

Conclusion and recommendations

Main project findings and lessons learned

The absence of comprehensive data on unaccompanied children on the move in the project countries Greece, Italy and France hampers the formulation of appropriate responses. Therefore, it was decided to make an effort, in the framework of the project, in gathering quantitative and qualitative data through project interventions. While the data gathered in the context of the project will not capture the full picture of the concerned population, they can be considered a representative sample, based on the fact that Patras, Rome and Calais are among the main transit locations of the project's target group, as illustrated by the following figures:

In a 10 month period (August 2011 – May 2012), project partners met at least 1,094 unaccompanied children in transit, the majority in Patras (407) and Rome (520). There were a lower number of contacts (167) in Calais, where – unlike in Patras and Rome - only children headed for the United Kingdom are found.

The majority of the children met in Greece (328 out of a total of 407) and France (127 out of a total of 167) continued to benefit from project services for up to 5 months following their first registration with project partners. In Rome children seem to remain for only an average of two weeks, possibly because it is relatively easy to organize onward travel from Italy.

The analysis illustrated in section 3 of this report, indicates that the intervention established through the project had a remarkable impact in terms of immediate protection of unaccompanied children in transit in Patras, Rome and Calais. As described in section 3 on the local context, in Patras and Calais, the establishment of the drop-in centre and mobile drop-in unit permitted daily, consistent and effective assistance interventions in locations where tailored services were not previously available for this target group. In Italy the already established intervention was enhanced, testing specific responses tailored to children in transit or strengthening existing ones, such as profiling interviews or the provision of information. In all locations outreach activities allowed for contact with 1,083 children.

Almost all children met by staff in drop-in centres and mobile units were provided with socio-legal information on their rights under national law and protection opportunities. All children received some kind of first assistance, tailored to their needs, as well as facilitated access to safe places, i.e. drop-in centres. This contributed to reducing the time children spent in the street and, thus, the risks of being neglected and subject to violence and abuse. Children were offered the opportunity to access more tailored services such as legal and health counselling, profiling interviews, best interests assessment based on individual profiling interviews, individual follow-up and referral, all of which contributed to foster their awareness, participation and empowerment. A detailed analysis of these interventions, the number of beneficiaries and the impact is presented in section 3.

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The project had on the other hand a limited impact on what one could call the long term protection of unaccompanied children on the move, in relation to the number of children entering the national protection and care mechanisms existing in project countries and in terms of reducing voluntary onwards movements and related risks. Statistics on referrals to official protection mechanisms show that, despite the significant number of children in transit in need of assistance and support, only 37 of them, equivalent to about 4% of the children reached through the project, accepted referral to protection mechanisms following project intervention (16 in Greece, 7 in Italy and 14 in France).

The limited impact in this regard is determined by both, systemic factors and inadequacies, as well as by the particular characteristics of the target group, combined with causes of their migration. Project findings, confirmed through direct information obtained from children, have demonstrated that several factors encourage and determine the decision of children to continue their journey, most importantly the child's network as well as other factors pertaining to the national level (in Greece, Italy and France) and to the European Union (EU) Level:

THE CHILD'S NETWORK:

- The **pressure** exerted by family members both in the country of origin and of destination, who expect that the child complete the original migration project.
- The **influence** exercised by the immediate environment of the child, including co-nationals, who allegedly had negative experiences in project countries and smugglers, who have an economic interest in encouraging onward migration.

