

# European Migration Network Synthesis Report for the EMN Focussed Study 2014

## Policies, practices and data on unaccompanied minors

in the EU Member States and Norway

Synthesis Report: May 2015



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#### DISCLAIMER

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The Focussed Study was part of the 2014 Work Programme for the EMN.

#### EXPLANATORY NOTE

This Synthesis Report was prepared on the basis of National Contributions from 27 EMN NCPs (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom and Norway**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities and practitioners. Statistics were sourced from Eurostat, national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN NCPs in the National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned (Member) States up to and including 2014 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted as well.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

## Executive summary

### KEY POINTS TO NOTE:

- ★ Unaccompanied minors (UAMs), for the purpose of this Study, are children (as defined by the UN CRC) from third countries, who arrive on the territory of an EU Member State unaccompanied by an adult responsible for them, or who are left unaccompanied after they have entered the territory of the Member State.
- ★ The number of UAMs seeking asylum in the EU has increased steadily since 2010, reaching a total of **24,075** minors in 2014 or 4% of the total number of asylum applicants in 2014, according to Eurostat. Sweden (29%), Germany (18%), Italy (10%), Austria (8%) and the United Kingdom (8%) have received the highest numbers of UAMs in the EU, taken together representing more than 70% of the total of all UAMs applying for asylum in 2014.
- ★ The majority of UAMs applying for asylum in the EU are **boys** (86%) and the rest are **girls** (14%). Most of these minors are **between 16 and 17 years old** (65%), with only a small proportion being less than 14 years old. The **main countries of origin** of these minors are Afghanistan, Eritrea, Syria, Somalia, The Gambia and Morocco.
- ★ The number of UAMs who arrive in the EU and are **not seeking asylum** is unknown and only a few Member States can provide data on minors in this situation. From this data, however, it is clear that this number reached more than 8,500 in 2013. A considerable proportion of these minors have arrived in Italy, with a number of other (Member) States also reporting data on UAMs in this situation. There is a general lack of comprehensive and comparable data on the numbers of and outcomes for non-asylum seeking UAMs, but also those minors seeking asylum in the EU.
- ★ The Study identifies a number of **gaps and challenges that still need to be addressed to ensure all UAMs benefit from the same level of protection**. Overall, whilst many provisions and measures are available for asylum-seeking UAMs and those granted international protection (under the EU *acquis* and international legislation), this is *not* always the case for *non-asylum seeking* UAMs. At present, these UAMs do not appear to benefit from the same level of protection either in law or in practice.
- ★ The Study highlights a number of **good practices** which have been adopted by some (Member) States since 2009, which could be useful to policy-makers to contribute to policy and practices to strengthen the protection of UAMs in the EU, whilst avoiding the 'inequalities' between asylum- and non-asylum seeking minors identified by the research presented here.

### What did the Study aim to do?

This EMN Study is an update of a previous EMN Study on *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors* carried out in 2008-2009. The current research aimed to:

- ★ Identify **changes in (Member) States' policies and practices in relation to UAMs which have occurred since 2009**, from the moment of arrival at the external borders or on the EU territory until a durable solution may be found;
- ★ Provide **new comparable statistics** for the period 2009 to 2014;
- ★ Fill knowledge gaps identified by the previous EMN work, notably to **distinguish** between *asylum-seeking UAMs* and those who have been granted refugee status or other forms of international protection, and *non-asylum seeking UAMs*, including those who entered irregularly and victims of trafficking;
- ★ Explore the situation of **UAMs who go missing or abscond** from reception and/ or care facilities;
- ★ Understand how (Member) States address the situation of **UAMs reaching 18 years of age** whilst in reception and/ or care; and finally
- ★ Highlight **good practices** which may serve to inform policy-makers of approaches to further strengthen the protection of UAMs in the EU, along with identifying areas in which more work may need to be done.

### What motivates UAMs to come to the EU?

The reasons and motivations of UAMs coming to the EU are **not always known**, for example, because UAMs may not fully articulate these due to their early age or trauma, or may be reluctant to reveal them before authorities in the (Member) States. UAMs have different reasons and motivations for fleeing their country of origin in the first place. Even though most (Member) States report that asylum-seeking UAMs may fear persecution, harm and/ or human rights violations in their country of origin, whilst non-asylum seeking UAMs often arrive in the EU because they are seeking better education and job opportunities, the reasons and motivations of UAMs arriving in the EU may not always align with their migration status. In many cases, the decision to migrate is not made by the minor, but instead by their family.

### What motivates UAMs to travel to a particular (Member) State?

Motives for travelling to a particular Member State are multiple and rarely stand-alone; however, the three main motives identified in the Study are reunification with family members, joining diaspora/ migrant communities, and economic and aspirational reasons, including education and judgments about UAMs' chances to obtain a residence permit and a job. However, in spite of these preferences for a particular (Member) State of destination, in reality, where a UAM

actually arrives, is trafficked or smuggled, or is intercepted, can be **unintentional and wholly dependent on external factors**.

#### *What are the entry procedures for asylum and non-asylum seeking UAMs?*

UAMs not seeking asylum are subject to the entry conditions applicable to third country nationals (TCNs) wishing to enter the EU. The documents required by UAMs to legally enter the EU include a valid visa and travel document (in most cases passport). In line with international obligations, asylum-seeking UAMs will always be allowed entry into the EU territory, regardless of whether they meet the entry requirements.

For non-asylum seeking UAMs, a **distinction** can be made between (Member) States that *can* refuse entry to all TCNs who do not fulfil the entry conditions, including unaccompanied minors, and those that apply a special policy to UAMs based on humanitarian grounds and always grant non-asylum seeking UAMs access to the territory, regardless of whether they fulfil the entry conditions. Where no special policy applies, non-asylum seeking UAMs who do not fulfil the entry conditions may be ordered to return to their country of origin (subject to conditions set out in the Return Directive being met).

In line with the EU *acquis*, (Member) States have special (minimum) safeguards in place for UAMs applying for asylum in the EU. These safeguards may vary across (Member) States, however, depending on the phase of the asylum procedure. As for non-asylum seeking UAMs, a **distinction** can be made between (Member) States that do not have legislation acknowledging this group of UAMs and generally directs all UAMs to the asylum procedure and (Member) States whose legislation does not distinguish between asylum- and non-asylum seeking UAMs who then benefit from similar provisions.

#### *Age assessment and guardianship arrangements for UAMs*

For reasons of vulnerability, border guards/ police authorities in most (Member) States' refer UAMs to child protection authorities. This is done either immediately, or – in case of doubt about the authenticity of documents (or lack thereof) – border guards/ police authorities may first ask for an age assessment, before referring UAMs to child protection services. Procedures for age assessment aim to determine the status of a minor where there is doubt about his/ her age; however, age assessment **methods differ** across (Member) States, and **different approaches are also taken** with regard to the outcome of the age assessment.

Member States appoint a representative to asylum-seeking UAMs (in line with the provisions of the recast Asylum Procedures Directive). In some Member States this is entrusted to a single entity (independent body, governmental authority or assigned individual), whilst

in others the system is divided into different levels. The **timing for the appointment of a representative also differs** between (Member) States, where in the majority of cases a representative is appointed upon registration of an asylum claim, on arrival at the reception centre, or prior to the asylum application.

Most (Member) States also appoint a representative to non-asylum seeking UAMs applying the same guardianship system; however, this is not true in all cases, where different systems of guardianship apply based on the UAM's migration status.

#### *What residence permit options are available for UAMs?*

During their stay within the EU territory, UAMs can be granted EU harmonised protection statuses (covered by the EU *acquis*) and non-EU harmonised protection statuses (based on the Geneva Convention, on the principle of *non-refoulement*, or on other various grounds). Different types of permits may be granted by (Member) States, depending on whether the UAM is applying for asylum or not. In general, (Member) States grant a permanent or long-term residence permit to asylum-seeking UAMs and temporary residence permits to non-asylum seeking UAMs, such as individual protection or permits based on humanitarian or compassionate grounds.

#### *What reception facilities are available for UAMs?*

Most (Member) States apply a **similar reception system for all UAMs**, hosting asylum- and non-asylum seeking minors in similar facilities. A small number of (Member) States have different reception systems, depending on the migration status of the UAM and thus allocate asylum and non-asylum seeking UAMs to different facilities. Most (Member) States accommodate asylum-seeking UAMs in separate reception facilities specifically for minors, foster families, or designated areas for minors within the mainstream reception facility.

Staff responsible for the reception and care of UAMs in facilities most commonly includes social workers, psychologists and teachers, and additionally highly specialised professionals where required in some Member States. Training of staff at reception centres differs between (Member) States, with some of them requiring staff to hold an appropriate qualification, whilst others provide ongoing training to staff.

#### *What material and non-material reception conditions are available for UAMs?*

(Member) States provide for material reception conditions – including housing, food and clothing, as well as a daily allowance – for both asylum- and non-asylum seeking UAMs; **no differentiation seems to be made**. These may be provided in kind or in the form of a financial allowance, vouchers, or a combination of both.

Most (Member) States also provide for non-material reception conditions, such as access to legal advice,



healthcare, education and employment. For asylum-seeking UAMs and those granted international protection, the recast Asylum Procedures Directive and recast Qualification Directive lay down certain common reception standards and content of the protection that is provided by (Member) States. As for non-asylum seeking UAMs, this Study shows that these minors benefit from **similar rights** afforded to asylum-seeking UAMs, however, exceptions may apply.

