PROPOSALS FOR A RECAST DUBLIN REGULATION:

PROMOTING THE LEGAL TRANSFERS OF UNACCOMPANIED MINORS OR INCREASING THE NUMBER OF MISSING CHILDREN?

Thousands of unaccompanied minors go missing from state care every year in the EU (10.000 in 2015, according to Europol estimates, while more than 6.000 were registered as missing in Italy at the end of 2016). One of the main reasons is that a large number of unaccompanied minors arriving in Italy, Greece etc. attempt to **reach irregularly other EU States**, where they have family members or hope to find better integration opportunities.

The proposals for a recast Dublin Regulation under discussion – both the proposal by the Commission and the Draft Report by the Rapporteur at the LIBE Committee of the European Parliament – establish mechanisms aimed at **discouraging secondary movements** of unaccompanied minors who do not have family members or relatives in other EU States, providing that they should be **transferred to the country of first application, first irregular entry or allocation**, unless it is determined that this is not in the best interests of the minor.

The undersigning organizations consider that these punitive mechanisms risk not only to be ineffective in discouraging secondary movements, but also to further **increase the number of unaccompanied minors absconding and going missing from state care, both in countries of first entry and in destination countries, as well as to make the distribution of unaccompanied minors even more unbalanced than today.**

Rather than discouraging secondary movements of unaccompanied minors through punitive mechanisms that are clearly against the best interests of the child and thus in breach of Article 24(2) of the Charter of Fundamental Rights of the European Union, EU institutions should **improve the procedures for legal transfers, thus encouraging unaccompanied minors to comply with the provisions of the Regulation.**

We wish to bring to the attention of the EU institutions a range of proposals regarding some of the provisions of the Dublin Regulation on unaccompanied minors, aimed at ensuring:

- the respect of the **best interests of the child,** as provided by the EU Charter on Fundamental Rights and the Convention on the Rights of the Child;
- the **reduction of the number of missing children due to secondary movements** of unaccompanied minors;
- a **fairer distribution of responsibilities** on asylum requests by unaccompanied minors among Member States.

It must be stressed that the document does not address *all* the provisions regarding unaccompanied minors under discussion in the debate on the recast Dublin Regulation. In particular, those proposals by the Rapporteur at the LIBE Committee, Cecilia Wikström, and by some of the Shadow Rapporteurs, that would strengthen the protection of the rights of unaccompanied minors, are not addressed here, since the document focuses on the main critical **issues that remain unsolved** in the proposals presently under discussion.

1. Punitive mechanisms aimed at discouraging secondary movements risk increasing the number of missing children

In the proposal for a recast Dublin Regulation adopted on 4 May 2016, the Commission has proposed that "in order to **discourage secondary movements** of unaccompanied minors, which are not in their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor **first has lodged his or her application** for international protection, unless it is demonstrated that this would not be in the best interests of the child" (Recital 20).

The Rapporteur at the LIBE Committee has suggested a different system, where "the Member State responsible shall be determined by the Member State in which the applicant is present pursuant to the procedure in Article 15(1) or (1a), unless it is determined that this is not in the best interests of the minor" (Art. 10 (5)).

This proposal entails that, as a rule, the **same procedures provided for adult** asylum seekers will apply to unaccompanied minors, in the absence of a family member or a relative, namely:

- if the unaccompanied minor has been registered in the MS of first irregular entry, this MS will be responsible: thus in case the unaccompanied minor has subsequently entered another MS, he or she will be transferred to the **MS of first irregular entry** (Art. 15(1));
- if the unaccompanied minor has not been registered in the MS of first irregular entry and has subsequently entered another MS, the responsibility will be determined randomly among the **remaining MS under the allocation system** (Art. 15(1a)).

Thus, as a rule, the unaccompanied minor who has arrived in a MS and subsequently has entered irregularly another MS, where he or she has applied for international protection, will not be allowed to stay in this MS, instead he or she will be transferred to the MS of first irregular entry or to the MS of allocation.

The above mentioned rules apply, unless it is determined that the transfer **is not in the best interests of the minor**. The determination, however, is carried out by the MS where the unaccompanied minor is present.

It must be considered that this MS is not in the best position to determine that the transfer is not in the best interests of the child, since it has an **interest in reducing the number of unaccompanied minors present** on its territory.

It is likely that the MS where the unaccompanied minor is present will quite seldom assess that his or her transfer to the MS of first irregular entry / allocation is not in the best interests of the child.

Crossing irregularly EU internal border as well as absconding in order to avoid registration, rather than being regularly transferred to other EU States, is certainly not in the best interests of the child.

