

Solidarity and Cooperation between EU Member States

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WHAT'S AT THE HEART OF THE MATTER?

Children in migration may be engaged in procedures in the EU which will involve cross-border cooperation between national authorities. Effective cross-border cooperation for the protection of children in migration depends on an inter-agency and multidisciplinary approach involving different actors. However, while the European Institutions are in a unique position to create better cross border cooperation, currently the legal and policy framework is fairly general and incomplete, practice is underdeveloped and the support for such cooperation needs to be improved.

The need for cross border cooperation may arise, for example, when a child applies for international protection and a transfer to another country is being considered (on the basis of [the Dublin III Regulation](#)). It may also occur in cases of family reunification or when restoring family links. Effective cross-border cooperation between different institutional actors of the countries involved in the case (such as the authority responsible for the Dublin procedure, the reception authority, child protection authorities, others) are essential to ensure these procedures are properly applied.

Cross-border cooperation is also crucial to ensure the protection and the implementation of an individual care plan is continued across borders. For example, guardians or professionals in charge of the medical or psychosocial monitoring should be able to communicate with their counterparts on the situation and the needs of the child, in light of an efficient implementation of the child's best interest.

Effective cross border cooperation is also important to avoid exposing children to risks. A study carried out by the SUMMIT project in 2015¹ and earlier by Terre des Hommes in 2009² found that one of the reasons for unaccompanied children to go missing is the lengthy and burdensome procedure for being transferred to another country, especially in cases where the child is trying to reunite with family members. In some of these cases, children give up on the process or on the trust in the system and prefer to travel by their own means. Children moving alone across borders are inevitably exposed to several risks, including homelessness, high level of stress and anxiety, smuggling, exploitation and trafficking. And when a child does go missing from care and is suspected to be in another country, cross-border cooperation should occur to ensure a proper follow up.

Although its crucial importance is increasingly recognised, in practice cross-border cooperation to respond to disappearances of children appears to be the exception rather than the rule. When cross-border cooperation is triggered, it is based on personal connections, rather than on formal, clear and standard procedures³. Cooperation is often jeopardised by a lack of clarity on the roles of agencies in differing countries and on the procedures to follow⁴. Inefficient national information sharing between agencies (arising, inter alia, out of a lack of adequate system for information sharing providing a clear firewall between protection and migration enforcement; a lack of trust

¹ [Best practice and key challenges for interagency cooperation to safeguard unaccompanied migrant children from going missing](#), Missing Children Europe, 2015

² [Disappearing, departing, running away: A surfeit of children in Europe?](#), Terre des Hommes, 2009

³ Summit study, ch. 3.3.6

⁴ Summit study, ch. 3.2.5 and 3.3.6

and GDPR concerns when exchanging sensible information on a child's case) and difficulties in unambiguous identification of the child also impede efficient transnational cooperation⁵.

WHAT CHILD RIGHTS ARE AT STAKE?

See section on child rights at [this page](#).

WHAT EU POLICIES & INSTRUMENTS ARE RELEVANT?

Key EU policy and legislative measures include:

- border procedures,
- international protection procedures, including asylum procedures and Dublin procedures (to determine which Member State has responsibility to hear an international protection claim)
- family reunification procedures,
- trafficking procedures and
- return procedures.

These include provisions which specifically deal with children, including provisions which focus on cross-border cooperation for unaccompanied children.

The role of EU agencies is important in this field, in terms of studies and development of practical measures of support for Member States, including guidance and training, but also through involvement in operations, such as Frontex involvement in border management activities or EASO, Frontex and Europol involvement in hotspots in Greece and Italy.

All

- [European Commission Communication on the protection of children in migration](#) – encourages member states to collect and exchange comparable data to facilitate the cross-border tracing of missing children and the verification of family links, as well as ensure swift and effective family tracing, within or outside the EU, by making full use of existing cross-border cooperation channels. Member States report on implementation of the 12 April Communication (last updated on 12 January 2018), including collection and exchange of comparable data.

Border Management

- [Eurodac Regulation \(EU\) 603/2013](#): establishes the 'Eurodac' database for the comparison of fingerprints of third-country nationals and stateless persons who are apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age, for the purpose of managing asylum applications. The Directive is currently under revision.
- [Schengen Information System \(SIS\)](#): enables competent national authorities, such as the police and border guards, to share information related to security and border management, including to enter and consult alerts on (missing) persons. Specialised national SIRENE

⁵ Summit study, ch. 3.2.2

[Bureaux located](#) in each Member State serve as single points of contact for the exchange of supplementary information and coordination of activities related to SIS alerts.