#### *How are durable solutions for UAMs arranged in Member States?*

Durable solutions for UAMs based on an individual assessment of the best interests of the child are usually not defined in legislation in most (Member) States, though some (Member) States have plans to introduce such a provision in the future. Most (Member) States have made efforts to identify durable solutions for UAMs, including integration, family reunification or return. A 'best interests' determination procedure is in place to support the competent authority's decision on a durable solution for the UAM in several (Member) States, but is not reported consistently across all. The competent authorities deciding on a durable solution for the UAM, as well as the timeframe for the determination procedure differ across (Member) States.

#### *What provisions are in place to prevent UAMs going missing or absconding from reception and/ or care?*

Information on the number and profile of UAMs who go missing or abscond from reception and/ or care facilities is limited in (Member) States at present. Possible reasons for the disappearance of these minors include, among others, transit to another (Member) State; fear of a negative decision on application for international protection and/ or fear of removal; UAMs falling victim to re-trafficking in human beings; or fear that the age assessment will not confirm that they are minors. Most (Member) States apply **measures to prevent** UAMs from absconding and a number of them have established protocols for cooperation between all relevant authorities dealing with UAMs.

As for **measures to respond** to disappearances, the practice in most (Member) States is for the police to undertake a preliminary/ full investigation, at which point a missing person's alert may also be launched. Most (Member) States also report the use of National Hotlines for Missing Children<sup>1</sup>.

#### *What happens to a UAM when he/she turns 18 years of age?*

Two thirds of all UAMs applying for asylum in 2009-2013 were aged 16 to 17 years and were/ are therefore already close to the age of majority. Until the age of 16, UAMs are treated first and foremost as children and measures are in place to protect them whatever their migration status; at 18 however, the migration status of UAMs takes precedence. This has

implications in terms of access to rights such as accommodation, education and/ or employment and above all, on legality of residence

UAMs turning 18 years of age may experience no change in residence permit provisions if they have been granted international protection in the respective (Member) State. Access to rights for these former UAMs will be the same as adult refugees or other migrants benefiting from international protection. On the contrary, non-asylum seeking UAMs turning 18 years of age may be treated as adult migrants with irregular status and may be returned to their country of origin without a valid reason to remain in the (Member) State (e.g. completing education).

The Study found that at present there are few measures available in the (Member) States to support UAMs preparing for this transition. Where available, however these included supporting UAMs in advance of the transition to adulthood commonly include support with moving to a new accommodation (where applicable), individual care or educational plans to prepare UAMs for the transition to adulthood (and which may start as early as a UAM turns 16 years), or – in the case of non-asylum seeking UAMs – support with the possible return to their country of origin. As for after-care services, in several (Member) States this may include accommodation and/ or related support provided until a UAM is of a certain age, i.e. 21-25 years old. Monitoring is being implemented by a number of (Member) States to ensure UAMs' effective transition to adulthood, though such mechanisms are not reported consistently across all (Member) States.

#### *Can UAMs be returned to their country of origin?*

Most (Member) States provide for the possibility of *voluntary* return of UAMs (if conditions set out in the Return Directive are met), as well as reintegration support. With regard to the latter, a small number of (Member) States have reported that reintegration plans have not yet been developed. Where available, most of the programmes provide information and counselling and undertake an assessment of the reintegration needs of the minor with the involvement of social services.

Provided that the above conditions to ensure the best interests of the minor are met, several (Member) States may *forcibly* return UAMs. In practice, however, such a procedure is carefully considered on a case-by-case basis; however, in practice, such forced returns are unlikely to take place across the (Member) States even where the possibility exists.

#### *Can UAMs be detained and what alternatives to detention are in place?*

With regard to detention of UAMs whilst awaiting return – which should be a measure of last resort and for the shortest amount possible – **differences** exist between (Member) States, with some of them

<sup>1</sup> The European Hotline (116 000) for Missing Children can be dialled from 27 Member States.

detaining UAMs awaiting return and others not adopting such a measure at all. Special conditions, taking into account the child's best interests apply in practice to the detention of UAMs, including age and/ or time limits, and/ or appropriate facilities whereby minors are held separately from adults.

Finally, UAMs are entitled to alternatives to detention in most (Member) States. Some examples of alternatives to detention in the (Member) States include special youth centres/ shelters, social institutions or reception facilities which are tailored to minors' needs and where UAMs are held separately from adults, or interim measures (e.g. obligation to report to the police).

#### *How do the EU and international legislative frameworks provide for UAMs?*

The EU has committed to a number of international conventions which have placed an obligation on (Member) States to take appropriate protection and prevention measures in relation to migrants and/ or children, including the UN Conventions on refugees (1951) and rights of the child (1989), and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. Since 2009, the Union has been working towards improving its Common European Asylum System (CEAS) and the recast of the Asylum Procedures, Reception Conditions and Qualification Directives, as well as the Dublin III-Regulation have as a result strengthened the (legal/ legally ensured) protection of children and the rights of UAMs in particular. In addition, the EU has recognised as essential to protect children, including UAMs, from trafficking in human beings by introducing a new Anti-Trafficking Directive in 2011.

Despite the considerable improvements to the EU asylum *acquis* – including procedural guarantees such as right to legal representation, right to be heard, right to family reunification or rules for taking the principle of the child's best interests into account in procedures – potential gaps remain in the legislation. For example, only a few child-specific provisions are in place with regard to the conditions of entry of UAMs. In addition, this Study also points to the fact that whilst the EU has set out a set of rules and standards regarding the protection of UAMs applying for asylum, only a few specific provisions are available in the legislation for UAMs who arrive in the Union without applying for international protection.



# 1 Introduction

This Synthesis Report presents the main findings of the 2014 EMN Study *Policies, practices and data on unaccompanied minors*.<sup>2</sup> The study aims to update the findings of the 2008-2009 EMN study *Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors*<sup>3</sup> and to provide up-to-date information and comparable data on the numbers and state of protection of unaccompanied minors (UAMs) arriving in Europe.

The study has a special focus on the following issues identified as knowledge gaps:

- ★ Entry procedures and arrangements in place for UAMs who are not in the asylum process, including those who entered irregularly and/ or are victims of trafficking;
- ★ Unaccompanied minors who abscond or go missing from care facilities – their profile, reasons for absconding and policies/ practices to prevent this and/ or reduce harm when they go missing;
- ★ Arrangements to support the transition to adulthood for UAMs turning 18; and
- ★ Policies and practices in place for (voluntary) return of unaccompanied minors.

The study shows that since the previous study in 2009, the European legislative framework and the reality faced by unaccompanied minors in some (Member) States has undergone change.

## 1.1 DEFINITION AND SCOPE OF THE STUDY

An unaccompanied minor (UAM) is a **child as defined by the UN Convention on the Rights of the Child (CRC)**, who arrives on the territory of the Member States unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person. It includes a child who is left unaccompanied after they have entered the territory of the Member States.<sup>4</sup> This study focuses only on third-country national UAMs. For the purpose of the study, a distinction has been made between:

- ★ UAMs seeking asylum or granted international protection;
- ★ UAMs not seeking asylum, including irregular migrant children and/ or child victims of trafficking.

At EU level, the past few years have witnessed a revision of EU legal acts concerning asylum, which has

also had implications for asylum-seeking UAMs, who are also covered by this study. The most important acts which have undergone changes are:

- ★ The **revised Asylum Procedures Directive** (2013/32/EU recast);
- ★ The **revised Reception Conditions Directive** (2013/33/EU recast);
- ★ The **revised Qualification Directive** (2011/95/EU);
- ★ The **revised Dublin Regulation** (604/2013);
- ★ The **Anti-trafficking Directive** (2011/36/EU).

More broadly (and hence including UAMs not seeking asylum), in 2011 the European Commission issued a new communication on the “Agenda for the Rights of the Child 2011-2014”,<sup>5</sup> which consisted of 11 actions aimed at making justice systems within the EU more child-friendly and the protection of children in vulnerable situations. Action 6 of this Agenda aims at “supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children.”

## 1.2 SCALE OF THE ISSUE

The most complete data on unaccompanied minors relate to those that apply for asylum. These data indicate that the total number of UAMs applying for asylum in the EU plus Norway has **increased from 2010 onwards, reaching 24,075 children in 2014 – or nearly double as the year before**.<sup>6</sup> This accounted for 4% of the total number of applicants for international protection in 2014.<sup>7</sup>

A map showing the number of unaccompanied minors applying for asylum in each Member State plus Norway in 2014 is provided below. It shows that the countries experiencing the highest amount of asylum-seeking UAMs are Sweden (7,050 or 29% of the total EU number), Germany (4,400 or 18%), Italy (2,505 or 10%), Austria (1,975 or 8%) and the United Kingdom (1,860 or 8%), taken together representing more than 70% of the total.<sup>8</sup> The main countries of origin of UAMs in 2014 were Afghanistan, Eritrea, Syria, Somalia, The Gambia and Morocco.

<sup>2</sup> This Synthesis Report was prepared on the basis of National Contributions from 26 Member States (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom**) and **Norway**, prepared according to Common Specifications developed by the EMN to the extent possible, comparability of data.

