

**EXPLANATORY MEMORANDUM (EM) ON A EUROPEAN UNION DOCUMENT**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL– THE PROTECTION OF CHILDREN IN  
MIGRATION**

Submitted by Home Office on 12 July 2017

**SUBJECT MATTER**

1. This Explanatory Memorandum (EM) relates to a Communication from the Commission to the European Parliament and the European Council on the protection of children in migration. The Commission Staff Working Document Implementation of the Action Plan on Unaccompanied Minors (2010 – 2014) accompanies this communication.

2. This Communication sets out a series of actions which the Commission recommends the European Union and its Member States implement along with the support of relevant EU agencies including the European Border and Coast Guard Agency, European Asylum Support Office (EASO), and the European Union Agency for Fundamental Rights (FRA) in order to improve the EU's comprehensive approach to managing migration and ensuring effective protection of children in migration.

**Addressing Root Causes and Protecting Children along Migratory Routes:  
Further Stepping up the EU's External Action**

3. The 2015 Valetta Summit political declaration and its Action Plan sets out actions to prevent irregular migration, migrant trafficking and smuggling, and calls for greater action to address the root causes of irregular migration. The Commission commends the EU for its efforts in protecting children along migratory routes through support for the development of child protection mechanisms in partner countries. This involves creating a safe environment for children and increasing awareness of the risks and dangers faced by children along the migratory route. Supported by EU funding, a number of international organisations and NGOs are currently carrying out child protection activities in countries of origin and throughout different routes, including: UNICEF in South Sudan, which focuses on prevention and response to separation, family tracing and reunification; Save the Children in Iraq, which provides immediate lifesaving assistance to children and improves their access to education and child protection services; and the IOM in Afghanistan, which provides humanitarian protection assistance for vulnerable undocumented unaccompanied minors.

4. The Communication urges the Commission and EU Member States to prioritise actions aimed at strengthening child protection systems along migratory routes, supporting partner countries in developing strong national child protection

systems, supporting projects to prevent child trafficking or smuggling and implementing the EU Guidelines on the Promotion and Protection of the Rights of the Child, which renew the EU's commitment to promote and protect the rights of children in its relations with third countries.

### **Swift and Comprehensive Identification and Protection**

5. The Commission urges Member States to ensure that children arriving in the EU are identified and registered as children using a uniform data set across the EU with particular attention focused on unaccompanied children who may be at a high risk of trafficking and exploitation. An appropriate child protection officer should be present at an early stage of the identification and registration phase. Family tracing and reunification processes should be carried out more efficiently and missing children should be promptly identified, registered and referred to the child protection authorities. The Commission recommends that Member States put in place the necessary procedures and protocols to systematically report and respond to all instances of missing unaccompanied children and collect and exchange data to facilitate the cross-border tracing of missing children and the verification of family links.

### **Providing Adequate Reception in the EU**

6. The Commission reiterates that reception conditions for children include not only safe and appropriate accommodation but also necessary support services to safeguard the child's best interests. The Commission urges Member States to actively ensure that individual gender and age-sensitive vulnerability and needs assessments of children are carried out once they arrive in the EU, and that a viable range of alternatives to detention are accessible to children. The Commission stresses the importance of ensuring that all children arriving in the EU have access to timely healthcare, psychosocial support, formal education and alternative care options including fostering.

### **Ensuring Swift and Effective Access to Status Determination Procedures and Implementation of Procedural Safeguards**

7. The Commission is taking active steps to reform the Common European Asylum System in order to recognise the fundamental role of guardians for unaccompanied children and to reinforce specific safeguards applicable to children. In 2017, the Commission and EU agencies will establish a European guardianship network to guarantee children access to their rights and safeguard their interests. The guardianship network will develop and exchange good practice and guidance on guardianship in cooperation with the European Network of Guardianship Institutions. The Commission reiterates how guardians can help build trust with the child and ensure the child's wellbeing and integration. The Commission urges Member States to strengthen their national guardianship institutions.

8. The Commission reiterates how age assessment methods and procedures significantly vary across Member States and do not always follow EASO recommendations and practice. In addition, children often face long delays in the processing of their asylum claim. The Commission encourages Member States to implement reliable age assessment procedures, prioritise the processing of children's asylum claims and prioritise the relocation of unaccompanied children from Greece and Italy.

### **Ensuring Durable Solutions**

9. In 2017, the Commission will promote the integration of migrant children through available funding and exchange of good practice in order to ensure children receive access to healthcare and other essential public services.

10. The Commission urges Member States to establish procedures and processes to assist in identifying durable solutions on an individual basis and set clear rules on the legal status of children who are not granted asylum but who cannot be returned to their country of origin. The report states the importance of Best Interest Determinations being carried out for all migrant children, which will look at a variety of options for the child including integration in a Member State, return to their country of origin, resettlement or reunification with family members in a third country. The Commission promotes cooperation between Member States to encourage early integration of children, facilitating exchanges of good practice and providing financial support to pilot integration projects for all migrant children. The integration of unaccompanied children is a priority under the Commission's Asylum, Migration and Integration Fund (AMIF) 2014 – 2020.