AT NATIONAL LEVEL IN GREECE, ITALY AND FRANCE:

The most important factors determining children's decisions to continue their journey to European countries, other than Greece, Italy and France, are:

- **Children's expectations and beliefs regarding integration opportunities, in relation, *inter alia*, to access to education, vocational training and the job market.** Independently from their needs of international protection, children in transit and their families have specific expectations regarding their immediate future, in particular access to secondary school and vocational training. Among the ultimate objectives is to find decent jobs allowing them to support their families and themselves. Since protection measures in project countries apply to children because of their age, rather than because of their status, most of the children in transit arriving in project countries close to 18 years of age have limited opportunities for accessing integration programs. In particular once they turn 18 they are generally required to leave reception facilities with no further support since there are no viable transitional measures to mitigate the difficult passage to early adulthood.
- **Inadequacy or the absence of reception facilities and social services to promptly respond to children's needs and to meet their expectations.** In some locations in project countries reception is critical in terms of availability and support offered. Standards vary from place to place and, thus, they do not always ensure respect of fundamental rights of the child, such as recreational and educational opportunities, prompt provision of information, sufficient communication with the relevant officers and responsible persons, participation of children in the decisions making process. These were noted as the main causes of disappearance of children from reception centres.

- **Lack of reception responses tailored to children in transit.** The identification procedure which is required to access reception facilities plays a deterrent role for children, who fear being identified, registered and fingerprinted. Heading towards Northern European Countries, they want to avoid any procedure that may entail the risk of being returned, under the Dublin II Regulation, to countries where they do not intend to remain. During their presence, they therefore opt not to benefit from existing protection measures. Instead they remain homeless and, consequently, continue being exposed to dangers and abuses inherent to the smuggling networks and to living conditions in hazardous and unsafe environments.
- **Inadequate age assessments and identification procedures.** Age assessments procedures are either lacking or they are carried out without a uniform and systematic methodology; they do not adopt a holistic nor a multidisciplinary approach; margin of errors are seldom taken into consideration and children's rights (to be informed about the procedure and the consequences of the age assessment and to give their informed consent to it) and their representation through a guardian or other legal representative are not always ensured.
- **Lengthy and inefficient procedures for the appointment of the guardian.** Guardianship provisions face considerable challenges in all three countries, and are not sufficiently designed or structured to meet the needs of all unaccompanied children.
- **Delays in obtaining access to the asylum procedure and the overall slow determination of the legal status of unaccompanied children.** Children who nevertheless decide to enter protection schemes and to remain in the country where they are identified, are discouraged by the long waiting periods as well as the insecurity and uncertainty of their legal status. Given, *inter alia*, the particular vulnerability of children their legal status needs to be determined timely. Legal regimes regulating legal stay of unaccompanied children in the three countries, vary in requirements, substance and procedures.

AT EU LEVEL:

- **The interpretation of Article 6 of the Dublin II Regulation and the consequent possible return of children the authorities of their chosen destination countries.** According to the information collected through partners and counterparts in European countries as well as individual cases encountered by project partners, children may be returned to Member States they have transited through under Art. 6 of the Dublin II Regulation. The reasons are not always clear and may be subject to interpretation by Member States, with an outcome which does not take into account the child's best interests. Reasons may include previous identification and fingerprinting as adults in other Member State, despite the child's recognition as such in destination countries, as well as previous submission of an asylum application in the relevant Member State by a child recognized as being underage in both countries.
- **The limited legal opportunities for reaching relatives in other EU Member States, due to the restrictive definition of family members in EU laws.** The majority of the children encountered in the framework of this project who wished to reach their family in other European countries had older siblings, uncles and cousins in that country. Such family members are not considered by EU laws, in particular the Dublin II Regulation and the Family Reunification Directive, and most of the national legislations regulating for family reunification.
- **The length and complexity of the legal procedures for family reunification.** The cases supported during the period of project implementation showed prolonged procedures mainly due to the inquiries of the enquiring or receiving countries to prove the family link.