<sup>3</sup> <https://emn.gov.pl/download/75/14011/0EMNSynthesisRepoUtUnaccompaniedMinorsFINALVersionMay2010.pdf>

<sup>4</sup> Art. 2(l) of Directive 2011/95/EU (Recast Qualification Directive)

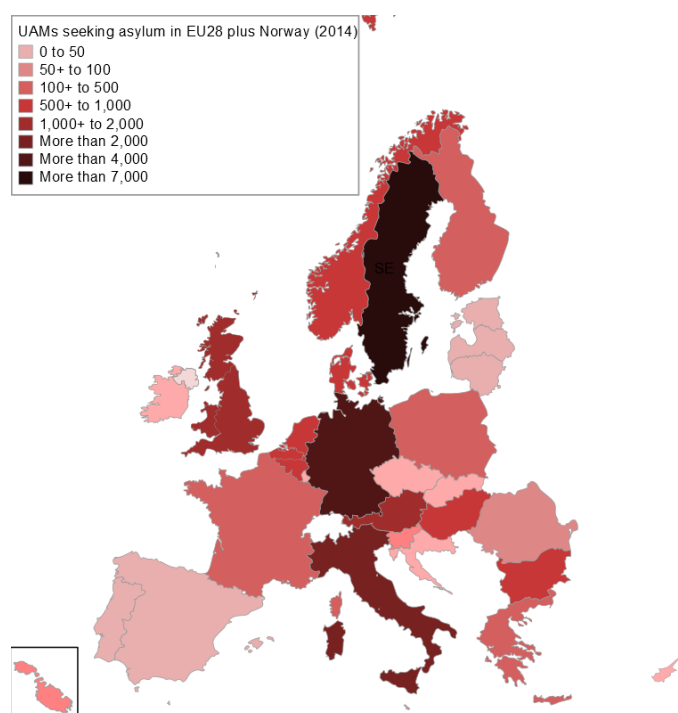
<sup>5</sup> [http://ec.europa.eu/justice/policies/children/docs/com\\_2011\\_60\\_en.pdf](http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf)

<sup>6</sup> Eurostat data EU28 plus Norway, 2009-2014

<sup>7</sup> This shows that in the most recent period, the number of adults applying for asylum has increased more quickly than the number of unaccompanied minors.

<sup>8</sup> Eurostat data, 2014

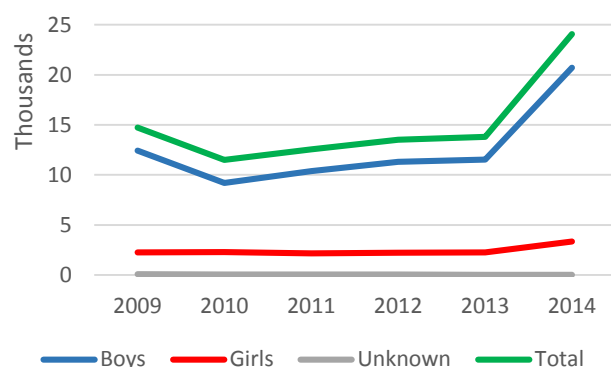
**Figure 1.1 Number of asylum-seeking UAMs in 2014 in EU28 plus Norway, by country**



Source: Eurostat, 2014

Figure 1.2 below shows the evolution in the number of UAMs applying for asylum over time, which has steadily increased after a drop in 2010.<sup>9</sup> The graph also shows the distribution of boys and girls among applicants: the number of unaccompanied girls applying for asylum mostly remained stable throughout the period, while the number of boys applying for asylum dropped in 2010 and increased from 2011 onwards.

**Figure 1.2 Number of UAMs (in 1000s) seeking asylum in the EU plus Norway 2009-2014, by gender**



Source: Eurostat, 2009-2014

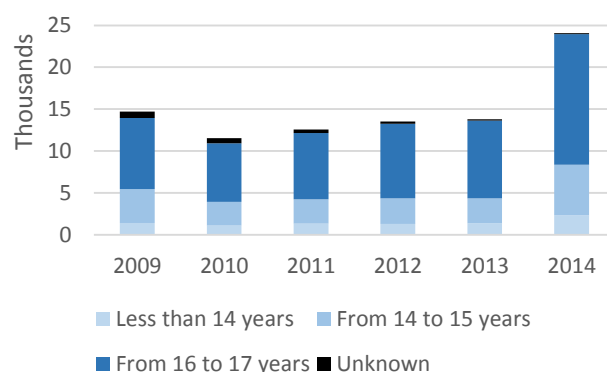
Nevertheless, as demonstrated in Figure 1.2, the vast majority of UAMs applying for asylum are boys: in 2013, they represented 86% of the total number of

<sup>9</sup> Eurostat data on EU28 plus Norway, 2009-2014. The data concern asylum applicants considered to be UAMs in the (Member) States.

UAMs seeking asylum in the EU, as opposed to 14% girls<sup>10</sup>.

Most UAMs who applied for asylum 2009 – 2014 were aged between 16 and 17 years, while only a small proportion were younger than 14 years. Figure 1.5 shows the trend in UAMs applying for asylum 2009 – 2014, disaggregated by age.

**Figure 1.5 Number of UAMs (in 1000s) seeking asylum in the EU plus Norway 2009-2014, by age**



Source: Eurostat, 2009-2014

The **estimated** number of UAMs in the EU *not seeking asylum* reached over 8,500 in 2013. The phenomenon of non-asylum seeking UAMs is hard to define and therefore measure. Although statistics on this issue are neither comprehensive, nor fully comparable, the majority of non-asylum seeking UAMs were registered in Italy (8,461).<sup>11</sup> All the available national level statistics on the number of non-asylum seeking UAMs identified in this Study are provided in Table 1.1.

**Table 1.1 Number of identified non-asylum seeking UAMs in 2013 in (Member) States**

Country	Non-asylum seeking UAMs in 2013
Croatia	302
Hungary	84
Italy	8,461
Latvia	0
Lithuania	9
Slovak Republic	42
Slovenia	22

Source: National Reports

Further data on unaccompanied minors in the (Member) States is provided in [Annex 1](#).

<sup>10</sup> Ibid

<sup>11</sup> Applications for residence permits

### 1.3 STRUCTURE OF THE STUDY

In addition to this introduction (Section 1), the study consists of the following Sections:

#### Box 1: Structure of the Synthesis Report

<b>Section 2:</b>	Motivations and circumstances of unaccompanied minors for entering the EU
<b>Section 3:</b>	Entry and assessment procedures, including border controls for asylum-seeking and non-asylum seeking unaccompanied minors
<b>Section 4:</b>	Reception arrangements, including integration measures for unaccompanied minors
<b>Section 5:</b>	Unaccompanied minors who go missing or abscond from reception and care facilities
<b>Section 6:</b>	Arrangements in the (Member) States for unaccompanied minors turning 18 years of age
<b>Section 7:</b>	Return practices of (Member) States, including reintegration of unaccompanied minors
<b>Section 8:</b>	Overview of the international and EU legislative framework
<b>Section 9:</b>	Conclusions

## 2 Motivations and circumstances of unaccompanied minors for entering the EU

In 2008-2009, an EU comparative study on the *Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors* was published. The study discussed the motivations and circumstances of UAMs for entering the EU in detail. This section provides a brief up-to-date summary of the motivations and circumstances for asylum-seeking and non-asylum seeking UAMs to leave their home country and to enter a (specific) EU Member State. It starts by discussing the difficulty in investigating the reasons and motivations for UAMs to leave the country of origin and to travel to the EU. An overview is also provided on prevention and development projects implemented by (Member) States in third countries.

### 2.1 MOTIVATIONS

The reasons and motivations of UAMs to come to Europe are multi-layered, making it difficult to provide a definitive overview. The findings presented in this section are mostly based on information reported by (Member) States' competent authorities, NGOs, etc. Further research providing insight into the motivations of UAMs to undertake the unaccompanied journey, from their own perspectives, include UNHCR's 2014 report on why children from Afghanistan depart to Europe.<sup>12</sup>

Before outlining the motivations of UAMs arriving in the EU, it is important to take note of the following caveats: first, the motives for fleeing the country of origin, as well as the reasons of UAMs to enter the EU are **not always known**. As some (Member) States note, this can be due to UAMs **not fully grasping their reasons for migration** in the first place, for example, due to their **early age** (e.g. Austria, Bulgaria, Estonia, Luxembourg) and/ or the decision not being their own. Unaccompanied minors may also be **reluctant to reveal the real reasons for migration** because of, for example, the fear of consequences (e.g., Ireland, Hungary, Luxembourg), or wish to protect their families who often might have made the decision to send the child to Europe (e.g. Hungary). Further, some UAMs, in particular those who do not seek asylum may avoid registration by authorities in the country they first enter, in order to continue their journey to another state. Thus, very little is known about this group of unaccompanied migrant children who manage to **stay off the radar** of authorities in the (Member) States.

Second, though this section demonstrates some obvious **differences between the motivations of**

**asylum- and non-asylum seeking UAMs** arriving in the EU, they may not always **align** with the migration status of these children. As mentioned above, some UAMs may not provide the reasons for leaving their country of origin, some of which may actually provide them with the grounds for applying for asylum, but due to **trauma or other reasons** this information is sometimes not shared with (the appropriate) authorities.

Finally, even when reported, the motivations of UAMs as revealed to the authorities may differ depending on the administrative procedure the UAM has opted for and which he or she has judged to increase his/ her chances to stay in the (Member) State (e.g. Belgium).

Bearing the above caveats in mind, overall, the reasons of UAMs for fleeing the country of origin in the first place may differ from their motivations to enter a particular European country. The motivations of UAMs applying and not applying for asylum may also differ.

A review of (Member) States' national reports suggests that **asylum-seeking UAMs** often flee their country out of fear of persecution or serious harm in their country of origin. Most UAMs applying for asylum come from countries with a problematic security situation or where violation of human rights is common. The main countries of origin of UAMs applying for asylum in the EU and Norway in 2014 were – as mentioned above – **Afghanistan** (6,155 representing 26% of the total number applying for asylum in the EU), **Eritrea** (4,475 or 19%), **Syria** (3,170 or 13%), **Somalia** (2,335 or 10%), **The Gambia** (1,075 or 4%) and **Morocco** (615 or 3%).

(Member) States' reports suggest that **non-asylum seeking UAMs** often may be entering the EU to seek a better future – education and job opportunities. As mentioned above, some of these UAMs avoid registration by authorities in the country they first enter, in order to continue their journey to another state on their own or via smugglers (reported by Croatia, Greece and the Netherlands). Belgium highlights the extra **vulnerability** of unregistered UAMs, as they are considered to be particularly exposed to the risk of trafficking and all forms of exploitation.

