, for a child who is placed under the protection of the Child Protection Services (Aide Sociale à l’Enfance) or the Child Judicial Protection services (Protection Judiciaire de la Jeunesse) to express their will to go back to their country of origin. The inter-ministerial circular DPM/ACI 3 n° 2006-522 of 7 December 2006 on the assisted return for foreigners in an irregular situation foresees a “humanitarian return assistance” which takes place with the support of the French Office for Immigration and Integration and is offered to any foreign person, including citizens of the European Union.³¹

EU migrant children can opt for such a solution provided that their return is either ordered by a Judge of Minors or takes place through regular family reunification channels.³²

In the majority of cases concerning EU migrant children, the return option must therefore be based on an order from the Judge of Minors taken on the basis of Article 375 of the Civil Code mentioned above. In the absence of any specific legislation on the return of an EU migrant child, it is therefore general child protection provisions that govern the conditions of their potential return.

27 Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, Council of Europe Treaty Series - No. 197

28 The judicial protection of children is regulated by articles 375 to 375-9 of the Civil Code and 1181 to 1200-1 of the Civil Procedure Code.

29 The administrative protection of children is regulated by Article L 112-3 of the Code on Social Action and Families.

30 For several practical applications of these principles see decisions of the French Council of State: CE, 20 juin 2003, n°254094; CE, 19 juin 1992, n°126843; CE, 27 janvier 1992, n°124705

31 L’aide au retour volontaire (ARV) concerne tous les étrangers à l’exclusion des communautaires.

32 <http://www.senat.fr/rap/r08-516/r08-51646.html>

General return procedure

Experience has shown that the return procedures used in France for EU migrant children are mostly based on Articles 375 to 375-8 of the Civil Code and Articles 1181 to 1200-1 of the Code on Civil Procedure. It is therefore clear that the return decision is perceived by the French authorities as an educational assistance measure, which the above mentioned articles of the Civil Code foresee. In that regard, three main actors are involved: the Prosecution Office of Minors, the Judge of Minors and the Child Protection Services (Aide Sociale à l'Enfance).

The usual process is as follows: the President of the competent General Council³³ can collect any relevant information from various sources (including education authorities, parents themselves, the minor himself, extended family or municipal services, the police or the gendarmerie, etc.) and decides whether an administrative action is needed due to the vulnerability of the child. In the case of an EU migrant child, the president of the General Council or potentially another authority (such as the police in cases of juvenile delinquents) will notify the Prosecutor of Minors and a judicial protection process will start.

The Prosecutor is responsible for conducting an analysis of reports transferred to them and may decide – if the situation requires – to refer the case to the Judge of Minors (article 375 Civil Code) and take emergency measures in the meantime (article 375-5 Civil Code).

The Judge of Minors intervenes when the health, safety, or the conditions of education of a minor are in jeopardy. The judiciary intervenes only when the children are in a dangerous situation, have committed an offence or when their caregiver requests help. That can take various forms, including school dropout, addiction, family conflicts, significant psychological difficulties, street children in a situation of vagrancy, including when parents are powerless or failed to provide their child with appropriate care.

The concept of danger covers a broad range of situations. The Judge has discretionary power in assessing the notion of risk. A case may be referred to a Judge of Minors by the father and mother of the child (together or one of them), the guardian, the minor themselves or the Prosecutor. In exceptional cases, the Judge of Minors can take up a case Ex Officio.

Article 1182 of the Civil Procedural Code provides that the Judge of Minors must inform the Prosecutor or the appropriate guardian, person or service to which or where the child has been placed. It proceeds first to the hearing of the parties, namely a "guardian, a person or service to whom the child was entrusted and the child when he is capable of discernment". The Judge may also hear any person whose testimony would be useful and order social inquiries from the country of origin in order to inform their decision. At the end of the procedure educational assistance measures can be ordered by the Judge of Minors, among which is a return decision.

However, this procedure was deemed inadequate following the massive influx of Romanian children that migrated to France at the beginning of 2001. A special procedure was negotiated between the Romanian and the French governments in order to solve the problems linked to this new type of migration.³⁴ The general child protection provisions were considered to be not adapted to this trend, which has led to the design of a specific agreement that would deviate from the general domestic law provisions on child protection.

³³ The child protection services in France are decentralised and belong to intermediate level "Départements" which are administered by a General Council (Conseil Général)

³⁴ For a clear explanation of the phenomenon, see: Debré, Isabelle, Les Mineurs étrangers isolés, rapport du Sénat, May 2010, p. 11 available at http://www.justice.gouv.fr/_telechargement/rapport_mineur_20100510.pdf [accessed 26 November 2012]

The France Romania Bilateral agreement on the cooperation to protect Romanian minors in difficult situations on the territory of the French Republic:

In 2002, a bilateral agreement was signed between the French and Romanian governments on cooperation aimed at the protection of Romanian unaccompanied minors on French territory.³⁵

In 2007, a second agreement was drafted following the expiry of the previous one. Though the bilateral agreement was signed by both governments it was only ratified by the Romanian Parliament, since the French opposition argued that the text was contrary to the fundamental rights of children, especially that it violated their right to a fair trial. The text was ultimately censored by the French Constitutional Council on the ground that it did not respect the right to benefit from an effective judicial remedy.³⁶

In the absence of a valid bilateral agreement, French authorities were left without clear guidance on the management of child protection cases that involved Romanian children. This absence of text put the French authorities in an uncertain situation and other frameworks were sought in order to make the return of children operational.

Authorities were even mistaken in the use of the applicable instruments as demonstrated in a note³⁷ that was issued by the French Embassy in Romania, and confirmed after an interview³⁸ claiming that the Brussels II bis regulation³⁹ concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility sets an exclusive competence of the European Union in that field and had to be applied in the case of Romanian minors involved in a return procedure in France.

As of today, the bilateral agreement is no longer valid and though it would be important to streamline the communication channels and operations on the French-Romania axis, a multilateral solution would remain preferable.

35 "Accord entre le gouvernement de la République Française et le gouvernement de la Roumanie relatif à une coopération en vue de la protection des mineurs roumains en difficulté sur le territoire de la République française et à leur retour dans leur pays d'origine, ainsi qu'à la lutte contre les réseaux d'exploitation", 4 October 2002, available at http://basedoc.diplomatie.gouv.fr/exl-php/cadcgp.php?CMD=CHERCHE&QUERY=1&MODELE=vues/mae_internet___traites/home.html&VUE=mae_internet___traites&NOM=cadic___anonyme&FROM_LOGIN=1 [accessed 12 November 2012]

36 Conseil Constitutionnel [French Constitutional Council], Décision n° 2010-614, 4 November 2010

37 'Note sur les mineurs Roumains isolés sur le territoire Français' available at http://www.ambafrance-ro.org/IMG/pdf/Note_sur_les_mineurs_roumains_isoles_sur_le_territoire_francais.pdf [accessed 12 November 2012]

38 Interview with French official at the French Embassy in Romania of 17 January 2012.

39 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:NOT> [accessed 12 November 2012]

Greece

Entitlements to protection measures for EU migrant children

Greece has adopted a series of legislative acts that ensure the protection of children's rights in the country. The protection of children's rights is a principle enshrined in the Constitution which specifically makes protection of childhood a constitutional principle.⁴⁰

Furthermore, the provisions of the International Conventions, once signed and ratified, become an integral part of domestic Greek law and shall prevail over any contrary provision of the law.⁴¹

Therefore, the provisions of the Conventions ratified by the Greek Parliament have a direct applicability under Greek law and may be invoked should a dispute arise. The CRC was signed and ratified by the Greek Parliament in 1992,⁴² but the Council of Europe Convention on Action against Trafficking in Human Beings⁴³ was not ratified. Every child within the Greek territory, regardless of their origin and nationality, is entitled to the rights and protection recognised by the Convention. Additionally, the Greek Civil Code provides that both aliens and nationals enjoy the same civil rights.⁴⁴

The principles and guidelines referring to the determination of the best interests of the child shall be applicable in all actions concerning children. In this regard, the Greek Civil Code makes specific reference to it,⁴⁵ especially in the context of the provisions for parental custody, care and guardianship.⁴⁶

Greek legislation also provides for the special protection of children in vulnerable situations and several acts have been enacted in recent years in line with relevant international norms. Hereby, the emphasis is placed on those whose situations may require the triggering of a return procedure, especially when they are in danger of re-victimisation or when they are victims of criminal acts.

Legal status of EU migrant children in Greece and general return procedural frameworks

The legal status of foreign children is further regulated by the Greek law on aliens. The Greek law relating to aliens is divided into four specific fields: a) the law regulating the special legal status of third-country nationals (migrant law), b) the law establishing rules regulating the special status of EU citizens, c) the law regulating the special status of refugees and stateless persons, d) the law that Greece has specifically enforced for expatriates and repatriates.⁴⁷ In the context of the migrant law, it is clearly provided that "the provisions of this law are not applicable [...] to the citizens of the European Union, within the meaning of Article 17(1) of the Treaty establishing the European Community".⁴⁸ Additionally, most of the provisions on the protection of unaccompanied minors and the return procedures are included in the refugee law, which is applicable to third-country nationals and stateless persons only. As indicated in a Presidential Decree, the protection and reception conditions of unaccompanied minors are applicable "to all third-country nationals and stateless persons (who apply for asylum in the Greek territory) [...]".⁴⁹ while the law through which the EU Return Directive has been transposed applies "to third-country nationals staying illegally on the Greek territory [...] and] does not apply to third-country nationals who [...] c. enjoy the Community right of free movement as defined in article 2 paragraph 5 of the Schengen Borders Code and PD.106/2007".⁵⁰

40 Article 21 of the Constitution "The family, as the foundation of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State".

41 Greek Constitution article 28 par. 1 "The generally recognized rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity."

42 Law 2901/1992 (Official Gazette 192/2.12.92)

43 Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, Council of Europe Treaty Series - No. 197

44 Article 4 of the Greek Civil Code

45 Article 3 Law 2901/1992

46 Indicatively: article 1511 (parental rights and obligations), article 1592 and 1648 (guardianship).

47 Z.Papasiopi-Pasia, "Law Relating to Aliens" in cooperation with Vasilios Kourtis, 3rd edition, Sakoulas, Athens-Salonica, p. 2

48 Article 2 and Law 3386/2005 "Admission, residence and social integration of third-country nationals in the Greek Territory" (Official Gazette 212 A / 08.23.2005)

49 Article 1 Presidential Decree 220/07 "Adaptation of Greek legislation with the provisions of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers EEL 31/6.2.2003" (Official Gazette 251 A/13-11-2007)

50 Article 17 Law 3907/2011 on the "Establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third-country nationals" and other provisions." Official Gazette A' 7 26 January 2011)

It is not surprising that the majority of the provisions of Greek law that are concerned with return do not apply to EU migrant children. However, a series of measures relating to them may be found.