But the proposed changes – both the proposal by the Commission and the LIBE Committee Draft Report – would not reduce these child rights violations, on the contrary they would risk further worsening the current situation:

a) Both proposals place upon the minor a **disproportionate burden of proof to demonstrate that the transfer is not in his or her best interests**, reversing the presumption established by the Court of Justice of the European Union, that, as a rule, transfers of unaccompanied minors to another MS are against the child's best interests.

As stated by the CJEU in the M.A. ruling, in fact, "since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, unaccompanied minors should not be transferred to another Member State".

It is difficult to understand the basis of the presumption that transfers of unaccompanied minors to the country of first application/first irregular entry/allocation – usually against the minor's will and thus to be enforced coercively – are as a rule in their best interests.

b) According to the Dublin III Regulation provisions and the M.A. ruling, unaccompanied minors are now protected from forced transfers to the country of first irregular entry or where they have first lodged their application.

Eliminating these safeguards, the Commission and the Draft Report proposals risk further increasing the number of unaccompanied minors that choose not to lodge an application for international protection in the MS of first irregular entry and to avoid registration and placement in the protection system in this country, for fear of being forcibly transferred under the Dublin Regulation.

The proposed provisions may even discourage these minors to apply for asylum in the MS they wish to settle in, for fear of being returned to the MS of first irregular entry or being transferred to another MS through the allocation mechanism.

The number of unaccompanied minors absconding and going missing from state care would thus further increase, both in countries of first entry and in destination countries.

c) Finally, the transfer of unaccompanied minors to the country of first irregular entry will further **increase the number of children that Italy and Greece** are responsible of, thus making the distribution of children among EU countries even more unbalanced than today.

The reception systems in these countries are already stretched by the continuous arrivals of unaccompanied minors: the proposed provisions would entail a further deterioration in the standards ensured to these children in the Italian and Greek reception centers and would put under unbearable pressure competent local authorities.

2. Improving the procedures for legal transfers in order to encourage unaccompanied minors to comply with the provisions of the Dublin Regulation

Rather than discouraging secondary movements of unaccompanied minors through punitive mechanisms that are clearly against the best interests of the child and thus in breach of Article 24(2) of the Charter, EU institutions should **improve the procedures for legal transfers, thus encouraging unaccompanied minors to comply with the provisions of the Regulation.**

If effective legal pathways are provided, and unaccompanied minors are adequately informed and supported in accessing them, the number of children who accept being registered and lodging an asylum application in the country of first entry will increase, while the number of those absconding and **going missing from state care will decrease**.

To that end:

a) Adequate **information and support** in accessing the procedures for legal transfers should be provided to unaccompanied minors by competent authorities and guardians.

The proposed amendments that strengthen the right of unaccompanied minors to adequate information and support are strongly welcomed.

b) **Family reunification procedures should become much more effective**, swifter and less cumbersome.

Until unaccompanied minors need to wait up to one year to be transferred to another MS for family reunification, they will keep choosing to reach that MS irregularly.

If the procedure becomes significantly swifter, probably most unaccompanied minors having family members, siblings or relatives legally present in another MS will prefer the legal procedure, rather than unsafe, uncertain and expensive irregular crossings.

c) Finally, **unaccompanied minors who do not have family members or relatives in the EU but who wish to reach another MS** because they have family relations, or cultural, social ties or language skills which would facilitate their integration into that other MS, should be supported in requesting that other MS to assume responsibility for the application under **Article 19** of the proposed Regulation and in providing evidence to motivate this request, in view of the best interests of the child.

In order to incentivize the requested Member States to assume responsibility of unaccompanied minors under Article 19, the number of unaccompanied minors transferred to a MS under Article 19 should be **"deducted" from the total number of applicants that must be allocated** to that MS under Article 34.

This mechanism would promote on the one hand a **fairer distribution of responsibilities** on asylum requests among Member States; and on the other hand it would incentivize unaccompanied minors to apply for asylum in the Member State of first entry and to comply with the provisions of the Regulation, thus **reducing the number of missing children.**

3. Assessing the best interests of the child

a) Procedures for a **thorough assessment of the best interests of the child** must be established.

This is particularly needed, if the possibility to transfer the child to the MS of first application/first irregular entry/allocation, against his or her will, is provided.

The proposed amendments that strengthen the safeguards in the assessment of the best interests of the child are strongly welcomed.

To further improve this assessment, the **views of the guardian** should also be explicitly included.

b) On the other hand, it is crucial that the safeguards particularly needed in cases of transfers to the MS of first application/first irregular entry/allocation **do not make family reunifications even more lengthy** than they are today.