Recommendations

The European Commission has acknowledged the challenging and growing phenomenon of unaccompanied children, departing alone from their countries of origin, undertaking an unsafe migration exposing themselves to risks of violence and abuses, and has issued an Action Plan for concrete solutions. States, having the ultimate responsibility of providing protection to children, are encouraged to do all that is within their power to effectively improve the protection situation and reduce the continuous exposure of children to violence and abuse. It is therefore recommended:

GENERAL RECOMMENDATIONS:

- To identify and implement tailored and effective responses at national and EU level for unaccompanied children in transit. Such responses should envisage short term solutions by guaranteeing access to assistance and reception services and long term solutions by ensuring concrete opportunities for local integration or transfer in other Member States, through measures such as effective family reunification.
- To ensure that the best interests of the child is always and truly the primary consideration in all actions affecting an unaccompanied child. To this aim, a clear binding provision stating that the best interests of the child should be the primary consideration for Member States with respect to all procedures affecting unaccompanied children, should be included in all national and EU laws related to unaccompanied children.
- To ensure that children are heard and their views are properly taken into consideration.
- To establish best interests determination procedures and to ensure that durable solutions are identified and implemented. In the determination of the child's best interests, States should adopt a multidisciplinary approach involving the opinion of independent experts.
- To ensure that specific information and awareness-raising activities are carried out in countries of origin, transit and destination and encompass family members and children's communities.
- To intensify efforts in the collection of disaggregated data and comprehensive statistics on unaccompanied children by developing common criteria and indicators. The collection of this data will enable the formulation of appropriate responses catered to the size and the status of the population.

RECOMMENDATIONS TO GREECE, ITALY AND FRANCE:

- To identify a single National Authority or body with responsibility for all unaccompanied children, regardless of their status. Such authority should facilitate the coordination among the various State institutions and bodies, and should suggest the adoption and actual implementation of appropriate measures for the protection of unaccompanied children.

Age assessments and identification:

- To develop a single set of operational guidelines on the timely identification of unaccompanied children and their specific vulnerabilities and protection needs immediately upon arrival. The guidelines should also provide indications on how best to identify specific protection measures in the best interests of each child.
- To ensure that age assessment is carried out as a measure of last resort where there are grounds for serious doubt and where other approaches, such as gathering documentary evidence, have failed

to establish the individual's age⁹² and through multidisciplinary methods and standard procedures which are uniform nationally and preferably across the EU. A holistic and multidisciplinary approach should be adopted; a margin of error should be indicated and the benefit of the doubt applied; the child should be properly informed and his or her guardian or legal representative be present; procedural safeguards and the right to appeal against the decision should be ensured.

Reception:

- To identify innovative solutions for reception systems tailored to the needs of unaccompanied children in transit. Tailored forms of reception should prevent their isolation and promote their access to accurate information and to protection mechanisms available at national level.
- To guarantee minimum common care standards for reception of unaccompanied children, to ensure the quality and conditions that are conducive to the child's development, able to guarantee the enjoyment of children's rights and promote the child's full and harmonious development.⁹³ This reception system should be centrally coordinated, sustainable in terms of funding and subject to a monitoring mechanism.

Information:

- To ensure that unaccompanied children are promptly informed about their rights and protection opportunities, in a child-friendly manner and with the support of cultural mediators. Information should be provided throughout all procedures and information.
- To ensure that children are informed on decisions of the authorities, which shall be communicated in the presence of the children's guardian or legal representative and in a child-friendly manner so that children can understand them.

Appointment of the guardian and issuance of legal documents:

- To guarantee that a guardian is appointed immediately for all unaccompanied children after identification, with the aim of ensuring that all children are advised accurately and their protection and welfare are properly guaranteed in all contexts.
- To establish a functional and effective guardianship system for all unaccompanied children, including through legislative amendments as appropriate. Such system should ensure that guardians can effectively act as guardians, with reference to know-how, expertise and capacity to individually follow each child they are appointed to. This system should foresee training, continuous supervision and appropriate legal assistance, and may be coordinated by independent authorities.
- To ensure that all unaccompanied children are timely granted a legal status and that legal documents are promptly issued.

Integration opportunities:

- To improve prospects for integration by way of increasing funding for social policies to support integration pathways for unaccompanied children. Integration opportunities should be concrete

⁹² With this purpose, see *SCEP Statement of Good Practice* 4th revised edition, p. 25.

⁹³ See UN General Assembly resolution on Guidelines for the Alternative Care of Children, A/RES/64/142, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/470/35/PDF/N0947035.pdf?OpenElement>.