As mentioned above, in most cases the initial decision to migrate is made by parents or family members and not by the minor himself/ herself (Austria, Belgium, Germany, Finland, Ireland, Sweden, United Kingdom and Norway<sup>13</sup>). **Motives for fleeing** the country of

<sup>12</sup> UNHCR (2014). *Why do children undertake the unaccompanied journey? Motivations for departure to Europe and other industrialised countries from the perspective of children, families and residents of sending communities in Afghanistan*, <http://www.unhcr.org/548ea0f09.pdf>

<sup>13</sup> Research conducted in Norway suggested that the decision was made by the family in cooperation or consultation with the minor him/herself

origin by all UAMs reported by (Member) States mainly include:

- ★ **Fragile environment:**
  - > **Security concerns** (e.g., Austria, Belgium, Bulgaria, Cyprus, Germany, Greece, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Malta, Poland, Portugal, Slovenia, Slovak Republic, Sweden, Norway); and
  - > **Economic and aspirational reasons** (including education) (e.g., Austria, Belgium, Cyprus, Czech Republic, Estonia, Germany, Greece, Finland, France, Hungary, Ireland, Luxembourg, Malta, Poland, Portugal, Slovenia, Slovak Republic, Spain, Sweden, Norway).
- ★ **Other reasons:**
  - > Domestic violence (e.g., Germany, Finland, Hungary);
  - > Recruitment of child soldiers (e.g., Austria, Germany, Finland); and
  - > Forced marriages (e.g., Austria, Germany and Norway).

#### Box 2: Illustrative example of a young boy being sent from Afghanistan to Belgium

Pamir, for example, had never thought about leaving Afghanistan and did not feel it was necessary. But his father insisted that he went; he had the strong conviction that Pamir, as a young boy, was too attractive for the Taliban and that they would take him away. Pamir had told his father: "No, I want to stay at home, I don't want to go abroad because I don't know how far away I will be from you and where I will stay." But his father said that he had to go to Europe because there he would study and be safe. (Belgium)

Source: *Belgian National Report*

According to the National Report of Sweden, research studies in addition show that, for the children themselves, the hope for (better) education, training and/ or employment, next to safety, informs their decision to migrate.

**Motives for entering** a particular (Member) State are multiple and rarely are stand-alone, however three main motives can be distinguished:

- ★ **Reunification with family members** (e.g., Austria, Belgium, Czech Republic, Germany, France, Hungary, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovak Republic and Slovenia );
- ★ **Joining diaspora/ migrant community** (e.g., Austria, Belgium, Luxembourg, Poland, Slovenia); and
- ★ **Education/ Economic and aspirational reasons** (e.g. Austria, Belgium, Cyprus, Czech Republic, Germany, Greece, Finland, France, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Slovak Republic, Spain, Sweden, Norway), in some

instances including judgments on their chances to obtain a residence permit and a job.

#### Box 3: Examples from Germany, Finland, France and Hungary on UAMs' motives for entering a particular EU (Member) State

UAM asylum seekers going to **Germany** are looking for a 'better' life that includes not only political and legal security but also economic and medical aspects. The legal security associated with Germany also include the quality of the asylum procedure which is automatically assumed to be transparent and non-arbitrary.

In **Finland**, UAMs admit more often than adult asylum seekers that their motivation for the entry into the country are economic reasons and the desire to receive education.

In **France** and **Hungary**, children who left their family in their home country usually do so because they want to work and send remittances to their family.

Source: *German, Finnish, French and Hungarian National Reports*

The reality however is that, in spite of these preferences for a particular (Member) State as the destination country, the (Member) State in which the UAMs actually arrive/ are intercepted/ or are registered by the authorities, can be **unintentional and dependent on external factors**. In fact, UAMs might not even know why they have ended up in a particular (Member) State (Austria, Belgium, Bulgaria, Finland, Ireland, Italy, Luxembourg, Poland and Norway). Next to the effect of smugglers (see Section 2.2), the decision made by (Member) State authorities, e.g. to return the UAM to the country of first entry, to allow them to stay and/ or support them in joining their parents/ family members in another (Member) State, also has a decisive impact (see Section 4.5).

## 2.2 CIRCUMSTANCES OF ENTRY

Some UAMs enter Europe through a country where they do not wish to stay and instead **continue their journey towards another (Member) State**. For example, often East Central European countries are considered to be transit countries, whilst children are interested to head further to Western European or Nordic countries.

This relates to the fact that, in most cases, smugglers have been approached by the parents/ family members of UAMs or by UAMs themselves to enter Europe (Austria, Belgium, Finland, France, Hungary, Germany, Lithuania, Luxembourg, Poland and Slovenia). For example, it is estimated that nearly all



UAMs in Germany are smuggled.<sup>14</sup> Also a study conducted in the Netherlands in 2010 revealed that most of the UAMs for their trip to the Netherlands had made use of the services of smugglers.<sup>15</sup> Although the family of the UAM may have indicated or agreed a destination country for the child the first point of entry into the EU and/or the (Member) State where the smugglers ultimately drop him/ her, can differ or be far away from this destination country. This is because smugglers adapt the routes and destination countries to changes in border control strategies. Because of insufficient funds, or the demand for more money by smugglers on route, the UAM may also end up and be left alone in a different destination country than the one originally chosen (Bulgaria, Germany, Luxembourg). As such, the child has often little control over his/ her travel route and destination.

Next to the problem of smuggling, UAMs can also be trafficked into Europe for the purposes of labour or sexual exploitation (e.g., Austria, Belgium, Cyprus, Germany, France, Ireland, Lithuania, Luxembourg, Portugal, and Slovenia).

## 2.3 PROJECTS IMPLEMENTED BY (MEMBER) STATES IN THIRD COUNTRIES

Several (Member) States have implemented prevention and development projects in third countries to try to address the circumstances of UAMs (or migrants in general) who seek to travel to the EU. These projects focused on:

- ★ Investment in **education** in third countries to improve access (educational aspirations constitute one of the reasons for fleeing third countries and seeking protection in the EU), reduce **poverty** and increase the possibilities for **employment** (Belgium, France, Hungary, Luxembourg, Slovenia);
- ★ Measures for **prevention** of recruitment of child soldiers, forced or temple prostitution and establishment of protection centres (Germany);
- ★ Measures for **prevention** of trafficking in human beings (United Kingdom);
- ★ **Awareness-raising** campaigns on migration and asylum procedures in the EU in general and (Member) States in particular (Belgium, Cyprus, Luxembourg, Netherlands, Poland, Slovenia and Norway).

Some examples of good practices are given in the box below:

### Box 4: Good practice examples from Slovenia and Spain of development projects aiming to prevent irregular migration, including of UAMs

**Slovenia** is implementing a two-year development project in Afghanistan. The project provides psychosocial assistance to girls in detention centres in Herat aiming to improve their prospects for re-integration into society. The project takes the form of individual counselling and workshops. These workshops cover topics like literacy, English language, computer skills and include training on skills and talents in traditional crafts, thus aiming at empowering girls and providing a basis for economic independence, which is one of the root causes of migration.

**Spain** developed a project to prevent irregular migration of UAMs from Senegal towards the EU. The project, which lasted three years and was completed in December 2011, aimed to strengthen material and human capacity of public institutions in charge of opening up of opportunities for the young Senegalese, as well as to support educational and vocational training of 1,500 Senegalese UAMs aged 14-18 years and their subsequent insertion in the labour market.

Source: *Slovenian and Spanish National Reports*

### Box 5: Good practice example from Belgium and the Netherlands of awareness-raising campaigns on migration and asylum procedures in the EU

**Belgium** has carried out several awareness-raising missions to countries of origin of important groups of migrants, such as countries in the Balkan region, Guinea and DR Congo. These missions aimed at explaining the Belgian migration policies and asylum system to the local populations, in order to counter false expectations and dissuade possible victims of trafficking or smuggling, UAMs including, from heading to Belgium.

From January 2013 to June 2014 **the Netherlands** ran a project in Afghanistan, implemented by UNHCR that developed an awareness-raising campaign geared towards preventing vulnerable children from abuse and improving this group's access to protection services. The most important activities that took place in various parts of the country were:

- ★ Dialogue with local communities about child protection (abuse, violence, exploitation and neglect);
- ★ Providing information in the form of theatre (due to illiteracy) about the risks of irregular migration;
- ★ TV and radio campaigns about irregular migration and the vulnerability of UAMs during such travel; and
- ★ Campaign about the forced marriages of children.

Source: *Belgian and Dutch National Reports*

<sup>14</sup> Scholz, Antonia (2013): Warum Deutschland? Einflussfaktoren bei der Zielstaatssuche von Asylbewerbern - Ergebnisse einer Expertenbefragung. Forschungsbericht 19, Nürnberg: Bundesamt für Migration und Flüchtlinge.

<sup>15</sup> Research and Documentation Centre (WODC): Young and illegal. The Hague, 2010.

### 3 Entry and assessment procedures, including border controls for asylum-seeking and non-asylum seeking unaccompanied minors

This section provides an overview of the entry and assessment procedures that apply to unaccompanied minors entering the EU. It provides an overview of the entry conditions, (Member) States' policy on the refusal of UAMs' entry into the EU territory, and provides information about the (special) procedural safeguards provided to UAMs during entry and assessment procedures, distinguishing between non-asylum seeking and asylum-seeking UAMs. Finally, it provides an overview of the type of residence permits granted to UAMs.