To that aim, we suggest that:

- If the unaccompanied minor and the parent/sibling/relative legally present in another MS request family reunification and no risks for the safety of the child (including risks of trafficking, abuse, neglect etc.) arise, there should be a **presumption that family reunification is in the best interests of the child** and the minor should be transferred swiftly.

- The MS where the relative is resident should not have any **discretionary power to refuse to assume responsibility on the unaccompanied minor's application, based on the assessment of the economic conditions of the relative**.
  If the relative is willing to take care of the child, the child wishes to be reunited to the relative, and the authority responsible under Art. 8(4) has determined that family reunification is not against the best interests of the child, he or she should be transferred, irrespective of the relative's economic conditions, as it is provided when reunification to parents and siblings is concerned.
  According to **art. 27 of the CRC**, the MS where the relative is resident shall take appropriate measures to assist him or her to implement the child's right to adequate conditions of living and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
  This solution not only ensures the respect to family unity but is also more **cost-effective at a EU level**. In fact, providing economic support to the relative so that he or she can take care of the child is generally much less expensive than the placement of the child in an accommodation center in another MS.

4. Suggested amendments

In summary, in order to ensure a) the respect of the best interest of the child; b) the reduction of the number of missing children due to secondary movements of unaccompanied minors; c) a fairer distribution of responsibilities on asylum requests by unaccompanied minors among Member States, we suggest that the Member State responsible for the application lodged by an unaccompanied minor shall be determined according to the following criteria:

a) If the unaccompanied minor has a **family member or a sibling or a relative** legally present in a MS and the persons concerned express their consent in writing, that MS will be responsible, unless it is determined that this is not in the best interests of the minor.

The MS where the relative is resident should not be allowed to refuse to assume responsibility, based on the assessment of the **economic conditions of the relative**.

The procedures for family reunification under the Dublin Regulation should be made **swifter** and less cumbersome, so as to incentivize unaccompanied minors to apply for asylum in the Member State of first entry and to comply with the provisions of the Regulation, thus reducing the number of missing children.

Examples

Mussie has entered Italy and wishes to reach an uncle in Germany. The uncle has been recognized subsidiary protection and is attending University. He has no job but he is willing to take care of the child, provided that social services ensure adequate support. No risks for the child's safety arise. The authority responsible for the assessment of the best interests of the child under Art. 8(4) decides that it is in the best interests of Mussie to be swiftly transferred to Germany to be legally reunited to his uncle.

Joy has submitted her application for international protection in France. She has an aunt legally resident in Belgium, who has declared that she wants her niece to join her. The social services in Belgium carry out a social assessment: the aunt has an adequate house and a good income, but she has been reported to the police for exploiting two young girls in prostitution and is still under process. The authority responsible for the assessment of the best interests of the child under Art. 8(4) decides that it is not in the best interests of the child to be reunited immediately to the aunt in Belgium, and that Joy should stay in France.

b) In the **absence of a family member or a sibling or a relative** legally present in another MS (or in case the relative or the child do not express their consent to family reunification or it is determined that family reunification is not in the best interests of the child):

- In general the MS responsible will be the **MS where the unaccompanied minor has lodged his or her application for international protection and is present**, unless it is determined that this is not in the best interests of the minor, as ruled by the CJEU in the M.A. ruling.

- The applicant should be allowed to avail him or herself of the **procedures referred to in Article 19** and appropriately informed and supported in accessing them. The number of unaccompanied minors transferred to a MS under Article 19 should be **"deducted" from the total number of applicants that must be allocated** to that MS under the allocation mechanism so as to incentivize the requested Member State to assume responsibility of unaccompanied minors under Article 19. This mechanism would facilitate a fairer distribution of responsibilities on asylum requests among Member States, as well as incentivize unaccompanied minors to comply with the provisions of the Regulation.

- If the MS where the unaccompanied minor has lodged his or her application for international protection and is present, is confronted with a **highly disproportionate number** of applications by unaccompanied minors – for example a number higher than 200% of the reference number for that MS as determined by the key referred to in Art. 35 – that MS may decide that the responsibility on the application shall be determined by the **allocation mechanism**, thus promoting a fairer distribution of responsibilities on asylum requests by unaccompanied minors among Member States.

Examples:

Selam has entered Greece and subsequently has moved to Italy, where she has no family members/relatives. She applies for asylum in Italy. The MS responsible for examining Selam's application is Italy.

Emmanuel has entered Italy and wishes to reach a cousin in France. He applies for asylum in Italy and expresses the request to be transferred to France, where his cousin is willing to take care of him. If French authorities decide to accept responsibility for Emmanuel's application, the total number of applicants that France will have to allocate under the collective allocation system will be reduced by one applicant.