The provisions for the protection against expulsion measures of the freedom of movement directive (articles 27, 28) have been transposed by Presidential Decree 106/07.⁵¹ According to the latter, the right of free movement may be restricted only under strict conditions on grounds of “public policy, public security or public health”. However, problems may arise concerning the interpretation of this provision, especially with regard to the implementation of the proportionality principle.

Greek Courts consider that expulsion shall be ordered only under the condition that the personal conduct of the person concerned constitutes “a present threat against the fundamental interest of the society”. The enforcement of an expulsion measure should take into consideration the specific situation of the person concerned (family, economic, vocational conditions, special bonds with the member state).⁵²

More specifically, “the measure of deportation against an EU citizen shall be based on the individual assessment of each case”. If the person is involved in criminal activities, the severity of the threat to public order or public safety should be defined in accordance with the punishment (penalties) foreseen for these criminal activities, the degree of involvement in the activities or the risk of recidivism.⁵³

Furthermore, the Greek Ombudsman, reporting on the case of an adult Romanian citizen, finds that, in line with Article 28 of the Directive, the criteria that should be taken into account are the bonds with Greece and the respective country, the duration of stay in the country, the age, the health, family and economic status, the (degree) of social and cultural integration in the country, as well as the general conduct of the person concerned after the issuance of the deportation decision. Additionally, a presumption of risk and a threat to public order and security cannot be merely established on the basis of a former criminal conviction.⁵⁴

With regard to EU minors, special protection is provided against expulsion measures.⁵⁵ Specifically, “An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, [...] if they are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child.”⁵⁶

Therefore, an expulsion decision may be taken against them only if the criteria of imperative grounds of public security and the respect of the best interests of the child principle are fulfilled, although there is no further provision regulating specifically the implementation of the minors’ expulsion procedure.

Finally, Greece has signed and ratified by law Readmission Agreements with Bulgaria⁵⁷ and Romania⁵⁸ that came into force in 1996 and 1995 respectively. Although these agreements frame the general administrative and operational procedures concerning the return and transit of illegally residing persons, their application in practice to the case of EU migrant children is of not much relevance.

51 Articles 21 and 22 of Presidential Decree no 106/07

52 Indicatively: Decision 1243/2000, Section E Supreme Court of Civil Criminal Jurisdiction (Areios Pagos), Decision 1550/2007 of Criminal Court of First Instance of Herakleion

53 Council of State Section D, Decision 4023/2011

54 Greek Ombudsman, 1709/08/5/29.11.2010

55 At this point it is important to remember that – in general with regard to third-country nationals – Greek legislation does not distinguish between minors’ and adults’ cases as far as the expulsion measures against irregular migrants are concerned.

56 Article 22 Presidential Decree no 106/07 (corresponding to Article 28 of the 2004/38/EC Directive) entitled “Free movement and residence on Greek territory of European Union citizens and their family members” (Official Gazette 135a/21-6-2007), enacted pursuant to the transposition of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

57 Law 2406/96 Ratification of the Agreement between the Government of the Hellenic Republic and Bulgaria about the readmission of persons who reside illegally, and its implementation Protocol and Annexes (Official Gazette 102 B’), Law 2301/95 Ratification of the Agreement between the Government of the Hellenic Republic and Romania on the readmission of non-legally residing persons.

58 Ibid.

General return procedures

Children, including EU migrant children, are upon identification referred to the Prosecutor of Minors,⁵⁹ most of the time by police authorities. The Prosecutor shall order all necessary measures for their protection. In the event that the minor is unaccompanied, every effort should be made for the determination of the child's identity and nationality, which includes the tracing of their family.

a) If the minor is a **victim of trafficking**, measures must be taken based on the anti-trafficking legislation, especially with regard to repatriation.

Victims may be entitled to residence permits for humanitarian reasons, even those who do not cooperate with the authorities.⁶⁰ Victims are given a reflection period of three months to decide whether or not they will cooperate with the prosecuting authorities. In line with the best interests of the child principle, this period may be extended for two more months. During this period the person shall not be deported.⁶¹ The law confers upon every victim of trafficking the right to be returned (repatriated)⁶² in a safe and dignified way, and additionally provides for the special protection of children in line with their best interests. Pursuant to the ratification of the Palermo Protocol in 2010,⁶³ new provisions and amendments were introduced with regard to the repatriation of unaccompanied minors.

Therefore, a special report on the case shall be prepared by the Juvenile Probation Service⁶⁴ prior to the decision. The decision is subject to the consistent opinion of the Prosecutor of Minors.⁶⁵

Accordingly, in the context of the law on aliens,⁶⁶ a significant role for the Prosecutor is foreseen. The Prosecutor shall take every necessary measure in order to evidence the identity and the nationality of the child and to determine the fact that the child is unaccompanied. Moreover, every effort should be made to trace the child's family as soon as possible. Furthermore, the legal representation of the child must be ensured and, if necessary, also the representation in criminal proceedings. In the event that the child's family is not found or if the Prosecutor, considering the circumstances, concludes that a return is contrary to the best interests of the child, they should refer the case to the Court within 30 days so as to be able to go on with the appointment of a legal guardian according to the provisions of the Civil Code (articles 1532, 1534 and 1592). In the event that the child's family is found and a return decision is issued, the repatriation is usually operated through the International Organisation Office in Athens (IOM). In these cases, prior to the repatriation, the IOM is tasked with conducting a special assessment of the family environment of the person concerned in their country of origin/destination.

59 If a Prosecutor of Minors is not appointed in a judicial periphery, juvenile matters are handled by the competent Prosecutor of the Court of First Instance.

60 Article 44 of Law 3386/2005 as amended

61 "The Public Prosecutor may decide on the cessation of the reflection period before it elapses if: a) the aforementioned person has actively, voluntarily and on his/her own initiative reactivated his/her relations with the perpetrators, or the data that were considered for the designation as victim of trafficking do not exist, or b) for reasons of public order and security."

62 The term used in the context of Greek law is "repatriation".

63 Law. 3875/10, Official Ratification and implementation of the United Nations Convention for combating transnational organised crime and its three protocols (Gazette-158 Ɖ/20-9-10)

64 According to the Greek Act 378 of 1976, the Juvenile Probation Service constitutes a Department of the Greek Ministry of Justice. Juvenile probation officers or, otherwise, supervisors of juvenile offenders, among others, have the mission to prepare a social inquiry report in relation to juvenile offenders' moral and mental situations, their historical and family backgrounds and their living environment in general, during the offender's interrogation stage. They propose to the juveniles' Court the educative measure that suits each offender best, according to his/her personality and the type of offence that he/she committed. They are also the supervisors of the enforcement of the educative measures imposed by the court on the juvenile offender. Furthermore, supervisors of juvenile offenders play in contemporary Greece, according to the Explanatory Report of the Act 3189 of 2003, the role of mediator in the process of juvenile offender-victim mediation. They therefore may play an important role as far as EU migrant minors are concerned when they committed an offence.

65 Article 13 Law 3064/2002

66 Article 48 (former 47) of Law 3386/05 as replaced by Article 4, p. 9 of Law 3875/10

b) In the cases of EU migrant children who are **not identified as victims of trafficking**, the Prosecutor shall refer the child to the child protection services to be protected and cared for according to the general provisions on the protection of childhood. The child protection services are coordinated by the National Centre of Social Solidarity (EKKA). Accordingly, if the parents or the legal guardian of the child are not traced in Greece, the Greek Police – Minors’ Department – is responsible for tracing the child’s family in the country of origin, often by cooperating with INTERPOL, or with the competent police authorities in the country of origin.

c) In the event that foreign children are **identified while committing a criminal act**, they are arrested and referred to the Prosecutor of Minors as offenders. According to Article 45(A) of the Code of Criminal Procedure, entitled “Diversion from prosecution of minor”, when a child has committed a punishable act, which constitutes a petty offence or a misdemeanour (e.g. theft, begging), the Prosecutor has the possibility of refraining from pressing charges if they deem that the circumstances under which the offence was committed make the prosecution not necessary in order to prevent the child from committing further punishable acts. In the event that the Prosecutor decides to refrain from pressing charges, they may impose a reformatory measure on the minor. If charges are pressed against the child, a trial is subsequently scheduled. However and in general, the minor is released until they are summoned to the Court. The Prosecutor usually refrains from pressing charges, especially against begging children. As far as other offences are concerned (especially theft), charges are usually pressed against minors.⁶⁷

Conclusions

As outlined in the introduction, the research faced a series of limitations which hindered its accuracy. One of the reasons is that, in contrast to the question of third-country nationals, there is no centralised data collection system that allows a clear picture to be drawn of the dimension of the phenomenon of intra EU child migration that raises child protection concerns.

Various institutions are involved in a variety of cases and no central authority is designated in Greece or in France to address this question, as would be the case for abducted children, for example.

Moreover, a plethora of procedures and practices related to return exist. The latter range from bilateral readmission agreements that were concluded prior to the EU accession of Central and South Eastern European countries to the domestic legislation implementing the freedom of circulation directive, including as well bilateral “child protection” agreement concluded between Romania and other EU countries. To that list must be added the instruments of international organisations and conferences that may be used in transnational child protection cases.⁶⁸

The absence of a clearly designated central authority, and therefore coordination between services within the country, also has an impact on the capacity of the system to coordinate at international level. As will be demonstrated in the next Chapter, the bilateral relations vary and many different return procedures may be implemented depending on which authority (or private actor) will be primarily responsible for the case. Owing to the absence of clear and targeted multilateral frameworks dealing with this specific issue, the authorities in countries of destination are left with the choice of using one or another procedure which may trigger different channels of communication. At the other end of the chain, countries of origin have developed adequate referral mechanisms at national level but, as will be demonstrated in the next section, are not always equipped with the means to conduct their mission.

67 Ibid.

68 The website of the Hague Conference on Private International Law gives an up-to-date picture of the Conventions to which EU Member States are parties, as well as their status. See: http://www.hcch.net/index_en.php

C) Inadequate legal and policy frameworks at regional level

As outlined above, several regional organisations active in Europe have developed a series of legislative and non-legislative measures addressing in a rather fragmented way the situation of EU migrant children.

The Parliamentary Assembly and the Committee of Ministers of the Council of Europe have issued recommendations and guidance related to the management of the cases of EU migrant children. They have even focused on the follow up of cases of returned children in their countries of origin and elaborated on the concept of life projects, which will be further explored in Chapter 3.