11. The Commission encourages Member States to increase the use of resettlement and other legal pathways for children, especially for the most vulnerable. The Commission further urges Member States to improve processes for returning children to their country of origin or reuniting them with their families in another third country, where this has been determined to be in their best interests.

### **Cross-cutting Actions: Respect and Guarantees for the Best Interests of the Child; More Effective Use of Data, Research, Training and Funding**

12. During 2017, the Commission and EU agencies will provide additional training, guidance and tools on the best interests of the child, including improving data collection in the EU relating to children in migration. The Commission urges Member States to ensure that all children are provided with relevant information on their rights and procedures in a child-friendly and age appropriate manner and that officials working with children from arrival at the EU border to their integration or return are appropriately trained with the involvement of child protection officers where appropriate.

## **Implementing the recommended actions**

13. In its conclusion, the Commission deems it the responsibility of the Member States to ensure that children migrating to Europe are adequately protected. Although good progress has been made on the Commission's Action Plan for Unaccompanied Migrants of 2010 – 2014, a coordinated follow up to the actions set out in this Communication is required at the EU and national, regional and local levels with cooperation from civil society and international organisations.

14. The Commission will support Member States by providing increased training, guidance, operational support and available funding. The Commission stresses that greater cooperation between EU agencies, national authorities, UN agencies and civil society organisations is essential. The Commission will be closely monitoring actions set out in this Communication and will regularly report to the European Parliament and the Council.

## **SCRUTINY HISTORY**

15. None for this document. This is a new Communication on this cross-cutting area and therefore there is no previous scrutiny history.

## **MINISTERIAL RESPONSIBILITY**

16. The Home Secretary has responsibility for UK immigration and asylum policy. The Foreign Secretary has overall responsibility for the Government's relationship with the EU and foreign Member States. The Secretary of State for International Development has responsibility for UK development activity in third countries and within the European Union.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

17. The Devolved Administrations have been consulted in the preparation of this EM.

18. The duties of English local authorities in accommodating and looking after unaccompanied children are set out in parts 3, 4, and 5 of the Children Act 1989. The Devolved Administrations of Scotland, Wales and Northern Ireland are each responsible for their own policies and laws concerning education, health and social welfare. This covers most aspects of safeguarding and child protection. Each Devolved Administration has equivalent legislation in place which govern local authorities' (or Health and Social Care Trusts in the case of Northern Ireland) responsibilities with regard to looked after children in their respective areas.

## **LEGAL AND PROCEDURAL ISSUES**

19.

i. Legal basis

None. This Communication is not a legislative instrument.

ii. European Parliament Procedure

The Communication has been sent to the European Parliament.

iii. Voting procedure

None. The Council is not required to vote on this report.

iv. Impact on United Kingdom Law

Not applicable to this Communication.

v. Application to Gibraltar

This Communication has no immediate impact on Gibraltar as it is not as legislative measure.

vi. Fundamental rights analysis

This is a Communication and so has no direct impact on fundamental rights. Member States and the Institutions furthermore remain bound by the Charter in their actions in this area.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA AND SWITZERLAND**

20. The communication does not state that its provisions are applicable to the European Economic Area.

## **SUBSIDIARITY**

21. The Communication complies with the principle of subsidiarity. Asylum policy is transnational in nature and is an area of mixed competence.

## **POLICY IMPLICATIONS**

22. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

23. The UK is committed to addressing the root causes of migration, including the drivers of conflict, instability and lack of economic opportunities in key source countries. The UK provides significant support to origin countries to reduce push factors, build stability, create livelihoods and combat trafficking networks. The UK pioneered a new approach to protracted crises at the London Syria Conference in February 2016 through the Jordan and Lebanon compacts, which go beyond people's basic needs and invest in education, jobs and livelihoods. The UK has also committed £80 million to the Ethiopia jobs compact, an agreement with the Government of Ethiopia, the World Bank, European Investment Bank and the EU to create 100,000 new jobs for Ethiopians and refugees in Ethiopia.

24. In Syria, the UK has pledged £2.46 billion, our largest ever response to a single humanitarian crisis. In 2015/2016, across Syria and the region, the UK provided almost 250,000 people with basic mental health support. In addition, over 265,000 victims of sexual and gender based violence in Syria and over 30,000 in the region were provided with specialist support, many of whom were children.

25. The UK is committed to safeguarding the welfare of unaccompanied and separated children along migratory routes and ensuring they are provided with adequate reception in the EU. We agree with the recognition of the need to protect children along migratory routes from violence, exploitation and trafficking. Since 2015, the UK has allocated over £100m humanitarian assistance to the Mediterranean migration crisis response. To date, this support has provided more than 1.5 million relief items to people affected by the Mediterranean migration crisis, and more than 1.9 million meals for vulnerable refugees and migrants in Europe. At the June European Council, the Prime Minister announced a further £75m focused on the Central Mediterranean route. This will meet the urgent humanitarian needs of migrants, facilitate voluntary returns and build the capacity of governments to manage migration.