- [Visa Information System \(Council Decision 2004/512/EC\)](#): allows Schengen States to exchange visa data. It consists of a central IT system and of a communication infrastructure that links this central system to national systems.
- [European Border and Coast Guard regulation \(EU\) 2016/1624](#): as part of the European integrated border management, should support and coordinate technical and operational cooperation between Member States (article 4). This regulation is currently under revision.
- [Schengen Borders Code \(Regulation \(EU\) No 610/2013\)](#) obliges Member States to include in the training curricula for border guards specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. Member States must also nominate national contact points for consultation about children's situations. A list of these national contact points is made available to the Member States by the Commission.

Children of regularly residing migrants and beneficiaries of international protection:

- [EU Directive on long-term residents](#) - covers status and rights of non-EU migrants who have resided regularly and continuously for 5 years, who meet certain criteria. Article 25 provides for the appointment of contact points in each Member State, who will be responsible for exchanging information related to residence permits and protection from expulsion.

Children seeking or granted international protection:

[The existing international protection legislation is currently being renegotiated on the basis of proposals from the Commission made in 2016]

- the [Dublin III Regulation](#) determines which member state is responsible for reviewing a claim for international protection and provides explicit guarantees for children. The best interests of the child, and the right to family life, are also deemed as primary considerations when applying the Regulation (Recitals 13, 16 and Article 6). The Regulation obliges Member States to take into account family reunification possibilities when assessing the child's best interests. For unaccompanied minors, States have specific obligations to identify family members, siblings or relatives. The obligation includes a proactive duty to search for family members and to take into account information furnished by the minor. Moreover, there are duties on States to promptly coordinate and exchange information with other Member States to identify family members, establish the existence of proven family links (by consulting with the other Member State, examining registers, residence permits, evidence of relations and, where necessary, DNA tests) and assess the capacity of the relative to take care of the child⁶. When the transfer is to be carried out, the Member State carrying out the transfer shall communicate with the receiving Member State the necessary information to allow for an adequate assistance, protection and respect of the rights of the person.
- The [Asylum Procedures Directive](#) establishes through the Article 49 that "Member States shall, in liaison with the Commission, take all appropriate measures to establish

⁶ For more, see also ECRE/ELENA [case law note](#) on the application of the dublin regulation to family reunion cases (2018).

direct cooperation and an exchange of information between the competent authorities”;

- [The Reception Conditions Directive](#) mentions the importance of cooperation between EU Member States in the field of reception of applicants for international protection (recital 26). This Directive is currently under revision.
- [EU resettlement scheme](#) provides the possibility for children outside of the EU in need of international protection to be granted it in the EU. *There is also a proposal under negotiation for a Regulation establishing a Union Framework for Resettlement.*
- [EASO Practical Guide on the best interests of the child in asylum procedures](#) looks at the implementation of the best interests of the child in Dublin procedures
- [EASO practical guide on family tracing](#) looks at the need of cooperation among EU Member States all along the guide
- [EASO Training Curriculum: Asylum Procedures Directive Module \(12.\), Dublin Regulation Module \(13.\)](#) The EASO Network of the national Dublin Units aims to enhance cooperation and information sharing among the national Dublin units in the 32 Member States of the Dublin Regulation.
- [FRA Guardianship Handbook](#) (See part 4. On transnational cooperation in the context of child protection especially)
- [FRA report on separated, asylum-seeking children in European Union Member States](#)

Trafficked children:

- [EU Trafficking Directive](#) – see in particular recital (5): “The law enforcement authorities of the Member States should continue to **cooperate** in order to strengthen the fight against trafficking in human beings. In this regard, **close cross-border cooperation**, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting-up of joint investigation teams [...]”

Children who may be subject to return proceedings:

Cooperation between EU member states in the field of return is largely related to data exchange and operational cooperation in the following areas:

- assistance in cases of transit for the purposes of removal by air
- organisation of joint flights for removals
- mutual recognition of decisions on expulsion
- and implementation of guidelines on forced return
- The [European Border and Coast Guard Agency](#) plays a key role in operational cooperation on return (articles 27-33), while taking into account children’s rights. The European Commission has issued a proposal to further strengthen the role of the Agency in carrying out returns⁷.
- [EU Return Directive \(2008/115/EC\)](#) – procedures and rights of children identified by immigration authorities as irregularly residing - Recital 7 and 19 enhance the need for

⁷ [Proposal](#) for a regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council (September 2018)

cooperation with third countries and between the institutions involved at all stages of the return process.