However, owing to the area of freedom of movement it created, the European Union is the most relevant regional organisation in that field.

Between cause and consequence: the EU's role in intra EU migration of children

In the Stockholm Programme adopted in December 2009, the European Union reaffirmed that “[t]he rights of the child, namely the principle of the best interest of the child being a child’s right to life, survival and development, non discrimination and respect for the child’s right to express their opinion and be genuinely heard in all matters according to their age and level of development as proclaimed in the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, concern all Union policies.” The Council tasked the European Commission to “identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children who are victims of sexual exploitation and abuse as well as children who are victims of trafficking and unaccompanied minors in the context of Union migration policy.”

However, the EU competences are based on the principle of attribution whereby the EU has been transferred a series of competences by its Member States in order to achieve the common objectives that Member States could not have achieved alone. The principle of attribution is further complemented by the principle of subsidiarity and proportionality, whereby an EU action should be undertaken where and when within the realm of its competences the objectives cannot be achieved sufficiently by Member States, which gives legitimacy and added-value to the EU action. The principle of proportionality provides that the action in a given area should entail measures only to the extent that is strictly necessary to achieve the objective.

It is in the light of these principles that the possibility for the EU to act on matters pertaining to the intra EU migration of children should be explored. However, there already exist many instruments that have been enacted by the EU and that already impact on the situation of EU migrant children.

First and foremost, the European Union has created an area where freedom of movement is a right, which has been one of the greatest EU achievements. The freedom of movement directive⁶⁹ has allowed EU migrant children and their families to move freely and reside unconditionally for a period of up to three months in any Member State. This has had tremendous consequences and opened new opportunities for those citizens whose countries acceded to the EU, among which were Romania and Bulgaria in 2007.

In order to mitigate a certain number of risks related to the migration of families and children, the EU has been very active in fostering judicial cooperation between Member States in criminal and civil matters thanks to the powers conferred upon it by Articles 81 and 82 of the Treaty on the Functioning of the European Union.⁷⁰ However, in several instances, EU citizens are excluded from the scope of application of these protective measures.

69 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

70 See the consolidated version of the Treaty on the Functioning of the European Union at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>

In the **criminal justice area**, the adoption by the European Parliament and the Council of the Trafficking directive⁷¹, which includes specific child-focused provisions and allows for better coordination between Member States in fighting this horrendous crime, represents an important step. It is interesting to note that the directive provides in Articles 14 and 15 for specific protection measures for child victims of trafficking, while in Article 16 it addresses the specific issue of unaccompanied minors. Although within the directive the term “unaccompanied child” is not defined, the usual meaning given to it by the European Union in other acts refers to third-country nationals. Is this differentiation the result of the usual dichotomy between EU children and non EU children? It remains unclear whether the additional guarantees offered by Article 16 will apply to EU national children or lawful residents and the “joint UN commentary on the EU directive – A Human Rights Based Approach”⁷² – which offers useful guidance on the implementation of the provisions of the directive – seems to adopt an “asylum-oriented” interpretation as well.

It is also interesting to note that one of the rights attached to the status of victim of trafficking within the EU is excluded for EU citizens in general and EU children in particular. The Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings⁷³ only opens this possibility to third-country nationals, thereby excluding EU migrant children that may have fallen prey to traffickers. It must however be noted that the application of these provisions for children are left to the discretion of Member States⁷⁴.

The adoption of the directive on combating the sexual abuse and sexual exploitation of children⁷⁵ was another step forward in improving the protection of children from such threats both within and outside the European Union.

The directive on the protection of victims of crime⁷⁶ is also of relevance in so far as EU migrant children may benefit from its provisions, which include child-specific provisions, in any EU country.

Similarly, in **civil justice matters**, the EU action focused on the issue of parental authority, which is of high relevance for the category of children that interests this research. However, very often and as already explained in the French case, the Regulation Brussels II Bis⁷⁷ should not be used in the management of the EU migrant children as we have defined them in this research. The regulation concerns the return of children who have been abducted by one of their parents and does not properly address nor does it provide adequate procedures for children⁷⁸ who are potential victims of trafficking, who are in street situations or are juvenile offenders (though abducted children may also fall under the definition of an EU migrant child as indicated in the introduction).

In the case of the Brussels II Bis regulation, it is important to note that a certain number of its provisions flow directly from (and supersede) that of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The Union has in this regard acceded to the Hague conference on Private International Law.⁷⁹ This is of fundamental importance when trying to explore what the EU could do in this area.

As a matter of fact, the EU has authorised Member States to ratify the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children⁸⁰ as it retains an exclusive competence in some of the areas that the Hague conventions are regulating (that is to say, what flows from the Brussels II bis Regulation).

71 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> [accessed 12 November 2012]

72 UN High Commissioner for Refugees, Prevent. Combat. Protect: Human Trafficking, November 2011, available at: <http://www.unhcr.org/refworld/docid/4edcbf932.html> [accessed 17 December 2013]

73 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. See, especially, its article 10.

74 Ibid, article 3(3)

75 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF> [accessed 13 November 2012]

76 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA accessed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:01:EN:HTML>

77 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:NOT> [accessed 13 November 2012]

78 Several interviews with French and Greek judicial authorities have confirmed the inadequacy of the Brussels II bis regulation and also revealed the difficulty of working with this instrument in their daily practice.

79 Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law

80 Council Decision 2003/93/EC of 19 December 2002 authorising the Member States, in the interest of the Community, to sign the 1996 Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children

Conclusion

The profusion of rules that impact on the individual situation of EU migrant children in each country as well as at regional level does not tackle holistically and coherently the difficulties that Member States face in providing protection to the children concerned nor does it foster efficient information exchange and adequate return practices.

On the other hand, the situation of third country national children is legislated upon especially within the framework of the asylum acquis. Needless to recall that the situation of third country national children still need to be improved. However, throughout the European Union (apart from the few countries which decided to opt out from these provisions) a set of minimum standards should be (though they are not always) complied with and national authorities benefit from a clear set of rules that apply to the case of third country national children.

The cases of children that hold the citizenship of one (or several) EU country or third country national children that have an established and lawful residence in one of the EU Member States is however not legislated upon which leaves Member States authorities in a legislative confusion as no legal entry point can be found for them, nor perspectives be offered.

The absence of clear and most importantly common procedures further puts these children at risk and may be treated more favourably in one EU Member State than in another. A need for a harmonized approach has become a must, in full respect with the treaties through a liberal interpretation of the competences they give to the Union in civil justice matters.

A brief glance through the UN Committee on the Rights of the Child country reports suffices to assess the importance of the situation: in its concluding observations on the report submitted by Romania in 2009, the Committee on the Rights of the Child noted “[...] the increased incidence in recent years of unaccompanied or separated Romanian children coming to the attention of foreign authorities abroad and the special needs of such children, some having endured abuse and neglect, including at the hands of parents or relatives. In this regard, the Committee takes note of bilateral agreements between Romania and destination countries regarding the return of unaccompanied Romanian children abroad.

It remains concerned that the return and re-integration of such children may in some cases lead to re-victimization”.⁸¹

The Committee pursued in recommending that Romania: “[...] ensure, including through the signing of bilateral agreements containing appropriate safeguards, that decisions for return and re-integration of unaccompanied Romanian minors are carried out with the primary consideration of the best interests of the child and taking into account the Committee’s views contained in its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin”.⁸²

As far as Bulgaria is concerned, in its concluding observations in 2008, the Committee on the Rights of the Child also suggested Bulgaria “enter into bilateral and multilateral agreements for the prevention of trafficking and for the rehabilitation and repatriation of trafficked children”.⁸³

These recommendations have a particular resonance in this context since, despite the establishment of a freedom of circulation area and the adoption of numerous legislative measures, the need to adopt multilateral agreements to properly address the situation of EU migrant children remains.

The analysis of the return practice of EU migrant children from France and Greece to Bulgaria and Romania will reinforce this last assertion and demonstrate the validity and topicality of the UN Committee on the Rights of the Child’s recommendations.

81 Concluding observations of the Committee on the Rights of the Child: Romania, CRC/C/ROM/CO/4, 30 June 2009, para. 49

82 Ibid, para. 50

83 Concluding observations of the Committee on the Rights of the Child: Bulgaria, CRC/C/BGR/CO/2, 23 June 2008, para. 66(d)

III) Analysis of the bilateral practice in the return of romanian and bulgarian children to their country of origin

This part of the research focuses on the way EU Member States handle EU migrant children cases prior to the decision making phase (Chapter A) as well as on the difficulties they encounter in taking informed return decisions (Chapter B) leading to durable solutions through the implementation of life projects for the children concerned (Chapter D). The analysis of the individual case files also allowed uncovering a variety of return practices (Chapter C).

A) Structural difficulties hampering protection during the pre-decision phase

The structural difficulties that authorities in countries of origin and destination are facing often have an impact on the quality of the decision making. Interim measures of protection are taken in all countries of destination from the moment the case is referred to the judiciary. This period serves not only to provide protection to vulnerable children but also to allow a child to settle and recover if need be. That can contribute to the decision making process in allowing an informed participation of children to their case.

As already stated in Chapter II, it is judicial authorities that are mandated to find durable solutions for EU migrant children. In order for them to take informed decisions, they need information on the situation in the country of origin that is gathered through a social inquiry process.

The social inquiries contribute to the quality of the decision making and offer judicial authorities information related to the social, economic and family situation where the child comes from and to where they may be returned.

The social inquiries are generally conducted by the child protection services in the countries of origin and bring a different perspective to the decision making, bringing the whole process closer to a best interests determination procedure.

Finally, and together with social inquiries, the participation of the children (and their families where that is relevant) is essential and allows decision makers to add yet another perspective to the evidence they should use in taking a decision. The latter should therefore always be substantiated by three different types of information: the situation in the country of origin, the situation in the country of destination, and the views of the children and families concerned.

1) Lack of awareness of available frameworks

G's story

G is a 10-year-old Bulgarian girl with disabilities. In January 2010, G was found unaccompanied begging in the street of a city in Greece by the police. G's family lived in Thessaloniki and her situation was assessed as vulnerable by the police services, which decided to place her in a hospital.

G's parents were summoned by the police and had to pay a fine of 52 Euros. At that moment, G's father decided to go back to Sofia in order to work to pay the fine.

The custody of the parents was suspended while G was placed in the hospital, where the personnel refused right of access to G's family members who stayed in Thessaloniki (her aunt and her sister).

One year later, G was still placed in the same hospital, until a lawyer decided to take her case and commission a social inquiry from the Bulgarian authorities. The social inquiry was done and sent back to the Greek prosecution office 6 months later. At the end of 2011, a new Prosecutor in charge of the case issued a return order and G was repatriated to Bulgaria in March 2012.

