

REQU 04 FEV. 2013

CECILIA MALMSTRÖM

B-1049 BRUSSELS

MEMBER OF THE EUROPEAN COMMISSION

Brussels, 31 JAN. 2013
CAB Ref. ARES(2013) 121709

Dear Mr Henry

Thank you for your letter of 10 December 2012 enclosing a study on “Right to asylum for unaccompanied minors in the European Union” and referring to a call you launched for “a European asylum policy adapted to unaccompanied children”.

We agree on almost all of your recommendations. The Commission's proposals for new EU asylum laws reflect a vast majority of them and we have defended such positions during the negotiations with EU Member States and the European Parliament.

The legislative work on the Common European Asylum System is now coming to a close. A key outstanding point concerns unaccompanied minors. We propose that they are never subject to special asylum procedures for cases that are likely to be abusive (border and accelerated procedures) and that they always enjoy full rights to appeal. Many still strongly oppose such rules. We are working hard to find a compromise which would adequately protect unaccompanied minors while responding to concerns about the potential abuse of protective rules. The civil society's voice can be an important one in this debate.

A point where we cannot fully agree with your recommendations is detention of unaccompanied minors. You recommend that they are never deprived of freedom. The Commission took the same stance in 2009, but during negotiations we have been sensitive to arguments that in exceptional cases, it may be necessary to detain unaccompanied minors to safeguard their best interest, in particular to protect them from being trafficked. This is why we propose to allow exceptional detention in the 2011 amended proposal for the Reception Conditions Directive. We will remain very attentive to the use of this possibility by Member States in practice.

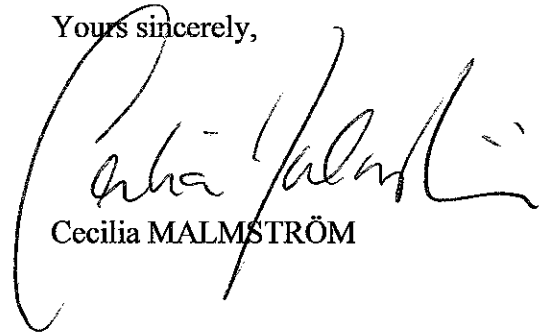
As regards the Dublin system, the Commission shares your view that, in certain instances, it is better that responsibility for examining the asylum application of an unaccompanied minor is decided via clear rules enshrined in law. We slightly depart from your recommendation in that we consider that the child's best interests often require adaptation to a larger scope of situations than those limited to family reunification. We fought hard during negotiations to defend the idea that an unaccompanied minor could never be sent back to a Member State.

Mr Pierre HENRY
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At the same time, strong arguments made by Member States' authorities, as well as other organisations, indicated that such a rule could lead to abuse and trafficking of minors. As you may know, this issue remained unsettled in the final text of the Regulation. The Commission committed via a Declaration to come back with a new proposal in this respect as soon as the Court of Justice will have delivered its judgement on a salient preliminary question on this subject.

I would like to take this opportunity to underline how important the work of European asylum NGOs is to the Commission. In particular, up-to-date information from organisations working on the ground is indispensable to properly supervise the application of asylum law in Member States. I hope civil society will be a strong partner for both the Commission and the European Asylum Support Office in the coherent implementation of the new rules across the Union.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cecilia Malmström', is written over the typed name. The signature is fluid and cursive, with a large initial 'C'.

Cecilia MALMSTRÖM