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and sustainable and should encompass education opportunities, vocational training and access into the job market as appropriate and according to relevant legislative provisions for the protection of the child's rights. Integration measures should be made available to all children promptly, independent of their legal status. The State should facilitate the recognition of children's previous studies and school certificates allowing children to access further studies in Europe.

- **To provide opportunities for integration for unaccompanied children upon turning 18** by promoting measures for accompanying them in such transition. For this purpose, specific provisions on the conversion of the residence permits should be envisaged so as to avoid that children fall into an irregular situation when turning 18.

RECOMMENDATIONS TO THE EUROPEAN UNION

Transfer of children under the Dublin II Regulation:

- Unaccompanied children are particularly vulnerable. In this respect, it is recommended that in the absence of a family member or of another relative, whenever a child has applied for international protection in more than one Member State, the Member State responsible for examining his or her application is the Member State where the child is present, provided that this is in the best interests of the child and that the child's views and opinions have been taken into due consideration. This is in line with Article 8 (4) of the Proposal to Recast the Dublin II Regulation currently under negotiation. UNHCR encourages the Council and the European Parliament to reflect this recommendation in the final text agreed.
- To ensure that the interpretation⁹⁴ and implementation of Article 6 paragraph 2 of the Dublin II Regulation⁹⁵ is anchored in best interests considerations. Formal and comprehensive assessment procedures should be carried out before any decision regarding the determination of the responsibility for examining an asylum application of unaccompanied children. Transfers back to the Member State in which children first lodged an asylum application should take place only if this is clearly shown to be in the child's best interests.⁹⁶
- UNHCR recommends to establish a legal obligation for Member States to assume responsibility over the claim of an unaccompanied child who has a close relative on whom the child may be economically, socially or emotionally dependent and who can take care of him or her in such Member State, provided that this is determined to be in the child's best interests.⁹⁷
- To ensure that procedural guarantees in all transfers are clearly defined, including the effective availability of legal remedies against any decision, the provision of proper information and the access to free legal assistance. No transfer should take place pending an appeal.

⁹⁴ With this regard, see Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 19 December 2011 – MA, BT, DA v Secretary of State for the Home Department (Case C-648/11). This concerns the interpretation of the second paragraph of Art. 6 of the Dublin II Regulation, i.e. which Member State is responsible under paragraph 2 for determining the application for asylum where an unaccompanied child has lodged an application in more than one Member State.

⁹⁵ Art. 6 par. 2 of the Dublin II Regulation states: "In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum." See the original Regulation on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>.

⁹⁶ UN High Commissioner for Refugees, *The Dublin II Regulation. A UNHCR Discussion Paper*, 2006, pp. 23-25.

⁹⁷ UN High Commissioner for Refugees, UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008), 18 March 2009, p.7- 9, available at: <http://www.unhcr.org/refworld/docid/49e0ca922.html> [accessed 2 July 2012].

Family reunification:

- To include in the definition of family members with whom an unaccompanied child may be entitled to reunite, close relatives who are legal or customary primary caregiver and child and adult siblings, in cases where a parent of the applicant is not present in the territory of a Member State, provided that it is determined to be in the child's best interests to reside with them.⁹⁸ This extension reflects children's vulnerability and is consistent with States' obligations under international law.⁹⁹
- To speed up national family reunification procedures, including by introducing standard operating procedures and ensuring the mutual recognition of respective national decisions, including child custody. In the requirements of proofs of the parental link or dependency situations, the child's best interests and wellbeing should be the primary consideration and children and parents should not bear an excessively heavy burden of proof of family link or dependency.¹⁰⁰

⁹⁸ See *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, January 2004, available at http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf.

⁹⁹ See CRC, Articles 3, 9, 10, 18 and 22; General Comment No. 6, *Ibid.*, p. 14.

¹⁰⁰ UNHCR comments on the Proposal for a recast of the Dublin II Regulation, pp.8-9, *Ibid.*, p. 80.