G was placed in a crisis centre for a period of 7 days until the child protection authorities decided to place her in a specialised centre with adequate staff and means to address her physical and mental disabilities.

Following a 6-month placement in this residential centre and common work undertaken in collaboration with G's parents, G was reunited with her family two and a half years after her initial identification.

On substance, and in an important number of social inquiries that the research team was able to access, the level of information provided was high and the analysis thorough. The reports were well structured and contained detailed information related to, among other aspects,

- The status of the family and of the household as a whole
- The material and economic conditions of the family
- The availability of services and their distance from the place of residence
- The opportunities that the child can take in their environment of origin.

However, in other cases the information was either not detailed enough or the analysis provided could be subject to another assessment, such as the risk of (re)trafficking. The substance of the social inquiry and the weight given to it in the decision making process will be addressed in the following Chapter.

When the international exchange of information is at stake, it poses a series of problems for the authorities.

The first problem relates to the **channels of communication**. Some returns, as will be explained in the chapter on the practical implementation of the return, have been conducted via channels other than the official ones. In a significant number of cases, when the return was not implemented via the regular procedure, the whole process was affected. No social inquiries were asked and the lack of knowledge of practitioners in this regard has led them to adjust their practice, sometimes requiring considerable ingenuity, in order to find a solution which resulted in a return.

This is the result of the **absence of a clearly designated responsible authority**, such as that designated in the framework of the Hague conventions on the protection of children at transnational level. That situation is partly the consequence of a lack of dissemination about available frameworks and communication channels that have to be used by all stakeholders.

The second problem, which also derives from the first, relates to the pace of exchanges. When the social inquiry was commissioned, in the vast majority of cases it took **more than a year for the process to be completed**. This is also the consequence of an overburdening of understaffed child protection services in countries of origin. To conduct a social inquiry is a difficult task that is time and resource consuming. It requires availability

and mobility on the part of the social workers that are working in the localities of origin of the child concerned. Such a workload is difficult to assume and social inquiries when commissioned may be seen in the eyes of social workers as an additional burden on their already heavily laden shoulders.

In one instance, after a social inquiry request was sent by French authorities to Romanian authorities, the social workers in the locality of origin indicated that they had still not received the request from their central authority 3 months after the request was sent by their French colleagues.

There are, however, examples where **returns occurred in a very short period following identification**, sometimes in less than 5 days, which clearly prevents authorities from undertaking a qualitative and individual assessment of the situation of a child (and their family, where applicable). As will be addressed below, the risk of secondary victimisation is high if a child is returned to an environment that has created or contributed to the conditions of their exploitation.

2) Challenges in providing interim measures of protection

In order for a return decision to be informed the opinion of the child must be sought, which can be the case when the child has been allowed to settle. The interim measures of protection provided to the child may pave the way for a participatory process.

All countries of destination do offer protection measures following identification. This can take the shape of a placement in an open environment, in a shelter or a child protection centre, but also in a closed environment, such as detention-like facilities for juvenile offenders when the child concerned has committed a crime.

However, in the case of France the situation is complex and relates to the wider problem of identification and determination of identity. From the outset, it should be noted that authorities in France are often precluded from initiating a procedure of protection due to the difficulties they face in determining the identity of a Romanian or Bulgarian child. This is particularly true where children use “aliases” in order to conceal their identity from their interlocutor. The fact that children use aliases does not necessarily imply that they have been trained to do so by traffickers but can also be explained by the cleverness of children who in some instances are not seeking protection and actually enjoy the life they lead.

Where law enforcement agencies have no legal means to restrict the mobility of a child, for very legitimate reasons such as the very young age of the child, the only possibility given to the authorities is to place the child – upon an order of placement – under child protection services from where, especially in France, the child will disappear sometimes minutes after the placement.

A striking quotation from a French official best characterises the situation admitting that “paradoxically, the only way we can start to work on the case of these children is when, after they have committed several offences, we are compelled to place them in detention-like facilities where the identity of the child will be verified and where the social workers can start establishing a relation of trust with the child concerned.” While placing children in detention-like facilities or prison is certainly not a good solution to initiate a best interests determination procedure, alternatives to detention should always be sought in order to create a climate of trust that would allow professionals to start a qualitative assessment of the individual situation of a child.

Moreover, if **the process of determination of identity** – which should be differentiated from the identification since the child has already been identified – considerably hinders the process of protection, it **should not be limited to the child himself but should also include the persons accompanying the child.**

It is evident from the individual files that were gathered that the methods used in order to determine the degree of parenthood is limited to a simple observation and often relies on the subjectivity of individuals entrusted with the responsibility to determine who the child is and what degree of relationship they enjoy with the persons accompanying them. The analysis of the individual files and the results of several interviews conducted in Greece confirm in numerous cases that **verification of the degree of relationship between a child and a person presented as a father, an aunt or a grandmother was not properly done.**⁸⁴

84 Interviews conducted on 29 October 2012

However, the interim measures of protection that can be taken are not only hampered by the determination of identity, as sometimes **no placement solutions can be offered to children**. This is especially the case in Greece where the limited number of places in child protection centres and shelters prevent the authorities from providing adequate care and protection. The story of G outlined above is striking in this regard, as G, a young girl with severe mental and physical disabilities, was placed in a hospital where the level of care and protection was not adapted to her condition.⁸⁵ Authorities have established a good partnership with NGOs but can only rely on the services they provide to a limited extent.

B) Bridging social work and judicial decisions: a need for standardised tools and harmonised procedures

1) Weight given to the social inquiry information in the decision making process

In the majority of the cases analysed that could rely on a social inquiry (that is to say, the social inquiry was asked of the authorities in the country of origin, conducted by them, sent, and received by the decision making authority in the country of destination), this carried a lot of weight in the decision taken by the judicial authorities.

However, the problems that were identified in the process of information exchange in order to undertake adequate and evidence-based best interests determination processes are threefold:

The first problem concerns the potentiality of a cultural bias in the decision making. Some interviews conducted with stakeholders in countries of destination have revealed what could be termed a suspicion concerning the capacities of child protection services in countries of origin to properly address the needs of the child for the benefit of whom a protection measure must be implemented. **This cultural bias may in several cases have altered the objectivity of a decision that should have relied only on factual and scientific evidence, as well as on the views of the child according to their age and maturity.**

⁸⁵ It should be noted that in Greece, children have to undergo a medical screening following their identification and are sent to hospitals where they can actually be placed for a lengthy period. See G case.

The second problem relates to the **actual and perceived quality of the social inquiry**, which was not always deemed appropriate depending on the interlocutor. Some decision makers expressed their satisfaction with the quality of the social inquiries, while others deemed them not thorough enough and not meeting the standards they are used to.⁸⁶ As already mentioned, the research team has not had access to a sufficient quantity of social inquiries – for obvious data protection reasons – to make a general conclusion about the quality of the data collection and analytical work undertaken in countries of origin by child protection workers. However, it seems reasonable to assume that **a standardised social inquiry template used across Europe would bring significant added value to the information exchange process in the transnational management of cases**. It would enable the use of a common analytical framework for child protection workers and judicial authorities in countries of destination while overcoming a series of obstacles such as that outlined above.

The third and final issue that arises in this context relates to the **risk and security assessment**⁸⁷ that should form an integral part of the social inquiry process, especially when authorities are aware (or, according to the terms of the European Court of Human Rights, “ought to have been aware”⁸⁸) that a person may be in a trafficking situation.

⁸⁶ Interview with decision maker held on 5 September 2012.

⁸⁷ See for reference : UN Children’s Fund (UNICEF), Guidelines on the Protection of Child Victims of Trafficking, September 2006, available at <http://www.unhcr.org/refworld/docid/49997af727.html> [accessed 11 November 2012]

⁸⁸ Rantsev v. Cyprus and Russia, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, available at <http://www.unhcr.org/refworld/docid/4b4f0b5a2.html> [accessed 20 November 2012]

2) Overlooking re-victimisation: the absence of risk and security assessments

Z's story

At the beginning of 2011, Z was a 15-year-old girl of Bulgarian origin to whom babysitting was proposed in France for a short period by a relative of her neighbours, called X.

After a one-month trial period that went well, Z returned to Bulgaria for Christmas. After the celebrations, X proposed to Z that she go back to France and lured her with false promises of studies.

After arriving, she was beaten and threatened with death if she would not agree to prostitute herself, which she was eventually compelled to do. Two to three months after her second arrival, Z was identified by the police in a situation of prostitution in a Parisian forest. Upon identification she was placed under police custody where she filed a complaint giving precise details of the identity of her pimps.

Following her arrest and cooperation with the police she was placed in a social centre managed by the Social Assistance for Youth, a decentralised child protection authority.

Although the French anti-trafficking police were notified about Z's case, no inquiry into her being trafficked was triggered nor commissioned despite Z's testimony. Only accusations of pimping were launched against X and her husband who were eventually indicted. On the other hand, no risk and security assessment was done in order to verify the degree of implication and awareness of Z's family in Bulgaria. Moreover, no social inquiry was commissioned by the Judge of Minors.

Z mentioned from the day of her arrest that she wanted to go back to Bulgaria immediately.

Civil Society organisations that were closely following Z's case expressed their reluctance to see Z returned in the absence of further information on the degree of involvement of her family and her environment of origin situation in general. They unsuccessfully insisted that Z be appointed an independent guardian in order for her case to be defended.

At a later procedural stage, it appeared that Z's cousin was also in a situation of prostitution in Belgium but this fact was not brought to the attention of the Judge of Minors, who decided to issue a return order.

The procedure of return took about a year, though Z expressed her desire to go back to her home country as early as the first day when she was identified..

In its concluding observations on the report submitted by France in 2009⁸⁹ the United Nations Committee on the Rights of the Child expressed its “[...] concern that children are often returned to countries where they face risk of exploitation without a proper assessment of their condition”. It further pursued in its related recommendation that France should “[e]nsure, with due consideration of the best interests of the child, that children in need of international protection and at risk of being re-trafficked, are not returned to the country where this danger exists”.⁹⁰

In its concluding observations on the report submitted by Greece in 2012, the United Nations Committee on the Rights of the Child recommended that Greece “Undertake a systematic assessment of the situation of children in street situations in order to obtain an accurate picture of the root causes and magnitude”.⁹¹

In the case of EU migrant children, these observations and recommendations would mean that together with a social inquiry request a risk and security assessment should also be conducted in the environment of origin of the child prior to their being returned. The difficulties encountered by a French association in convincing authorities that a risk and security assessment should be undertaken in the case of Z characterise well the current situation.