#### 3.1 ENTRY CONDITIONS AND REFUSAL AT THE BORDER

Any third-country national (TCN) entering the Schengen area is subject to entry conditions, as also stipulated in Art. 5 of the Schengen Borders Code<sup>16</sup>. By law, in most (Member) States, **similar entry conditions apply to adult third-country nationals as well as unaccompanied minors (both non-asylum-seeking and asylum seeking)**. These include:

- ★ A valid visa, and
- ★ A valid travel document (e.g. in most cases a passport).

The specific documents required for UAMs to legally enter the EU, as applied by (Member) States, are set out in **Error! Reference source not found.**

Generally, entry should be refused to any third-country national who does not fulfil the entry conditions set out in the Schengen Borders Code.<sup>17</sup> However, (Member) States may also exempt certain TCNs from entry conditions and grant access to the territory based on humanitarian grounds or international obligations<sup>18</sup>.

With regard to international obligations, special entry rules apply to asylum seekers (including UAMs seeking asylum), as also explained in the 2012 EMN Study on "Establishing Identity for International Protection: Challenges and Practices".<sup>19</sup> In principle, asylum

seekers are under the obligation to submit all relevant documents (including e.g. passport/ visa) which can substantiate their application, in line with the Asylum Procedures Directive and its recast.<sup>20</sup> Upon arrival, should asylum seekers not be able to provide the required entry documents, law enforcement authorities have the right to search them to obtain relevant information about their identity.<sup>21</sup> However, practice shows that asylum-seekers often do not possess/ provide any (valid) identity documents. Asylum-seekers are subsequently nonetheless allowed to enter the EU territory and remain on the territory whilst their claim for asylum is assessed.<sup>22</sup> Under the Asylum Procedures Directive and its recast, they do have the obligation to cooperate with the authorities and to try to retrieve their documentation. A further international obligation (under the Geneva Convention and the ECHR) prohibits (Member) States from returning UAMs (and all others) seeking entry into the country if the refusal of entry would violate the principle of non-refoulement.<sup>23</sup>

It follows that a TCN who claims to be a minor and is asylum-seeking will always be allowed entry into the EU territory, regardless of whether they meet the entry requirements (although they may not subsequently be granted leave to remain, e.g. UK).

As to non-asylum seeking UAMs, based on Member States' national legislation, a distinction can be made between:

- ★ (Member) States' **national legislation** under which **all TCNs who do not fulfil the entry conditions including non-asylum seeking UAMs** can be refused entry (Austria, Belgium, Croatia, Czech Republic, Estonia, Germany, Greece, Finland, France, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Slovak Republic, Sweden, United Kingdom, Norway), and;
- ★ (Member) States' **national legislation** under which UAMs cannot be refused entry **on the basis of humanitarian grounds**, regardless of whether they fulfil the entry conditions (Bulgaria, Hungary,<sup>24</sup> Italy, Spain).

<sup>16</sup> Regulation EC No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Ireland and the United Kingdom are not bound by this Regulation.

<sup>17</sup> As stipulated by Art. 13 Schengen Borders Code; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R0562&from=EN>

<sup>18</sup> See Art. 5 (4) (c) Schengen Borders Code.

<sup>19</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/establishing-identity/0\\_emn\\_id\\_study\\_synthesis\\_migr280\\_finalversion\\_2002013\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/0_emn_id_study_synthesis_migr280_finalversion_2002013_en.pdf)

<sup>20</sup> See Art. 13 of the recast Asylum Procedures Directive (Directive 2013/32/EU).

<sup>21</sup> See Art. 13 (2) (d) of the recast Asylum Procedures Directive.

<sup>22</sup> See Art. 9 of the recast Asylum Procedures Directive.

<sup>23</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary/index\\_n\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_n_en.htm)

<sup>24</sup> However, if UAMs subsequently either do not apply for asylum or withdraw their application for asylum and do not fulfil the requirements for legal stay, they can be ordered to return to their country of origin or a safe third country, provided that non-refoulement does not apply and that there is adequate (institutional or family) care provided for them in the country of return.

In the case of the former, non-asylum seeking UAMs who do not fulfil the entry conditions *may* be ordered to return to their country of origin. However, in practice, this does not always happen, for example:

- ★ In **Sweden**, although officially entry conditions apply to all TCNs irrespective of their age, it is common practice that a UAM is not denied entry and will never be ordered to return if entry conditions are not met;
- ★ In **Ireland**, while UAMs are subject to immigration legislation, in practice minors are always permitted entry. The best interests of the child always take precedence regardless of whether or not a wish to claim asylum is expressed (see also Box 6).
- ★ In **the United Kingdom**, although all TCNs regardless of their age are subject to the Immigration Act, if a UAM is thought to be at risk and in need of protection, s/he would not be refused entry at the border and would be granted the appropriate care (similar to that which a minor applicant for international protection would receive); whilst
- ★ As well, the **Slovak Republic** applies softer provisions to UAMs and does not refuse entry based on the humanitarian grounds, on grounds of national interest or because of international commitments.

**Box 6: Good practice example from Ireland on official policy not to refuse entry to minors**

It is official policy in **Ireland** not to refuse any minor entry to the Irish State. The policy is based on the premise that the best interests of the child must always take precedence regardless of whether or not a child claims asylum. According to the Immigration Act 2003, the provisions for the arrest and detention of persons refused leave to land shall not apply to persons under 18 years of age if the Immigration Officer believes that the person is a minor. The Refugee Act 1996 further states that in cases where it appears that a minor presenting at the border or within the territory is alone, or in the company of an adult with whom the Immigration Officer is not satisfied has a genuine relationship with the child, the Immigration Officer must contact TUSLA (the Child and Family Agency).

Thereafter, the provisions in the Child Care Act 1991 apply, meaning that TUSLA assumes responsibility for the child. In practice, Immigration Officers exercise caution with regard to the age of UAMs presenting at the border/ within the territory, giving the benefit of the doubt and working closely with the relevant social work teams in order to ensure that UAMs are not refused entry to the Irish State. A decision to refuse leave to land is not solely taken by an individual Immigration Officer but is checked by a supervisor.

Source: *Irish National Report*

Other (Member) States whose national legislation foresees possible refusal of entry to UAMs (Austria, Belgium, Croatia, Czech Republic, Estonia, Germany, Greece, Finland, France, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovenia, Norway), **make decisions on return for UAMs in practice also on a case-by-case basis, with the best interests of the child being a primary consideration**, in line with Art. 5 of the Return Directive.

For example, in **Finland** a UAM will not be returned if there are reasonable grounds to assume that the UAM is incapable of taking care of himself/ herself on the sole ground of being a minor. Following on from Art. 10 (1) of the Return Directive, before deciding to issue a return decision in respect of a UAM, **assistance by appropriate authorities is also to be granted** to the UAM. In **Luxembourg**, for example, a return decision cannot be issued to a minor who is not accompanied by a legal representative. Non-asylum seeking UAMs who do not fulfil the entry conditions are therefore first appointed an ad-hoc administrator who advises the minor in proceedings. Moreover, in line with Art. 10(2) **returns of UAMs may not be carried out unless concerned Member States first ensure that UAMs will be returned to a member of their family, a nominated guardian or to adequate reception facilities in the country of origin** (see also section 8).

Finally, although national legislation stipulates the **refusal** of non-asylum seeking UAMs who do not fulfil the entry conditions, it is, in some Member States **hardly ever carried out as in practice all UAMs lodge an application for international protection** (e.g. reported on by Finland and Norway).

**National legislation** in Bulgaria, Hungary,<sup>25</sup> Italy, and Latvia does not foresee for the refusal of UAMs into the territory based on humanitarian considerations; UAMs will therefore always be allowed to enter the territory, regardless of whether or not they fulfil the entry requirements or whether they are asylum-seeking. For example in **Italy**, all UAMs are entitled, simply by virtue of being underage (and thus non-removable), to obtain a “residence permit for minors<sup>26</sup>” (Presidential Decree No 394/1999, Article 28), even if they do not have official documents, on the basis of their declarations.

### 3.2 PROCEDURES AT THE BORDER AND INTERCEPTION ON THE TERRITORY

UAMs crossing borders may come into contact with different (Member) States’ border/ police authorities. The **recognition/ identification of a minor is of crucial importance** as, in some (Member) States, it influences the entry decision, and/ or subsequent

<sup>25</sup> Please note that this is only valid in the case of UAMs identified as such by the border guards in Hungary.

<sup>26</sup> See Italian Presidential Decree No 394/1999, Article 28.

procedures/ treatment. In line with the Schengen Borders Code, all border control authorities should pay particular attention to children<sup>27</sup> and guidelines on dealing with children at the borders have recently been finalised by Frontex (Vega Children).<sup>28,29</sup>

In the majority of (Member) States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Greece, Finland, Hungary,<sup>30</sup> Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic,<sup>31</sup> Spain, Sweden, United Kingdom, Norway) border guards/ police authorities receive **special training to help identify minors, in particular victims of trafficking in human beings.**

In some (Member) States (France, Latvia) training is also provided to border authorities/ police authorities with a view to ensuring child-friendly communication. For example, in the **United Kingdom**, training on safeguarding children is provided to Border Force officers highlighting warning signs to look for when dealing with children and how to refer to the agencies with child protection/ child welfare roles. EASO, Frontex and FRA are currently working together on developing a further training module on fundamental rights in the international protection process addressing among others asylum officials and border control authorities.