- [European Commission Recommendation on making returns more effective](#), 7 March 2017- Recital 9 enhances the need of “[...] procedures and instruments allow information to be made promptly available to the competent authorities, as well as **cooperation between all actors** that are involved in the different procedures.”

WATCH THIS SPACE: *Updated as of March 2019*

In a nutshell:

- **The ongoing revision of the EU international protection instruments are proving protracted and contentious, especially because of the difficulty in finding compromises on the Dublin Regulation.**
- **The European Commission has issued a proposal to further strengthen the role of the European Border and Coast Guard Agency in carrying out returns, including joint return operations between member states.**
- **The revision of the Eurodac regulation poses significant risks as well as potential improvements regarding the protection and rights of children (see below).**
- **The Schengen Information System has potential for making cooperation between Member States in cases of missing children in migration more efficient but also poses significant risks for child protection (see below).**
- **The ongoing development of a European Guardianship Network (EGN) is a positive development (see below)**

The proposed revision of the **Eurodac Regulation** expands the purposes of the Eurodac database to also identify and track secondary movement and enforce decisions on return. It also lowers the age at which a child must be registered, from fourteen to six, and introduces the use of coercion to obtain fingerprints for children above 14. The lowering of the age of registration could be used to better coordinate to protect children, but data will also be used to enforce Dublin, restrictions on secondary movement and return decisions, which may run contrary to the best interests of the child and cause more children to avoid and disengage from contact with state authorities.

The revision of the **Schengen Information System** has brought some positive changes in the use of SIS alerts in cases of missing children. For instance, it is now possible to differentiate between

- runaways;
- unaccompanied children in the context of migration;
- children abducted by a family member

However, in the case of missing migrant children, the competent authorities may move the child to a safe place in order to prevent him or her from continuing his journey, if so authorised by national law. Migration authorities are now also authorized to access to the database, including article 32 alerts. The SIS dual purpose of finding missing persons (incl. children) and managing return puts the protection of children at risk and may discourage reporting. A strict firewall between protection and migration enforcement is necessary.

The European Commission recast proposal amending the **Reception Conditions Directive** strengthens the obligations of Member States to cooperate through indicators developed by the EASO and the Union network on reception authorities developed by EASO.

RESOURCES FOR ADVOCACY

The SUMMIT Project (coordinated by Missing Children Europe)_Report on [Best practice and key challenges for interagency cooperation to safeguard unaccompanied migrant children from going missing](#) is an in-depth study on the issue of the disappearance of unaccompanied migrant children, conducted in Belgium, Cyprus, Greece, Ireland, Italy, Spain and the United Kingdom. The aim of this research is to identify good practices and key challenges in inter- agency cooperation including across borders.

[A handbook for frontline professionals](#) has also been developed translating the research findings into practical examples and tools, to improve knowledge and response of professionals on an individual level, who work directly with unaccompanied children or with disappearances of children. The handbook aims at stimulating and disseminating practices on how to better cooperate, including across borders, in prevention, response and after care of missing unaccompanied children.

The annual conference called "[Lost In Migration](#)" gathers professionals from different countries meet to discuss good practices that have an impact on prevention and response to the disappearance of children in migration. The final conference recommendations address cross border cooperation and are available [here](#).

The [Amina programme](#), led by Missing Children Europe and its partners, aims at assisting frontline professionals by developing tools that address the gaps in knowledge and practice in their coordinated response to cases of children in migration going missing for reasons linked to trafficking. A toolkit - including checklists, suggested procedures, modules for cooperation, and a contact guide to facilitate co-operation between services - will be available at the end of 2019 and presented in a Brussels based conference in December 2019.

The EGN is a project that started in September 2018, funded by the European Commission and managed by Nidos, which aims to develop a network of institutions and agencies who work in the area of guardianship for unaccompanied and separated children. The Network has great potential to have a key role in improving the cross-border cooperation between guardians and other actors, including in cases of Dublin transfers, trafficking and disappearances.