In all but one of the cases that were analysed by the research team **the social inquiries did not include any adequate assessment of the risks of re-trafficking within the environment of origin** (including the degree of potential involvement of family members) of children that were in situation of prostitution or children that were involved in a criminal network for begging or theft.

In cases where serious doubts should have arisen as to whether or not the child was in a trafficking situation, a return decision was issued without proper risk and security assessment done in the country of origin, and therefore in violation of article 16(7) of the Council of Europe Convention on action against trafficking in human beings⁹².

Although formats and guidance exist in this regard,⁹³ it is difficult to understand why the assessments were not undertaken (is it due to the fact that authorities in countries of destination did not ask for them or because services in countries of origin did not have the capacity to undertake them?) or why in the absence of assessment, given the fact that the situation gave rise to serious doubts, the competent authorities in France and Greece did not refrain from issuing the return decision.

Returning a child to an environment that may have been involved in the trafficking chain puts the child at risk of re-trafficking and secondary victimisation. In the one instance where a risk assessment was undertaken for a young Romanian girl who was in a situation of prostitution in Paris, the conclusion reached by the social worker in Romania indicated that “no risk factor was identified”.

89 Concluding observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4, 11 June 2009, para. 84.

90 Ibid. para. 86(d)

91 Concluding observations of the UN Committee on the Rights of the Child: Greece, CRC/C/GRC/CO/2-3, 13 August 2012, para. 67

92 The article 16(7) of the Council of Europe convention on action against trafficking in human beings states that “Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child”.

93 As described in the second chapter, the Romanian governmental decision gives important guidance on that issue for example. See also, the UNICEF guidelines on the protection of the rights of child victims of Trafficking, supra.

C) Multiplicity of practices in the practical implementation of the return decision

One cannot but be surprised by the multiplicity of return practices and channels that the analysis of the individual files has revealed.

There are different possibilities that are foreseen in legislation as explained in the second chapter and a careful analysis of the individual files allowed us to identify 5 different return ways:

- ↳ One can be undertaken thanks to the help of specialised International Organisations (such as the International Organisation of Migration) in a process of assisted voluntary return.
- ↳ Some countries have established specific authorities dealing with the return of illegal migrants and other categories of population (for example, France has established a specific Office⁹⁴ that is tasked, among other duties, with ensuring the operational return of a child).
- ↳ The return can sometimes be undertaken by decentralised bodies that are not aware of the official return channels.
- ↳ Another practice identified was termed by one interviewee as a “consular return”, whereby the consulate of the country of origin takes over all logistical aspects of the return.
- ↳ And finally, returns have also been identified to be undertaken by NGOs.

Although there is nothing wrong with having different possibilities to rely on in implementing a return decision, the situation may raise concerns when the legal procedures are not followed.

In several cases, returns were undertaken by an NGO in Greece, who was informally entrusted with the responsibility of ensuring the family tracing, the assessment of the situation of the child, the coordination of the social inquiry with the country of origin (which ultimately was not undertaken by officials in the country of destination) and the logistical operation of return. In the end, the NGO (which was waiting for more than a year for a judicial order to implement the return) could not afford to offer protection for such a long time to a significant number of trafficking victims and implemented the return without a valid order issued by the Prosecutor.

A return decision and its implementation should always be made by authorities who offer the maximum guarantees and safeguards of independence, such as magistrates. Return must be undertaken, documented and well coordinated with countries of origin, which, again, can only be properly achieved by State authorities.

The manner and time of the return processes also play an important role from a child protection perspective. Some returns, when they involve a family, are often not child sensitive and may occur at night to the main airport of a capital city, while leaving children and families on their own once they arrive at their destination. This was the case for four children that were returned from France to Romania with one “family member” in 2010, and who were left late in the evening on their own, 230 kilometres from their place of residence, Craiova, with no means of subsistence.

94 The French Immigration and Integration Office, see <http://www.ofii.fr/>

D) Follow up in countries of origin and implementation of durable solutions

The obligation to provide a quality follow up following return rests with countries of origin. It poses the question of the capacity of the child protection system to provide adequate assistance and ensure a quality follow up of the children that have been returned and for whom a durable solution should have been found. The perceived capacity of the child protection services is one of the reasons that explain the lack of confidence of some authorities in countries of destination to return children.

It is true that in some instances the situation is worrying, such as in Romania where the number of social assistants able to complete quality work varies significantly between urban and rural areas. In a study of 2006, the Romanian Institute on Economical Research⁹⁵ found that the ratio of social assistants in urban areas was 2.85 per 100,000 inhabitants, while it was only 1.27 per 100,000 inhabitants in rural areas. An even more striking figure concerns their education, where just over 4% of all social assistants in rural areas have had specialised university education to become social assistants. With one of the lowest budgets in the social affairs field within the European Union, the situation is not surprising and one can ask whether the persons entrusted with the responsibilities of conducting social inquiries and ensuring follow up after return have the possibility to provide these two qualitative services with such a workload and lack of specialisation.

However, the responsibility of commissioning a social inquiry, taking a decision on the basis of all elements brought to the case and ensuring that a durable solution is found for the child concerned is that of countries of destination. The decision on return will have lifelong consequences for a child and all parameters should be carefully assessed, among which are the availability of services and the opportunities that a child may take once back in their place of origin.

1) Limited understanding of the concept of durable solutions

The Council of Europe has perhaps been the most vocal regional organisation as far as follow up plans for migrant children are concerned. Although the recommendations of its Parliamentary Assembly and Committee of Ministers have mainly focused on unaccompanied migrant children, their relevance for the target group of this research is high and their implementation can (and should) be promoted.

In particular, the Committee of Ministers of the Council of Europe in a recommendation⁹⁶ focusing on life projects for unaccompanied minors tackled the issue of follow up in countries of destination and origin following a return decision when that was in the best interests of the child. It defined life projects as “[...] individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned”.⁹⁷

A handbook was created in order to assist front-line professionals in making the concept of life project operational in practice. The handbook detailed that “[a] life project is a plan, drawn up and negotiated between the minor and the authorities in the host country, represented by a designated professional, with contributions from a variety of other professionals. Life Projects are holistic, personalised, flexible tools”.⁹⁸ [emphasis added] Therefore, the primary responsibility to draw up life projects with the active participation of the child concerned rests with countries of destination, according to this practical tool.

The overarching importance of life projects is totally overlooked by authorities in countries of destination as evidenced in most of the cases researchers have identified.

95 Arpinte, Daniel, Profesionalizarea serviciilor de asistentă socială, Romanian Academy, National Institute for Economic Research available at <http://www.revistacalitateavietii.ro/2006/CV-3-4-06/8.pdf> [accessed 23 November 2012]

96 Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12 July 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=1164769> [accessed 12 July 2007]

97 Ibid, Appendix to Recommendation CM/Rec(2007)9, para. 2

98 Drammeh Louise, Life projects for unaccompanied migrant minors; A handbook for front-line professionals, Council of Europe, October 2012. Available at http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf [accessed 15 November 2012].

There is not a single case that was analysed by the research team where authorities in countries of destination have considered the possibility of designing a life project for an EU migrant child. In some instances this was not necessary but in the vast majority of cases this aspect of return was given no consideration.

It is true that the concept remains unfamiliar and did not benefit from a wide dissemination. The implementation of the concept in practice is also extremely time and resource consuming. However, the failure to consider the joint design and implementation of a life project has been a catalyst in seeing children coming back to the same country of destination after their return decision was issued, as will be explained later.

Other research has uncovered the lack of clear conceptual framework upon which professionals can rely in identifying exploitation and abuse within family-based survival strategies.⁹⁹ The analysis of the individual files reveals an even greater **conceptual vacuum when it comes to identifying long-lasting solutions**. Return is in itself perceived by professionals as a solution that is self evident by authorities both in countries of origin¹⁰⁰ and destination,¹⁰¹ with little understanding of the added value of life projects or the opportunities that may be found in local integration.

This attitude, as explained in the following chapter has important consequences for the way EU child migration flow is managed and on the sustainability of an approach that considers one direction only.

2) Life projects as child migration flow management tools

F's story

In 2007, F is a young 13-year-old boy living in a rural area of Romania. He and his family decide to leave for England in order to escape poverty and seek better opportunities to work as seasonal workers. They will stay there until F reaches the age of 15, when his mother died in an accident.

In 2009, F and his father decide to leave for France. Once in France and living in precarious conditions, F and other young people began to prostitute without their families' knowledge in order to meet their needs. Living poorly from this activity, F was happy to go back to Romania when his father accepted an assisted voluntary return "offer" from the French Office for Immigration and Integration.

One month after their return, F immediately went back to England with his partner and his "in-law family". F worked there for 18 months until he reunited with his father at the beginning of 2012, in Paris again.

Back in France, F fell back into prostitution until he became an adult. He was at that moment recommended another assisted voluntary return offer to go back to Romania from the OFII without any other prospect but return. He accepted the offer.

During F's stay and activities in Paris, he benefited from the help of a French civil society organisation. Before his second return, this organisation proposed to F a project to which he could adhere and which might help him stabilise and have a long-term vision about his life. The project was clear and simple: Obtain a driving licence in order to become a delivery man (F would have preferred to work in England).

His driving licence obtained, F is now working for a market gardening company as a delivery man in Romania, which would not have been possible without the help of this civil society organisation.

99 Op. Cit. Invernizzi, A., p.46.

100 Interviews conducted on 5 November 2012.

101 Interviews conducted on 29 October 2012.

Returning to their environment of origin a child who has willingly migrated alone or together with their family without a careful assessment of the reasons why they decided to migrate is a practice that is bound to fail. The joint design of a life project and the joint creation of realistic prospects for the future of a child can, however, mitigate this problem.

It can, however, be argued that **the failure to consider a life project fosters the pendulum migration of children.** This assertion is supported by the research findings, which clearly demonstrate a phenomenon of pendulum migration of children where no adequate plan was designed with the full participation of the children, only return. The story of F exemplifies well this reality.

There is nothing intrinsically wrong with the phenomenon of pendulum migration per se when it does not raise important child protection concerns. It can indeed constitute a powerful vector of opportunities for children and families that are facing discrimination (in accessing social services as well as employment) and extreme poverty. Pendulum migration can be seen as a family survival strategy that allows children and/or their families to conciliate income generation with the possibility of keeping social and family ties in their country of origin, thereby avoiding leaving behind them a part of their identity.