Different assessment procedures apply to check fulfilment of entry requirements at the border, depending on the (Member) State and the specific circumstances of the individual case. Generally speaking, border control authorities will try to establish the (initial) identity of the minor, whereby a search can be performed for relevant documentation, and register his/ her presence. Subsequently, in most (Member) States, for reasons of vulnerability, border control authorities have an obligation to refer UAMs to child protection authorities. Two scenarios apply to the timing of this referral:

- ★ (Member) States in which the **border authorities usually immediately refer UAMs to child care authorities** without confirmation of their age; (e.g. Austria, Finland, Italy, Ireland, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Norway).<sup>32</sup>
- ★ (Member) States where, in case of doubt about the authenticity of documents acquired at the border or doubt about the declared age, usually

first ask for an **age assessment**, before they refer UAMs on to the child protection authorities - see also Section 3.3 (e.g. Belgium<sup>33</sup>, Czech Republic, France, Malta, Slovak Republic, Spain).

UAMs who are **intercepted** by authorities **on the territory**, are similarly **also referred on** to child protection authorities or specific accommodation centres, either immediately (e.g. Austria, Cyprus, Estonia, Latvia, Portugal) or after an age assessment has been conducted in case of doubt about the minor's age (e.g. Belgium, Czech Republic, Slovak Republic). Note however that for most (Member) States, if not conducted immediately, the age assessment can also still take place at any subsequent stage of the asylum or migration procedure (see section 3.3).

The concerned child protection authorities to which UAMs are referred to differ depending on the (Member) States and can include:

- ★ **Welfare authorities** (Austria, Cyprus, Croatia, Estonia, France, Ireland, Lithuania, Slovenia, Slovak Republic, United Kingdom);
- ★ **Youth courts** (Latvia, Luxembourg, Portugal);
- ★ **Special child protection services** (Belgium,<sup>34</sup> Czech Republic,<sup>35</sup> Germany, Spain,<sup>36</sup> Norway<sup>37</sup>);
- ★ **Special accommodation centres for children** (Finland).

These child protection authorities will subsequently appoint a guardian to represent the UAM (see Section 3.4).

For the referral of UAMs to child protection authorities, the Netherlands has concluded **protocol agreements** amongst different authorities with a view to adopting an integrated, child-centred approach making sure that the UAM is, as quickly as possible, provided with the specific care s/he needs and to prevent possible exploitation/ abuse. This good practice example is described below.

#### Box 7: Good practice examples of the Dutch and Spanish integrated approaches for the referral of UAMs

In the **Netherlands**, the Immigration and Naturalisation Service concluded a **memorandum of understanding** with migration services and a **working arrangement** with the transportation and support service of the Dutch Ministry

<sup>27</sup> See Annex VII of the Schengen Borders Code.

<sup>28</sup> Frontex, Vega Children, <http://frontex.europa.eu/feature-stories/whose-children--zAMbUK>

<sup>29</sup> <http://www.ksmm.admin.ch/content/dam/data/ksmm/aktuell/veranstaltungen/2014/vega-leaflet.pdf>

<sup>30</sup> In Hungary, trainings were provided to border guards/ police authorities by NGOs based on availability of EU funding in the last four years. These were not regular, however, as there is no continuous compulsory training requirement set out at national level.

<sup>31</sup> The Slovak Republic provides training to members of the Police Force (including border guards) on identification of the victims of trafficking in human beings.

<sup>32</sup> However, for most (Member) States, if not conducted immediately, the age assessment can still take place at any subsequent stage of asylum or migration procedures (see Section 3.3).

<sup>33</sup> In Belgium, if there has been expressed doubt about the age of the UAM, the Guardianship Service will usually perform an age assessment test before appointing a guardian. However, it is also possible that a temporary guardian is appointed before the age assessment test.

<sup>34</sup> Guardianship Service

<sup>35</sup> Facility for Children Foreigners

<sup>36</sup> Child Protection Services

<sup>37</sup> Directorate for Children, Youth and Family Affairs



of Security and Justice. Under this agreement, the IND, following identification of an UAM, must immediately inform NIDOS (an independent institution providing guardianship for all UAMs in the Netherlands). A special transportation service exists, which the Marechaussee (the seaport police) and the aliens police may call upon to ensure that an UAM is transported from anywhere in the country at any day/ time to a specially designated reception area in the reception facility in ter Apel. Here, the UAM will immediately be put into contact with NIDOS, still on the same day of arrival in the centre (see also Section 3.4 below).

In **Spain**, an Agreement approving the Framework Protocol for Unaccompanied Foreign Minors was signed in July 2014 by the Ministers of Employment and Social Security, Justice, Health, Social Services and Equality, the General Prosecutor's Office, Secretary of State for Security and the Undersecretary of the Ministry of Foreign Affairs and Cooperation. This protocol lays the foundations for coordination among the various institutions and authorities in actions with UAMs: from the location of the minor or suspected minor to his/ her identification, age determination, delivery to the public child protection services and documentation.

Source: *Dutch and Spanish National Reports*

### 3.3 AGE ASSESSMENT

Knowing someone's identity and age is important to ensure that UAMs are protected and afforded the child-specific rights they are entitled to under law. As mentioned earlier, however, many UAMs arrive without identity/ travel documents and even if these documents are produced, their authenticity may be questioned. Where there are grounds for serious doubt about the person concerned being underage, most (Member) States may decide to conduct an age assessment. An exception includes Bulgaria however where no official age assessment procedure exists.

The **grounds, timing** and **methods** for conducting age assessment differ across (Member) States. The different practices are extensively described in the **EASO Age Assessment Practice in Europe**<sup>38</sup> **handbook**. Amongst others it also reports on the timing and accordingly the grounds for age assessment, which are briefly summarised in the table below:

Table 1.2 Timeframe and grounds for age assessment across (Member) States (n=number of MS reporting)

Timeframe	Grounds for age assessment
At any stage (n=18)	When the claim to be a child is in doubt (n=25)
Upon arrival (n=16)	When authenticity of documents is doubted (n=15)
Prior to the asylum interview (n=8)	When the claim to be an adult is in doubt (n=12)
Within a week of application (n=4)	When age must be determined for age of criminal responsibility (n=2)
Within a month of application (n=4)	As routine practice (n=2)

Source: *EASO Age Assessment Practice in Europe, 2014*

The EASO Handbook further reports that (Member) States make use of **multiple methods** and many (Member) States apply **more than one method as part of their age assessment process**. According to Art. 25 (5) of the recast Asylum Procedures Directive, the least invasive examination should be opted for. However, it seems that few (Member) States (Ireland, United Kingdom) exclusively rely on non-medical methods such as social services age-determination interviews, consideration of documentary evidence, and physical appearance, whereas most (Member) States make use of medical **methods**, including e.g. dental observation (Austria, Belgium, Czech Republic<sup>39</sup>, Finland, Hungary, Italy, Latvia, Poland, Portugal, Spain, Sweden, Norway) and carpal, collar bone or dental x-ray<sup>40</sup> (Austria, Belgium, Czech Republic, Estonia, Finland, Lithuania, the Netherlands, Poland, Slovak Republic, Spain, Sweden, Norway).

Not only do the methods differ across (Member) States, but (Member) States also adopt **different approaches** with regard to the outcome of the age assessment. For example, in Austria age assessment leads to a **defined minimum age**, in Belgium a **standard deviation** (minus 1) **is used**, whereas in Norway the age assessment determines the likelihood (in %) that the person has the claimed age and on this basis an assessment is made as to whether the person is likely to be above 18 years old (taking also other information into consideration).

The interpretation of the results of age assessment as performed in Belgium (see box below) constitutes a good practice in the best interests of the child, identified by this Study.

<sup>38</sup> See EASO Age Assessment Practice in Europe, available at: <http://easo.europa.eu/wp-content/uploads/EASO-Age-assessment-practice-in-Europe.pdf>

<sup>39</sup> In exceptional circumstances like an additional method to bone test.

<sup>40</sup> Other medical methods, though less frequently used, include development assessment by a paediatrician, psychological interviews and a sexual maturity examination.



#### Box 6: Good practice approach in the best interests of the UAM for the interpretation of the outcome of medical age assessment test in Belgium

In **Belgium**, age assessment is done by means of three medical tests:

- clinical impression of a dentist/a radiological examination of the dentition
- the hand and wrist of the non-dominant hand
- medial ends of both collarbones

In case the three tests give different results, **the test that claimed the lowest age is taken**. Furthermore, **the age minus 1 standard deviation** on that particular test **is used** to determine whether the claimed minor is indeed below 18 years of age. If the age as claimed by the UAM is **realistic** according to the medical test, the **date of birth as claimed** by the UAM **is accepted**. In case the medical test provides a **different result, the lowest possible age**, according to the medical test **is taken**. For example, for a UAM who claims to be 15 years old but for whom the age test demonstrates that the age is between 16.6 and 18.6, the UAM's age is considered to be 16.6 years old.

It must also be noted however that despite a careful interpretation and the application of a standard deviation, there still remain high numbers of cases in which the age of the UAM cannot be confirmed,<sup>41</sup> which presents challenges in practice.

Source: *Belgian National Report*

Further **detailed information** on the procedures and methods of age assessment can be found in the **EASO handbook**.<sup>42</sup>

### 3.4 APPOINTMENT OF A GUARDIAN/ REPRESENTATIVE

The prompt appointment of a guardian/ representative is one of the most important practical measures to be taken to protect UAMs.<sup>43</sup> Guardians/ representatives assist and represent a UAM with a view to ensuring his/ her best interests. They also exercise, where necessary, legal capacity. Various EU law instruments contain provisions on guardianship.<sup>44</sup> For example, the Anti-Trafficking Directive (2011/36/EU) prescribes that (Member) States must ensure that, where appropriate, a **guardian** is appointed to UAM victims of trafficking **from the moment the UAM is identified by the authorities**.<sup>45</sup> The recast Asylum Procedures Directive

also stipulates that (Member) States must, **as soon as possible**, take measures to ensure that a "representative" represents/ assists the UAM with respect to the examination of the application<sup>46</sup> (see also Section 9). In some (Member) States a representative is appointed to a UAM who claims to be a minor, i.e. before the authorities have accepted that s/he is a child.