Maryam has entered Italy and, after a long journey through EU countries, has reached Sweden, where she has no family members/relatives. In the months before her arrival, Sweden has been confronted with a huge influx of unaccompanied minors. Sweden authorities decide to apply the allocation mechanism and propose Maryam to be transferred to another MS, giving her the possibility to choose among 6 States, supported by the guardian in this choice. The final decision on the MS of allocation will be based on the assessment of the best interests of the child provided by Art. 8(4).

Commission Proposal	Draft Report Proposal	Suggested Amendment
Article 8, par. 3 3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development; c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity.	**Article 8, par. 3** 3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development*, taking into particular consideration his or her ethnic, religious, cultural and linguistic background and the need for stability and continuity in the minor's care and custodial arrangements and access to health and education services*; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity.	**Article 8, par. 3** 3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development*, taking into particular consideration his or her ethnic, religious, cultural and linguistic background and the need for stability and continuity in the minor's care and custodial arrangements and access to health and education services*; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity; **(e) the views of the guardian.**
Article 10, par. 2-3 2. The Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of	**Article 10, par. 2-3** 2. The Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of	**Article 10, par. 2-3** 2. The Member State responsible shall be that where a family member or a sibling **or a relative** of the unaccompanied minor is legally present, **unless it is determined that this is not in the best interests of the minor**. **The persons concerned must express their consent in writing**. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the

that Member State, or sibling is legally present.	that Member State, or sibling is legally present.	father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling, **or relative** is legally present.
3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.	3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.	~~3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.~~
Justification The proposed amendments to par. 2 and elimination of par. 3 aim to: - strengthen the presumption in favor of family reunification; - eliminate any discretionary power by the MS where the relative is resident to refuse to accept responsibility for the unaccompanied minor's application, based on the assessment of the economic conditions of the relative.		
Article 10, par. 5-6	**Article 10, par. 5-6**	**Article 10, par. 5-6**
5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be *that where the unaccompanied minor first has lodged his or her application for international protection*, unless it is *demonstrated* that this is not in the best *interests* of the *minor*.	5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be *determined by the Member State in which the applicant is present pursuant to the procedure in Article 15(1) or (1a)*, unless it is *determined* that this is not in the best *interests* of the minor. *Prior to such a determination the applicant shall be allowed to avail him or herself of the procedures referred to in Article 19.*	5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be **that where the unaccompanied minor has lodged his or her application for international protection and is present,** unless it is *determined* that this is not in the best *interests* of the minor. *Prior to such a determination the applicant shall be allowed to avail him or herself of the procedures referred to in Article 19* **and shall be appropriately informed and supported in accessing these procedures**. **The number of unaccompanied minors transferred to**

		a Member State under Article 19 are deducted from the number of applicants that shall be allocated to that Member State, with regard to the application of the collective allocation mechanism in accordance with Article 34. **6. By way of derogation from paragraph 5, the Member State where the unaccompanied minor has lodged his or her application for international protection and is present may decide that the responsibility on the application shall be determined by the collective allocation mechanism, where the automated system referred to in Article 44(1) indicates that the number of applications for international protection lodged by unaccompanied minors for which that Member State is responsible under the criteria in Chapter III is higher than 200% of the reference number for that Member State as determined by the key referred to in Article 35. The applicant and his or her guardian shall receive information on the possible Member States of allocation and shall be enabled to choose among them. Any decision on the Member State of allocation responsible should be based on the multidisciplinary assessment of the best interests of the minor referred to in Article 8(4).**

Justification The proposed amendments to par. 5 and 6 (that would become par. 4 and 5 if par. 3 is eliminated) aim to: - establish the general rule that the MS responsible will be the MS where the unaccompanied minor has lodged his or her application for international protection and is present, unless it is determined that this is not in the best interests of the minor, as in the M.A. ruling; - provide a possibility for those unaccompanied minors wishing to reach another MS, to request to be legally transferred to that MS, under Article 19, in order to incentivize them to comply with the provisions of the Regulation; - incentivize the requested MS to assume responsibility of unaccompanied minors under Article 19, by "deducting" them from the total number of applicants that must be allocated to that MS under the allocation mechanism, thus facilitating a fairer distribution of responsibilities on asylum requests among MS; - establish a possibility of derogation from the above general principles, in exceptional cases where a MS is confronted with a highly disproportionate number of applications by unaccompanied minors, allowing that MS to decide that the responsibility on the application of an unaccompanied minor present on its territory shall be determined by the allocation mechanism.		
Article 29, par. 2 2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.		**Article 29, par. 2** 2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. **Minors shall never be detained.**

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