26. Two current UK aid programmes provide support to unaccompanied children in Europe and countries along key migration routes. The £10m Refugee Children Fund for Europe identifies and responds to the most pressing needs of unaccompanied refugee and migrant children in Greece and the Balkans. This support provides safe accommodation, educational activities, family reunification, psychosocial support, translation and legal advice, as well as training of officials in child protection, asylum and foster care alternatives. In addition, the £8 million Women and Girls Protection Fund for Europe and the Mediterranean protects women and girl refugees and migrants by providing shelters as a safe alternative to dangerous camp environments, providing tailor-made protection services, and strengthening national counter-trafficking mechanisms. This support includes enhanced protection, shelter, psychosocial and legal support, food and other emergency assistance to women and girls, as well as other vulnerable refugees and migrants, in Libya, Sudan and Niger.

27. The UK is developing a safeguarding strategy for unaccompanied asylum seeking and refugee children, drawing on the evidence of what works in keeping vulnerable children safe and in recognition of the increasing numbers and specific needs of unaccompanied asylum seeking and refugee children already in the UK,

unaccompanied children who we transfer to the UK from Europe, and unaccompanied children we resettle directly from Europe. The strategy will address issues including training foster carers to provide specialist support to unaccompanied children, driving an increase in foster care provision and actions to prevent unaccompanied children going missing.

28. We have launched the Independent Child Trafficking Advocates (ICTAs) service in three early adopter sites across the country for which will provide specialist support to trafficked children. ICTAs are specially trained to build trusting relationships with trafficked children to help support and protect them from further harm including re-trafficking. ICTAs will also work with local agencies to ensure the specific and complex needs of trafficked children are met, for example ensuring they are placed in safe, appropriate accommodation. The Home Office has awarded nearly £2.2m from the Child Trafficking Protection Fund (CTPF) to seven organisations for projects protecting vulnerable children in the UK and overseas who are at risk of trafficking. The projects cover a range of proposals.

29. The UK continues to work with the French, Greek and Italian authorities, as well as UNHCR and NGOs to identify minors who may be eligible to come to the UK under section 67 of the Immigration Act 2016. The UK is also working with Member States and relevant NGO partners to ensure the efficient and timely operation of the Dublin Regulation, so that unaccompanied minors with family in the UK can have their asylum claimed transferred here quickly and safely.

30. We agree that the best interests of the child must be a primary consideration in all actions of decisions concerning children and in assessing all durable solutions, resettlement, integration or return. Decisions over whether children are to be transferred to the UK under the Dublin Regulation, section 67 of the Immigration Act or as part of one of our resettlement schemes are underpinned by what is in the child's best interests. We agree with the Commission's conclusion that this is a primary consideration.

31. In the UK, it is local authorities' children's services that are responsible for looking after unaccompanied asylum seeking children. Once an unaccompanied child arrives in the UK, the welfare needs of the child must come first, followed by the registering and processing of the claim for asylum. Within a few hours of a child arriving in the UK, the child is transferred to the care of a social worker and the local children's services. Once in the care of the local authority an unaccompanied asylum seeking child is entitled to the same levels of care and access to services as other children in the UK.

32. We note the Commission's concerns regarding age assessment procedures. The Home Office does not treat an individual as an adult when there is doubt about whether they are under 18 years of age. When there is doubt, the individual will be referred to a local authority social services department for a careful, case law-compliant age assessment and will be treated as a child whilst the outcome is awaited.

33. An asylum seeking child is entitled to legal aid to help with their claim. For unaccompanied children legal assistance is available under the arrangements whereby a local authority has responsibility for meeting that child's needs. Unaccompanied children who are seeking asylum are also referred to the Refugee Council Children's Panel who are an independent voluntary organisation, funded by the Home Office, and who provide advice and guidance on a range of subjects to assist children through the asylum process.

34. We note the Commission's emphasis on guardianship to ensure the safeguarding of unaccompanied children. The UK has extensive children's legislation in place that allows local authority children's services to take formal responsibility for unaccompanied children. We consider this sufficient protection for unaccompanied children in the UK. We do not agree that a legal guardian provides further protection beyond that offered by the local authority, and could in fact add increased bureaucracy and cost to the system.

### **CONSULTATION**

35. External consultation has not been required beyond consultation with the Devolved Administrations.

### **IMPACT ASSESSMENT**

36. The proposal does not contain reference to a full impact assessment.

### **FINANCIAL IMPLICATIONS**

37. None directly from this communication.

### **TIMETABLE**

38. The Commission will regularly report to the European Parliament and the Council on the follow-up actions set out in this Communication.



**Rt Hon Brandon Lewis MP**  
**Minister of State (Immigration and International)**