**In all (Member) States a representative** is appointed to **asylum-seeking UAMs**, in line with Art. 25 of the recast Asylum Procedures Directive,<sup>47</sup> but there is diversity in terms of the type of representative i.e. guardian, lawyer, and/ or both. Whereas in some (Member) States (Belgium, Bulgaria, Italy) the role of representative is entrusted to a single entity (independent body, governmental authority or assigned individual), in others (Austria, Czech Republic, France, Norway) the system is divided into different levels. For example, in **Austria**, asylum-seeking UAMs are appointed a legal advisor who acts as a temporary legal representative with regard to the asylum procedure during admissibility procedures. At the same time the Youth Welfare Authorities take over guardianship (i.e. responsibility for care and education, asset management and legal representation in areas other than the asylum procedure). Once admitted to the asylum procedure, the guardian also becomes the legal representative in the asylum procedure. In **Ireland** each UAM has a dedicated social worker, with a guardian *ad-litem* appointed under certain circumstances. In **Luxembourg**, an ad-hoc administrator, who accompanies and assists the UAM during all legal procedures, is appointed as soon as possible and in all cases. A guardian is additionally appointed to UAMs applying for international protection, who assists the UAM in all activities of daily life.

The **timing** for the appointment of a representative, however, **differs** among (Member) States; whereas some (Malta, Poland, Portugal, Slovenia) appoint a representative after the registration of an asylum claim or upon arrival at the reception centre (Austria, Estonia, Finland, Latvia,<sup>48</sup> Lithuania), others (Belgium, Cyprus, Germany, Ireland, Netherlands, Slovak Republic<sup>49</sup>) already appoint a representative prior to the asylum application. For example, in **Belgium** the Guardianship Service appoints a guardian as fast as

<sup>41</sup> In Belgium in 2013, on a total of 1,786 self-declared UAMs, 536 age assessment tests were carried out, resulting in 405 persons who were considered to be adults.

<sup>42</sup> <http://easo.europa.eu/wp-content/uploads/EASO-Age-assessment-practice-in-Europe.pdf>

<sup>43</sup> According to the Committee on the Rights of the Child.

<sup>44</sup> The EU Anti-Trafficking Directive (Directive 2011/35/EU), the EU asylum acquis, the EU's Victim's Directive (Directive 2012/29/EU) and the Directive on sexual exploitation of children (Directive 2011/92/EU).

<sup>45</sup> Art. 14 (2) Anti-Trafficking Directive (Directive 2011/36/EU).

<sup>46</sup> Art. 25 (a) recast Asylum Procedures Directive. Note that Art. 7 (5) provides Member States the option to determine

the cases where asylum applications can be lodged by UAMs themselves or where these have to be lodged by a representative on behalf of UAMs.

<sup>47</sup> Whilst IE is bound under the APD, Directive 2005/85/EC, IE is not bound under the recast APD, Directive 2013/32/EU.

<sup>48</sup> In Latvia, a representative is appointed after a UAM's registration at the State Border Guard. If the UAM applies for asylum later when s/he is moved to another territorial unit of the State Border Guard, the representative will be changed according to the territorial orphan court's responsibility.

<sup>49</sup> In the Slovak Republic, guardians "must" already be appointed prior to the start of the application.

possible, when the identity and the age of the minor have been confirmed. However, it is also reported that the actual appointment in practice may only happen at a later stage in the asylum procedure when the minor is transferred from the first Orientation and Observation Centre to a more stable housing situation. In **Germany**, representatives are appointed **prior to the lodging of an application**. The timely appointment of a representative is also crucial to guarantee access to the asylum procedure as national legislation in Germany does not allow UAMs below the age of 16 to file an application for asylum themselves; any such application can only be filed on their behalf by a legal guardian appointed by a court.

A particular **good practice of the timely appointment** and establishment of contact between UAMs and a guardian is practised in the **Netherlands** as elaborated on below.

#### Box 7: Good practice example of timely appointment of a guardian in the Netherlands

To facilitate a guardian's prompt appointment, NIDOS signed a memorandum of understanding with migration services to ensure NIDOS can be contacted immediately when the services identify a UAM. The first contact between NIDOS and the unaccompanied child must take place on the day of his or her arrival at the application centre. From that moment, NIDOS fulfils the role of a guardian and asks the court to appoint it to act as guardian until the court appoints a specific guardian for the child.

Source: Dutch National Report

Most (Member) States also provide a representative to **non-asylum seeking UAMs**. For this, some (Member) States (Austria, Belgium, Bulgaria, Cyprus, Estonia, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg,<sup>50</sup> Poland, Slovak Republic, Spain, Sweden) apply the same guardianship system also to non-asylum seeking UAMs, and thus have one guardianship system for all UAMs (whether they are asylum-seeking or non-asylum seeking).

Others (Croatia, Finland, Portugal), however, seem to apply different systems of guardianship depending on the UAM's migration status.<sup>51</sup>

Finally, the **United Kingdom** does not operate a system of guardianship for non-asylum seeking UAMs (except for Scotland who do so for victims of trafficking)<sup>52</sup> and in Norway, the law does not foresee for the appointment of a guardian of non-asylum

seeking UAMs. However, in practice all UAMs are appointed a guardian as there are no UAMs who do not lodge an application for international protection in Norway.

The **Fundamental Rights Agency** (FRA) recently released a **handbook on guardianship**<sup>53</sup> as part of the EU's anti-trafficking strategy which provides guidance to (Member) States on how to establish and run national guardianship systems. In particular it provides guidance on ways to strengthen guardianship systems, setting forth the core principles, fundamental design and management of such systems. The reader is referred to this report for any further information on (Member) States' practices of guardianship, including distinction between the concepts of 'guardian' and '(legal) representative'. The reader may also want to consult the outputs of the CONNECT project<sup>54</sup>, as well as the **National Reports**<sup>55</sup> produced for this EMN Study which include further information on (Member) States' policy with regard to e.g. qualifications/ training to become a guardian, what types of guardian (Member) States appoint to UAMs, their tasks, etc.

### 3.5 SPECIAL SAFEGUARDS FOR ASYLUM SEEKING UAMS: THE ORGANISATION OF NATIONAL ASYLUM PROCEDURES

If UAMs decide to lodge an application for international protection, EU legislation ensures that (Member) States provide special (minimum) safeguards throughout the asylum procedure, in line with the Asylum Procedures Directive and its recast. As explained in section 3.4, all (Member) States must in any case ensure that a representative represents/assists the UAM with regard to the examination of the application. Beyond EU legislation, (Member) States may, as also stipulated in the UNHCR Guidelines on International Protection, grant UAMs other more favourable asylum procedural measures and standards than those of adults. These specific safeguards differ across (Member) States and several examples are provided below, distinguishing between the different phases of the asylum procedure.

#### 3.5.1 SPECIAL SAFEGUARDS DURING THE DIFFERENT PHASES OF THE ASYLUM PROCEDURE

★ **Registration/ Application:** in some (Member) States (Belgium, Czech Republic, Ireland, Latvia, Netherlands) UAMs lodging an application for international protection are treated by **specially**

<sup>50</sup> An ad-hoc administrator is appointed in Luxembourg, but not necessarily a tutor/ guardian.

<sup>51</sup> For example in **Finland**, an applicant for international protection and a victim of trafficking in human beings are appointed a guardian based on the Finnish Act on reception of Persons applying for international protection; a beneficiary of international protection and a victim of trafficking holding a residence permit are appointed a guardian based on the Finnish Act on the promotion of Immigrant Integration; whereas non-asylum seeking UAMs

fall under the Child Welfare Act which defines the circumstances in which a guardian must be appointed.

<sup>52</sup> There is also a pilot system for guardians of trafficked children in the United Kingdom.

<sup>53</sup> <http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>

<sup>54</sup> <http://www.connectproject.eu/>

<sup>55</sup> Available on the EMN website: [www.emn.europa.eu](http://www.emn.europa.eu)

**trained staff.** In the Netherlands the interpreters are also specifically trained to interact with UAMs.

★ **Assessment of the international protection claim:** in some (Member) States (Belgium, Cyprus, Finland, Germany, Latvia, the Netherlands, Poland, Slovak Republic, Norway) the interview is conducted by a specialised case-worker trained in interviewing vulnerable persons including children. Several (Member) States also make use of the **EASO Interviewing Children Module**. For example, interviewers in **Ireland** receive additional specialised training, facilitated by UNHCR, to assist them in working on cases involving unaccompanied minors. This training focuses on issues such as psychological needs, child specific aspects of the refugee process, the role of the social worker and other issues particular to refugee status determination for unaccompanied minors.

★ **Decision-making on the international protection claim:** in some (Member) States (Belgium, Finland, Norway) the standard of proof will be lower or different rules apply to the application of the burden of proof.

Examples of good practice when it comes to the provision of special safeguards granted to UAMs during the asylum procedure can be found in Belgium and the United Kingdom, as described in the box below.

#### Box 8: Special safeguards for UAMs during the asylum procedure in Belgium

In **Belgium**, to apply for asylum, the UAM must first present him/ herself at the Immigration Office. He/she is **separated from the (adult) other asylum seekers** and **assisted by staff** from the Immigration Office **trained to deal with UAMs**. The identification form is transferred to the Guardianship Service, which will appoint a guardian to the UAM.