The fact that in no instances were life projects designed also reveals a gap in the participation of children in the process of return. Children's participation in migratory processes has – in several scholarly articles –¹⁰² been described as a “tension between ‘structure and agency’” which opposes the agency of migrant children against the institutional and political reality created by States. That is applicable to the present research, where the emphasis was always put on return before considering any other available options negotiated with the children concerned.

It can, however, be verified that children for whom a decision on return was taken always had the opportunity to be heard in line with the provisions of Article 12 of the Convention on the Rights of the Child. The latter is true when they were not accompanied by their parents or adult members of their families.

When on their own, whether identified as juvenile offenders, victims of trafficking or street children, as soon as they are identified by the appropriate services and their case referred to the Prosecutor, the opportunity to be heard is always present. The views of the child can therefore be taken into account (though the option of not issuing a decision in line with the views of the child can often happen) into the systems that were studied, but the very essence of participation and “mutual commitment” as implied by the concept of life project is far from being reached.

When children were accompanied by a family member, the opportunity to be heard was either seriously reduced or completely absent from the procedure (as in the case of F exposed above, during the first return decision proposed to his father and not consulted on with F).

The tension between structure and agency often takes over and undermines the great protection and integration potential of life projects. On the other hand, it fosters what Member States are trying to overcome: involvement of children in networks, problems of irregular migration, child begging and overall protection problems in general.

The management of child migration flows, in an area of freedom of movement, cannot avoid proposing long-term and durable solutions to children. The life project possibility is one of many solutions that cannot only help Member States in investing their time and money in long-lasting solutions (and, needless to recall, complying with their international obligations at the same time) but also help children in formulating their desires for the years to come.

The research has, since it started, been confronted with one major obstacle, that is to say the temptation to categorise children and compartmentalise policies that would address the needs of different categories. In an effort to be holistic, the proposed solutions and recommendations always tend to be as inclusive as possible and encompass children that are accompanied or not, trafficked or not, etc. without jeopardising efficiency. That is the reason why the status of being an EU citizen child was retained and it should not be interpreted as an effort to exclude third-country national children from the scope of the protection measures that are proposed in the current documents.

102 See for example, Hess, J and Shandy, D, Kids at the Crossroads: Global Childhood and the State, Anthropological Quarterly, Volume 81, Number 4, Fall 2008, pp. 765–776.

IV) Conclusions and Recommendations

The research has, since it started, been confronted with one major obstacle, that is to say the temptation to categorise children and compartmentalise policies that would address the needs of different categories. In an effort to be holistic, the proposed solutions and recommendations always tend to be as inclusive as possible and encompass children that are accompanied or not, trafficked or not, etc. without jeopardising efficiency. That is the reason why the status of being an EU citizen or lawful resident child was retained and it should not be interpreted as an effort to exclude third-country national children from the scope of the protection measures that are proposed in the current documents.

The lack of transnational cooperation is often the consequence of the diversity and lack of understanding of national regulations and procedures. A kind of disbelief or mistrust between authorities in different Member States also contributes to the inefficiency of the procedures in place. Additional evidence-based and well-designed procedures may be welcome but may also add confusion to the plethora of already existing instruments.

Although the responsibility of ensuring the protection of children within an area of freedom of circulation rests primarily with Member States, the creation of this area through the establishment of the European Union also entails consequences that have not been foreseen by the treaties. The very creation of the area of freedom of movement should be complemented by actions that allow the negative consequences of its being created to be neutralised.

Freedom of circulation within the borders of the European Union has had the effect of allowing children to migrate from one country to another while the status they hold as European citizens or lawful residents has had the negative consequences of depriving them of a vision of their future that would allow them to settle. Unaccompanied minors from third countries will “benefit” from a clearance on their status allowing them to settle once they receive it. Romanian and Bulgarian

children, however, as beneficiaries of the right to migrate, do not have access to the entry points that the child protection or asylum systems usually offer. Since their status is not to be cleared, no procedures are foreseen to either integrate them or offer them long term perspectives and alternatives in the receiving or origin countries. They remain “suspended” between two necessities that have not yet been reconciled: a search for opportunities in migration and a fundamental right to be protected.

1. General Recommendations

On the current procedures

The research has demonstrated an important gap in the management of cases of EU migrant children moving from one country to another. Alone, Member States are today not able to mitigate the risks that freedom of circulation entails for children. Accountability is not a concept that can be shared by different actors that hold competences in different fields or have exclusive competence in others. In order to establish an effective and functioning internal market, it may be time to rethink the competences of the EU in this area and **explore all avenues that would allow children to exercise their right to freedom of circulation without being left unprotected and put at risk of exploitation and trafficking. An effort to streamline existing instruments and practices should be undertaken at EU level. That could take the shape of a newly designed procedure accompanied by supportive policies in an effort to rationalise the practice for the diversity of children concerned.**¹⁰³

¹⁰³ A proposal can be found in ANNEX 2.

On the international exchange of information

a) The procedures in place are not sufficiently disseminated to the wide range of stakeholders that play a role in the management of EU migrant children cases. Depending on the situation of the child concerned, entry points may differ, that is to say that for a juvenile offender the case will be primarily dealt with by the police, while in a situation of vagrancy, social services or civil society organisations may be the first to refer cases to the judicial authorities ultimately responsible for dealing with the case.

The wide range of stakeholders involved in the referral and management process needs to be better informed and available channels and procedures need to be better disseminated. For that very purpose, information sessions and/or training need to be organised in countries of destination. The possibility of designating a responsible authority at central level in countries of destination and origin should also be explored. In that regard, the central authorities that have been appointed in the framework of the Hague Conventions could also include EU migrant children in their mandate.

b) The disbelief and mistrust between authorities of countries of origin and countries of destination needs to be overcome. A cultural bias may have in several instances altered the judgement of the persons in charge. A way to foster understanding between systems would be to **organise exchange visits between magistrates from countries of destination to child protection authorities in countries of origin in order for the former to have a clear view of the infrastructures, working methods and capacity of the staff of the overall child protection system in countries of origin, including the countryside.**

c) The research has demonstrated the importance that a well designed social inquiry can bear in the information sharing and decision making processes for vulnerable EU migrant children. However, the social inquiry format and quality are diverse and its interpretation not always adequate. Moreover, the process of requesting and delivering social inquiries is lumbering and can last for a long period during which children are often left without perspectives. It has therefore become **a must for Member States to work towards the establishment of a common standard for social inquiries. Specific social inquiry templates should be drafted, made available and used by every Member State authority mandated to manage the case of an EU migrant child. Risk and security assessment should form an integral part of this process.**

2. Specific Recommendations to Regional Players

Aside from the support regional players could provide to Member States in implementing the general recommendations outlined above, the research team would like to address the following set of recommendations to regional organisations.

a) European Union

The EU bears a responsibility in the current lack of protection of EU migrant children, in part due to its very creation and the set up of a freedom of movement area. The absence of a holistic answer to the lack of protection of EU migrant children also stems from the scattered competences it possesses in the Freedom, Security and Justice area. It may, however, find many different entry points in the Treaties to provide for such a holistic answer. In current times, where the very existence of the Schengen Area is questioned even internally, the European Commission should take on a leading role in resolving this problem. **It is therefore strongly advised that the EU explore all possible non-legislative avenues – in partnership with other organisations – that would contribute to supporting Member States in offering an adequate answer to the intra EU migration of children.**

b) Council of Europe

The authority of the recommendations of the Committee of the Ministers and the Parliamentary Assembly of the Council of Europe, as well as the quality of the guidance and tools that the Council of Europe has produced are undisputable. However, the awareness of the existence of such recommendations, guidance and tools remains limited among decision makers and practitioners. **It is therefore advised that the Council of Europe take steps in improving the quality of the dissemination of the deliverables it produces.**

c) Organisation for Security and Cooperation in Europe (OSCE)

The OSCE has made significant efforts to put the issue of child protection in a context of migration on the agenda of its participating states. This is particularly true in the trafficking area, where the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings has advocated for a reinforced child protection approach in the fight against human trafficking. Similarly to the Council of Europe, it

may be important to ensure a better dissemination and use of the outputs it produces, such as the joint statement of the OSCE Alliance against Trafficking in Persons Expert Coordination Team on Child protection.¹⁰⁴

d) National and International Non-Governmental Organisations

Throughout the research, NGOs have been identified as service providers that brought considerable added value to the official processes of protection and return of EU migrant children thanks to their commitment and flexible management rules. However, in a certain number of cases, NGOs may have exceeded their role and taken decisions outside the official framework, despite the fact that they are neither entitled by law to take such decisions nor can they offer the guarantees of independence and objectivity that are necessary for a sound decision making process to occur. **It is therefore recommended that, when it is deemed to be in the best interests of the child, the willingness to collaborate with authorities be reinforced and that the know how NGOs possess be transferred to public authorities that are ultimately in charge of taking decisions and providing protection to EU migrant children.**

¹⁰⁴ OSCE – AECT, Joint Statement on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking, 8 October 2012, RC.GAL/12/10 available at <http://www.osce.org/home/72015> [accessed 14 November 2012]

Annex 1

USE ENGLISH LANGUAGE ONLY TO FILL IN THE BOXES.

THE DOCUMENT IS DIVIDED INTO DIFFERENT SECTIONS THAT PARTNERS SHALL FILL IN DEPENDING ON THEIR ROLE IN THE PROJECT.

Part I: GENERAL INFORMATION¹⁰⁵

Child's personal data

Given name	
Surname	
Nickname (alias)	
Gender	
Date of birth	
Place of birth	
ID card or passport (if available and/or necessary)	

Present address/location in destination country	
Former residences in destination country	
Present address/location in country of origin	
Former residences in country of origin	

Family and/or accompanying person's data

Number of family members	
--------------------------	--

Father's surname	
Father's given name	
Place of birth of father	
Today's home address	
Civil status ¹⁰⁶	
Mother's maiden name	
Place of birth	
Today's home address	
Former home address	
Civil status	

Where appropriate:

Other primary caregiver's surname	
Other primary caregiver's given name	
Place of birth	
Today's residence	
Former residence	
Civil status	

¹⁰⁵ This section may be filled in either by partners in countries of destination or partners in countries of origin.

¹⁰⁶ In the "Civil status" rubric, please use: M – married, S – single, D – divorced, D/R – divorced and remarried, V – dead

Current activities of the Child (may be activities such as school, work, leisure activities or participation in social or sports clubs/events, but may also be activities such as begging, prostitution, etc.)

Starting date of activity	Place of activity	Type of activity	Duration of activity	Comments

Etc

**Part II:
History of Movement¹⁰⁴**

	Places	Date	With whom	Declared purpose	Upon evidence only, provide your assessment of the declared purpose
1	From				
	To				
2	From				
	To				
3	From				
	To				

¹⁰⁴ This part shall be filled in by partners in either countries of destination or origin.

Part III:

Current procedures in place in countries of destination¹⁰⁵

1) Approach used to reach the child

school

street patrol

family approach

other (please, specify) _____

2) Has the child been returned/deported (please specify)?

Yes

No

3) Is the child currently involved in a return procedure? Or involved in any other proceedings (be they administrative or criminal)

Yes

No

4) If "Yes", which measures have been undertaken?

Social inquiry has been commissioned

Interviews/hearings taking place with child

Risk and Security Assessment conducted
(can be part of the social inquiry)

Appointment of a guardian

Other (please specify _____)

5) Is (or was) the child willing to return to their country of origin? (In other words, did the child consent to return?)

Yes

No

6) Was the opinion of the guardian (when appointed and/or consulted) favourable for the return?

Yes

No

7) If the child is not currently involved in a return procedure, what are the procedures that have been started?

The child is detained or their movement restricted

The child is involved in another procedure

If "Yes" to the latter, please detail which procedure _____

¹⁰⁸ This part shall be filled in by partners in countries of destination only



8) If "Social inquiry" box has been ticked in Question 4, please detail what actions were taken:

a) Pace of the international exchange/communication:

Which authority commissioned the social inquiry? _____

How many days after the identification of the child was the social inquiry commissioned? _____

Has the Social inquiry been received?

Yes

No

If "Yes", how many days after the demand was the social inquiry received? _____

b) Substance of international exchanges:

What elements was the social inquiry composed of?

Schooling?

Family financial capacity and social capital?

Guardianship arrangements / Custodial issues / Adequate residential facility?

Community or environment of origin?

Other, please give details.

9) If "Risk and Security Assessment" box has been ticked in Question 4, please detail what actions were taken:

Which authority commissioned the Risk and Security Assessment ? _____

How many days after the identification of the child was the risk and security assessment commissioned? _____

Has the Risk and Security Assessment been received? Yes No

If "Yes", how many days after the demand was the Risk and Security Assessment received? _____

What elements was the Risk and Security Assessment composed of?

a) Risk assessment:

Which persons/authorities/agencies were consulted in the risk assessment, and who conducted it?

Material (including economic) conditions of the family?

Status of the household? (monoparental, step parents, etc.)

Evidence or suspicion of prior abuse or domestic violence in the family/household or environment of origin?

Other, please give details.

b) Security assessment:

Which persons/authorities/agencies were consulted in the security assessment, and who conducted it?

Potential networks active in the community or environment of origin of the child?

Family's involvement if the child is a victim? (As well as opinion of the parents as far as return of the child is concerned)

Other, please give details.



**Part IV:
Decision Making in countries of destination¹⁰⁹**

1) Which authority is responsible to take decision as far as the return of the child is concerned?

2) Is it a judicial authority? Yes

 No

3) If not, to which Ministry and/or Agency does it pertain?

4) How long after identification of the child was a decision on their return or stay issued?

5) In case of return, how long after the decision on return has been issued has the child been effectively returned?

6) Was the social inquiry from authorities in countries of origin been received by the decision making authority? Yes No

7) If yes, was the social inquiry from authorities in countries of origin been used by the decision making authority? Yes No

8) If yes, to which extent has it weighted in the decision taken by the decision making authority?

 A lot

 It had importance

 It played a minor role

 It was given almost no consideration

9) If you answered "No" to question 7, why the social inquiry was not taken into account?

¹⁰⁹ This part shall be filled in by partners in countries of destination only

10) What are the predominant criteria that have been used to take a decision in that case?

- a) Immigration status ; Yes No To which extent? _____
- b) Criminal record (or other administrative offences); Yes No To which extent? _____
- c) Level of integration in the host country; Yes No To which extent? _____

d) If yes to the latter, what elements have been taken into account, and to which extent, please specify under each point

In favor of stay:

- Child's or guardian's opinion Yes No To which extent? _____
- Schooling Yes No To which extent? _____
- Knowledge of local language Yes No To which extent? _____
- Presence of family (respect for private life) Yes No To which extent? _____
- Income of a parent or a responsible guardian Yes No To which extent? _____
- Level of integration in host society Yes No To which extent? _____
- Extended social network on which the child can rely Yes No To which extent? _____
- Quality environment of living Yes No To which extent? _____

Against the stay:

- **No income to support the stay of the child**
 Yes No
- **Poor criminal record**
 Yes No
- **Low level in local language**
 Yes No
- **Child not schooled**
 Yes No
- **Few social network on which to rely**
 Yes No
- **Poor accommodation and general upbringing facilities**
 Yes No
- **Poor hygiene and detrimental health habits**
 Yes No
- **Other, please specify** _____

e) **Parents or extended family presence in the host country** Yes No

f) **Parents or extended family presence in the country of origin** Yes No



Part V:

Follow up in countries of origin (post return)¹¹⁰

Please detail the qualification of the persons ensuring the follow up. (That includes social workers undertaking family visits or social workers working in reception facilities, e.g. crisis centres, orphanages etc.)

Was the person entrusted with the responsibility of the follow up by law or regulation the person who actually undertook the task? Yes No

What did follow up mean in practical terms in that case?

Family visits? Yes No

If "Yes", were they regular? Please give details.

Social workers working in the reception facility where the child is accommodated? Yes No

If "Yes", is the reception facility adequate and is the staff sufficiently trained to care for the returned children? Please give details.

Meeting with an authority outside the place of residence (i.e. the child and family had to physically go to a certain place)? Yes No

If "Yes", please give details.

Follow up through reports provided by other service providers? Yes No

If "Yes", which one (e.g. school teachers or directors, Residential/Child Protection Facility staff, psychologists, etc.)? Please describe.

¹¹⁰ This part shall be filled in by partners in countries of origin only.

Any other type of monitoring?

If "Yes", please describe in this box:

Periodicity of the follow up:

Number of times per week or month that a follow up is ensured?

Does the same person ensure the follow up regularly, or have different persons taken over these cases?

Please describe in the box below whether the number of these visits (or the number of staff in the residential facility) seems reasonable as compared to the workload of the person entrusted with this responsibility (e.g. Is this person so overloaded that they cannot accomplish quality work and/or an adequate number of visits?).

What are the criteria applied by the persons entrusted with this responsibility in order to determine whether the child is at risk of re-trafficking and/or exploitation or that the child's well-being is endangered?

Present observations on the appropriateness of the services provided (include the child's views where possible).

Part VI:

Cross checking of information in countries of origin (during or post return)¹¹¹

1) If a social inquiry request was received, please detail what actions were taken:

a) Pace of the international exchange/communication:

Which authority(ies) was (were) responsible for conducting the social inquiry? _____

How many days after the receipt of the request was the social inquiry done? _____

Has the Social inquiry been sent? Yes No

If "Yes", how many days after the demand was the social inquiry sent? _____

b) Substance of the international exchanges:

What elements were considered by the person conducting the social inquiry?

Schooling?

Family financial capacity and social capital?

Guardianship arrangements / Custodial issues / Adequate residential facility?

Community or environment of origin?

To what extent does the social inquiry present guarantees of independence? (e.g. Do you feel that any pressure is put on the family or environment of origin to accept the return?)

Other, please give details.

¹¹¹ This part shall be filled in by partners in countries of origin only.



2) If risk and security assessments are included in the social inquiry or were anyway conducted, please detail what actions were taken:

Which authority made the risk and security assessment? (please also indicate whether it is the same as the authority that conducted the social inquiry) _____

How many days after receiving the request was the risk and security assessment done? _____

Has a risk and security assessment been done on site? Yes No

How many days after the demand was the risk and security assessment sent? _____

What elements did the person who was supposed to conduct the risk and security assessment take into consideration?

a) Risk assessment:

Which persons/authorities/agencies were consulted in the risk assessment, and who conducted it?

Material (including economic) conditions of the family or presence of an adequate reception facility?

Status of the household? (monoparental, step parents, etc.)

Evidence or suspicion of prior abuse or domestic violence in the family/household or environment of origin?

Child referral to reintegration/integration services after return

Referral date	Country (RO, BG)	Type of reintegration/integration service				Service provider	
		Residential facility? (specify type)	School? (specify class)	Vocational training? (specify)	Other (specify)	Public (specify its name)	Private / non-governmental (specify its name)

If you have indication of a "life project" being designed by the authorities in countries of origin or countries of destination, do you consider that the present situation of the child and/or the steps taken by authorities of the child reflect the content of the "life project"? Please explain.

The following space must be used to present all information that may be useful for the purpose of the research. Please give details of any relevant information and or comments you may have on the process, as well as on the current situation of the child that you think may be useful for the research.



Example of a protocol of collaboration for a better protection of migrant children in a freedom of movement area.

Project partners made the choice to present a protocol of collaboration under a European Directive format, as it was deemed to be the most appropriate instrument to achieve the objective of the project and promote the recommendations set out in this research. This proposal could however be adapted to the format of any other kind of international text such as an international Treaty or a multi-lateral agreement.

This text mainly addresses, following the entry into force of the EU anti trafficking directive, the civil aspects and the protection measures to be taken upon identification of EU migrant children cases. Its articles are not numbered as it can be worked on as a background document for policy and decision makers as well as technical experts.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and the Treaty on the functioning of the European Union,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 24 thereof,

Having regard to the proposal of the European Commission,

Acting in accordance with the procedure laid down in Article 294 of the Treaty on the Functioning of the European Union

Whereas:

(1) [...]

(#) Clear, transparent and effective rules need to be laid down to provide for the effective protection of European migrant children in vulnerable situations in order to improve the necessary management of transnational child protection procedures.

(#) It has been demonstrated that bilateral readmission agreements between EU Member States did not provide an adequate framework to find durable solutions for unaccompanied and separated European Union children found in an EU Member State other than their own.

(#) The need for a European Union framework of a harmonised return process for European Union children underpins the responsibilities that Member States have endorsed in the freedom of movement directive. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return and finding durable solutions for European Union children.

(# Subsidiarity and proportionality) Since the objective of this Directive, namely to establish common procedures governing decision making in matters relating to the return or stay of unaccompanied or separated children possessing the citizenship of one EU Member States and found in another Member State, cannot be sufficiently achieved by the Member States but can on the other hand, by reason of its scale and effects, be better achieved at Union level, the European Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not exceed what is necessary to achieve that objective.

(# Non Discrimination) Member States should implement this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

CHAPTER I

GENERAL PROVISIONS

Article XX: Scope of application

(# Relations with other acts of the Union) This directive shall apply without prejudice to the rules set out in other European Union instruments relating to the civil aspects of parental responsibility in matrimonial matters, in particular Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

(# Relevant International Law) This directive complements the actions foreseen in the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and in the Hague Convention.¹¹² This directive shall also complement the actions foreseen in the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

(#) This directive shall be interpreted in the light of the UN Convention on the Rights of the Child. The interpretation given to its content by the UN Committee on the Rights of the Child should be given interpretative weight, in particular the General Comment number 6 on the treatment of unaccompanied minors outside their country of origin.¹¹³

(#) This directive shall be interpreted and applied in a way that is consistent with the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children¹¹⁴ as adopted by the General Assembly of the United Nations on 3 December 1986.

HAVE ADOPTED THIS DIRECTIVE

1. This directive shall apply in matters relating to national and transnational measures and processes to be taken in order to protect EU migrant children found in an EU Member State other than their own.

2. The matters referred to in paragraph 1 shall, in particular, deal with:

(a) the establishment of a formal best interests determination procedure

(b) decisions concerning the right of residence and attribution of a residence permit or the return of the child to their country of origin

(c) representation and guardianship, without prejudice to the legal rights attached to parental authority

(d) procedural safeguards and judicial review in matters relating to transnational child protection

(e) cooperation between all EU Member States in matters relating to the transnational protection of EU migrant children as defined in Article 2 of this directive

(f) exchange of information between all EU Member States aimed at monitoring the individual situation of EU migrant children as defined in Article 2 of this directive.

2. This directive is without prejudice to the rules set out in Council Regulation (EC) No 2201/2003 of 27 November 2003 and shall therefore not apply in matters relating to international child abduction or determination of parental responsibility following matrimonial disputes.

¹¹² Hague Conference on Private International Law, Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980, Hague XXVIII

¹¹³ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html> [accessed 12 September 2012]

¹¹⁴ UN General Assembly, Draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally., 13 December 1984, A/RES/39/89

Article XX Definitions

For the purpose of this directive,

1. The term “EU migrant child” shall cover

a) all natural persons under the age of eighteen possessing the citizenship of one EU Member State and being found in another EU Member State in a vulnerable situation and without being accompanied by the holder of parental responsibility or a person exercising other forms or rights of custody.

b) all third country natural persons under the age of eighteen holding a lawful residence permit in one EU Member State and being found in another EU Member State in a vulnerable situation and without being accompanied by the holder of parental responsibility or a person exercising other forms or rights of custody.

2. The term “parental responsibility” shall cover all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access.

3. The term “Best Interests Determination” shall cover the decision having a long-term impact on the life of a child, such as a decision on return to the country of origin or a decision favourable to the integration of the child in the receiving country.

4. The term “measure[s] of protection” covers all measures, be they administrative or judicial, civil or criminal, that aim to protect the child from abuse, neglect or a situation of exploitation or other type of vulnerability as provided for under domestic law.

5. The term “receiving Member State[s]” covers all countries where an EU migrant child of another citizenship is found.

6. The term “Member State[s] of origin” covers the Member State from where the EU migrant child possesses its citizenship or where they have their habitual residence.

7. The term “habitual residence” covers the Member State where the child has a lawful residence.

Article XX More favourable provisions

This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.

Article XX The best interests of the child, family life and state of health

When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;

(b) family life and personal relations;

(c) the state of health of the EU migrant concerned.

CHAPTER II

COOPERATION BETWEEN MEMBER STATES

Article XX Responsible authority

1. Each Member State shall appoint, for the purpose of this directive, one central authority which shall be designated responsible for all coordination at transnational level aimed at coordinating protection measures and managing the migration flow of children from one EU Member State to another.

2. The responsible authority designated should be exclusively responsible for the transnational exchange of information.

3. The responsible authority shall ensure the inter-agency coordination at national level that is necessary to achieve the objectives set out in this directive.

Article XX
Information Exchange

1. Upon a request sent by the responsible authority of a Member State to the Member State of origin of the child, the latter State shall conduct the social inquiry and send it back to the authority that requested it as expeditiously as possible, but no later than 20 working days following receipt of the request.
2. The information presented in the social inquiry shall be provided according to the template proposed in Annex XX.
3. The responsible authority shall ensure the strict implementation of national and European data protection policies.
4. Member States shall provide continuous guidance and trainings to professionals mandated to conduct social inquiries, which should include training on risk and security assessment as well.

Article XX
Determination of identity

Where Member States are aware that the identity of an EU migrant child is being concealed or is suspicious, Member States shall make all possible efforts to establish the true identity of the child prior to leaving the child without supervision of the owner of parental rights or responsible caregiver or entity as established by domestic law.

CHAPTER III

MEASURES OF PROTECTION AND DURABLE SOLUTIONS

Article XX
Decision making in receiving Member State

National authorities shall undertake either a best interests assessment prior to taking interim measures of protection or a best interests determination prior to finding a durable solution for an individual EU migrant child.

Article XX
Interim measures of protection

1. Where the authorities of a Member State identify an EU migrant child they shall take in due course any interim measures of protection, be they administrative or judicial, in civil or criminal matters, which are necessary to ensure the immediate safety and well being of the child.
2. The measures referred to in paragraph 1 include, at a minimum, provision of safe and adequate accommodation, medical assistance and physical protection where necessary.
3. Member States should encourage the adoption of measures promoting fostering arrangements rather than institutional placements where that is appropriate.

Article XX
Durable solutions

1. An independent authority shall undertake a best interests determination prior to taking any decision having a long-term impact on the life of the child. This includes, at a minimum, a decision to return a child to their country of origin or a decision to integrate the child in the receiving country.
2. A best interests determination shall be undertaken after a multi-disciplinary assessment of the situation of the child and the decision shall be based on objective elements reflected in the social inquiry referred to in article XX, as well as in individual assessments of the child produced by the child protection services of the receiving Member State.

Article XX
Local integration

1. Member States shall provide for the possibility of granting an EU migrant child a right of residence.
2. When a decision favourable to local integration as referred to in Article XX(X) is taken, Member States shall foster the integration of the child with a full set of measures including, at a minimum, full access to social security and benefits, educational programmes,

vocational training, health care and adequate accommodation arrangements.

3. Once a decision on local integration has been taken, the receiving Member State shall formulate a life project in collaboration with the minor concerned when the age and maturity of the child allow their participation.

Article XX **Return procedure**

1. The central authority referred to in Article XX shall be responsible for ensuring a safe and dignified return of the child to their Member State of origin.

2. Once a decision on return has been taken, the central authorities from the Member State of origin and receiving Member States shall take the necessary operational measures to return the child once the return form provided in Annex XX has been received by the Member State of origin.

3. A decision on return shall be enforceable only after the period foreseen to exercise legal remedy has elapsed as provided for in domestic law and a life project has been formulated for the minor concerned.

Article XX **Representation and guardianship**

1. EU Migrant children without the supervision of an authorised representative shall be appointed an independent and adequately trained guardian as expeditiously as possible, but no later than 24 hours after identification.

2. The role of the guardian shall be to preserve the child's best interests throughout the whole decision making procedure and should be associated with any interim protection measures or best interests determination processes that are initiated.

Article XX **Remedies**

1. The EU migrant child concerned or their legal representative or guardian shall be afforded an effective remedy to appeal against or seek review of decisions taken after best interests determination, as referred to in Article XX, before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions taken after a best interests determination, as referred to in Article XX, including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The legal representative or guardian or the child concerned shall have the possibility of obtaining legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid.

Article XX **Views of the child**

Member States shall give due consideration to the views of the child according to their age and maturity. A decision taken without prior consultation with a child who is capable of expressing their views shall be considered null and void.

CHAPTER V

FINAL PROVISIONS

Article XX **Reporting**

The Commission shall report every two years to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments. The Commission shall report for the first time by MM/YYYY and focus on that occasion in particular on the application of Article XX in Member States. In relation to Articles XX and XX (on local integration and return) the Commission shall assess in particular the additional financial and administrative impact in Member States.

Article XX **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by DD/MM/YYYY. They shall forthwith communicate to the Commission the text of those measures. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article XX **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

“REVENI”

Transnational monitoring of return procedures for Romanian and Bulgarian children

Project Summary

The REVENI project has been jointly designed by 4 different NGOs in 5 different countries in order to improve the level of protection of, and decisions taken for, European unaccompanied minor victims of exploitation and/or trafficking, or at risk of being, in Europe. The four partners are the Alliance for Children and Youth in Bulgaria, ARSIS in Greece, Hors La Rue in France and Terre des hommes in Romania and Hungary.

Partners will foster professional exchanges, monitor return procedures, carry out research, conduct awareness raising activities, and collect and disseminate best practices in countries of origin and destination in all countries of interventions and beyond.

A monitoring of the return procedure of European unaccompanied minors from countries of destination to countries of origin will be undertaken throughout the 18 months of implementation of the project in order to identify gaps in return procedures of Romanian and Bulgarian unaccompanied minors and to promote alternatives in accordance with the UN Convention on the Rights of the Child.

International research published at the end of the project will analyse the data gathered throughout the monitoring process and will provide an in-depth view of the gaps and good practices in return procedures, while interpreting the compliance of those and the national legislation as well as bilateral return agreements with international instruments and EU law. The analysis will be made through the prism of the EU directive on the rights of citizens of the EU to move and reside freely in the territory of Member States and the anti-trafficking framework decision currently being replaced by a directive of the European Parliament and the European Council.

The awareness of national authorities and all other relevant stakeholders of the gaps and good practices in the return procedure will therefore be increased allowing better planning and management of the cases of EU unaccompanied minors at risk of exploitation and/or trafficking, as identified by project partners.

The project will also foster the sharing of experience at transnational level, with professionals in child protection and judicial authorities meeting their counterparts from countries of origin/destination during multi-disciplinary events. This strengthening of the links between those professionals – that will be facilitated throughout the project – will ensure that during the transnational exchange of information judicial authorities and child protection professionals from different countries cooperate actively in finding durable solutions in the best interests of the child.

The collaboration between stakeholders in countries of origin and destination will be improved and an experience-sharing meeting will draw the lessons learned from this 18-month-long facilitated cooperation. A working document on a standardised procedure of collaboration will be designed and promoted on this occasion.

The dissemination of the results of both the project and the study, as well as a final conference, will be organised in order to promote and contribute to harmonised national and European responses to the protection of EU unaccompanied minors at risk of exploitation and/or trafficking through identified good practices and methods of collaboration.

The knowledge of European decision makers on the good practices and gaps in the protection of EU unaccompanied minors will therefore be increased, while a joint manifesto agreed upon by participants will be issued.



ARSIS, ASSOCIATION FOR THE SOCIAL SUPPORT OF YOUTH



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