Once the asylum application has been registered, the UAM and the guardian are invited together to the Immigration Office so that the UAM is **interviewed by a specialised caseworker trained in interviewing vulnerable persons**. The UAM is then invited to the Commissariat-General for Refugees and Stateless Persons (CGRS) for the actual **asylum interview**, for which the **guardian is present** and the UAM may be **assisted by a lawyer, another trusted representative or an interpreter** if needed. A **specialised caseworker** of the CGRS **conducts the interview** and takes into account the minor's age, maturity and other personal and cultural factors. The CGRS **caseworkers** interviewing children **are**

**specialised in the geographical area the minor comes from, and have received specific training.**

The asylum application will be further assessed to qualify if the UAM can be granted refugee or subsidiary protection status. During this process, the age and personal development of the minor are taken into account. In addition, **the fact that the applicant is a minor shifts the burden of proof more towards the authorities and the principle of the benefit of the doubt has a larger field of application**. If the decision about the asylum application and subsidiary protection status is negative, an appeal can be lodged at the Council for Aliens Law Litigation.

Source: *Belgian National Report*

#### Box 9: Special safeguards for UAMs during the asylum procedure in the United Kingdom

The following safeguards apply specifically to asylum-seeking UAMs in the **United Kingdom** which are not present in other asylum application considerations/ processes:

- ★ **A four day period for recuperation and to obtain legal representation before the screening interview after a long and difficult journey** (this is currently being incorporated into the guidance 'Processing an asylum application from a child'<sup>56</sup>);
- ★ **Reference at the earliest opportunity to local social services;**
- ★ Reference to the Refugee Council Children's Panel;
- ★ The child has an **asylum interview with a trained case worker** to address any issues not covered by the Statement of Evidence form (SEF) (recording the basis of a child's asylum claim).

Source: *UK National Report*

### 3.6 Residence permits granted to unaccompanied minors

During their stay on EU territory, UAMs can be granted a EU harmonised protection status,<sup>57</sup> as well as a non-EU harmonised protection status, not covered by the EU acquis (e.g. based on humanitarian grounds) – see also the EMN Study on the different national practices concerning granting of non-EU Harmonised Protection Status.<sup>58</sup> Different types of permits may be delivered, depending on whether the UAMs are applying for asylum and/ or are victims of trafficking in human beings and cooperate with the authorities in exchange for a residence permit (in line with Directive 2004/81/EC<sup>59</sup>).

<sup>56</sup> Processing an asylum application for a child in the UK, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processingasylumapplication1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf)

<sup>57</sup> In line with the Council Directives addressing temporary protection in the event of mass influx and the qualification of persons applying for international protection.

<sup>58</sup> <http://emn.ie/index.jsp?p=210&n=188>

<sup>59</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

### 3.6.1 RESIDENCE PERMITS FOR ASYLUM-SEEKING UNACCOMPANIED MINORS AND THOSE WHO HAVE BEEN GRANTED INTERNATIONAL PROTECTION

During the **assessment of a claim for international protection**, UAMs are in some (Member) States (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Germany, Greece, Ireland, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovak Republic,<sup>60</sup> Spain) granted temporary residence permits, certificates, or registration cards. In the **United Kingdom**, for example, asylum-seeking UAMs can be granted temporary permissions to enter the country.

Unaccompanied minors who have been **granted international protection** are, in accordance with the Qualification Directive and its recast, issued residence permits based on refugee status or subsidiary protection. On the basis of national law, a type of humanitarian status is also possible.

#### 3.6.1 RESIDENCE PERMITS TO TCNS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE IRREGULAR MIGRATION WHO COOPERATE WITH THE COMPETENT AUTHORITIES

Following Directive 2004/81/EC<sup>61</sup>, all Member States can issue residence permits to victims of trafficking in human beings or, if a Member State extended the scope of this Directive to TCNs who have been the subject of an action to facilitate irregular immigration, in exchange for their cooperation with the competent authorities in the Member States. Moreover, a residence permit can also be extended to witnesses of crimes related to trafficking in human beings in exchange for the witnesses' cooperation.

The Directive puts in place special safeguards for children (see Art. 10) and some Member States apply more favourable conditions to children in relation to some of the safeguards as provided for by the Directive, such as longer reflection periods<sup>62</sup> and/or dedicated accommodation shelters for children. Some Member States (Belgium, Greece, and Poland) can also issue unconditional residence permits to children, which do not require the child to cooperate in proceedings.

#### 3.6.2 RESIDENCE PERMITS FOR NON-ASYLUM SEEKING UNACCOMPANIED MINORS

Most (Member) States (Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, United Kingdom,

Sweden, Norway) may also grant residence permits to **non-asylum seeking UAMs or to those whose claims for asylum have been rejected**. The grounds on which permits may be granted vary among (Member) States. Examples include:

- ★ **Residence permits for UAMs who do not fulfil the legal entry/ stay requirements, but who cannot be returned** to their country of origin (Belgium, Croatia, Finland, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Poland, Slovenia, Spain, United Kingdom, Norway);
- ★ **Residence permits for UAMs who have been present in the State for a certain period** (in connection to Art. 8 ECHR) (Austria, Germany, Poland, Slovenia, Norway<sup>63</sup>);
- ★ **Residence permits on account of being a TCN UAM** (Croatia, France, Italy, Slovak Republic)
- ★ **Other temporary residence permits granted on an individual basis** (Austria, Belgium, Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland), e.g. tolerated stay (Germany).

<sup>60</sup> In the Slovak Republic, during the period of making a decision on the asylum application, the applicants' stay in the territory of the Slovak Republic is authorised on the basis of the Act on Asylum. His/ her status as an asylum seeker is proven by an Asylum Seeker's Card, which UAMs also receive.

<sup>61</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0081&from=EN>

<sup>62</sup> Belgium, Bulgaria, Croatia, Greece, Italy, Netherlands, Romania, Spain, see COM(2014) 635 final

<sup>63</sup> This would apply to UAMs who initially applied for asylum.



## 4 Reception arrangements, including integration measures for unaccompanied minors

This section provides an overview of the reception arrangements in place for asylum-seeking and non-asylum seeking unaccompanied minors, including the ways in which reception systems are organised, the type of facilities and the circumstances in which UAMs are accommodated, as well as an overview of the basic reception conditions, such as access to healthcare, education and employment. Moreover, the section highlights a number of good practices, as well as identifies gaps in the protection of children in vulnerable situations such as UAMs, in comparison to the level of protection to other children in the care of the state.

More information on reception arrangements and integration measures for asylum-seekers, including minors, is provided in the 2013 EMN focused study 'The Organisation of Reception Facilities for Asylum Seekers in different Member States'.<sup>64</sup>

### 4.1 TYPES OF RECEPTION FACILITIES FOR UNACCOMPANIED MINORS

Most (Member) States apply a **similar reception system to all UAMs** (asylum-seeking or non-asylum seeking). Non-asylum seeking and asylum-seeking UAMs are therefore hosted in similar facilities, whether these are in protected zones within standard reception facilities for applicants for international protection, or special facilities for children. Austria, Finland, Hungary, Slovak Republic<sup>65</sup> and Slovenia, however, apply different reception systems depending on the migration status of the UAM. In these (Member) States, non-asylum seeking UAMs are separated from asylum-seeking UAMs and are hosted in different facilities. For example, in Austria, asylum-seeking UAMs are accommodated in basic welfare support facilities, whereas non-asylum seeking UAMs are directed to the general socio-pedagogical facilities of the Youth Welfare authorities. In Finland, in practice all UAMs who are TCNs seek asylum and are hosted in reception centres for asylum seekers, which are specifically designed for children. However, should an UAM who is a TCN be encountered, who did not seek asylum, s/he would fall under the Child Welfare Act and be accommodated in a child welfare facility.

For information on the authorities responsible for the reception arrangements of UAMs, please see the 2013 EMN Study on the Organisation of Reception Facilities for Asylum Seekers in different (Member) States.<sup>66</sup>

Thus, in line with the recast Reception Conditions Directive<sup>67</sup> (Art. 24(2)), all (Member) States accommodate asylum-seeking UAMs in special reception facilities where their needs can be attended to. However, the types of these facilities differ among (Member) States. Most (Member) States accommodate asylum-seeking UAMs in one or a combination of the following:

- ★ **Separate reception facilities specifically for children** (Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Ireland,<sup>68</sup> Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Spain, Sweden, Norway);
- ★ **Designated area within the mainstream facility** (Austria, Belgium, Czech Republic, Germany, Latvia Luxembourg, Malta, Slovak Republic, Norway);
- ★ **Foster families** (Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Greece, Ireland, Italy, Latvia, Netherlands, Poland, Spain, Sweden, the United Kingdom (if under 16 years<sup>69</sup>), Norway). Further information on some (Member) States' use of reception provisions within families for UAMs is available through the Reception and Living in Families project implemented between 2013 and 2015 by the European Network of Guardianship Institutions (ENGI).<sup>70</sup>
- ★ **With relatives** (Czech Republic, Finland).

Some (Member) States have also adapted facilities to cater for the needs of child victims of trafficking. See for further details on the special facilities tables A2.1 and A2.2 in [Annex 2](#). In Belgium, child victims of trafficking are referred to specialised facilities for UAM victims of trafficking (such as Esperanto, a non-profit association accredited and funded by the Youth Care Service of the French Community and Minor N'Dako & Juna, a non-profit association accredited and funded by the Youth Care Service of the Flemish Community). In addition, since 2008 the Netherlands has been accommodating UAMs suspected to be potential victims of trafficking in **protected reception**. The pilot programme was evaluated in 2010 showing its

<sup>64</sup> EMN focused study 'The Organisation of Reception Facilities for Asylum Seekers in different Member States' 2013, available from the [EMN website](#):

<sup>65</sup> During the production of this report new provisions of asylum law were adopted by the Slovak Government with the aim to unify the provision of care for UAMs within a single type of facility (foster home) irrespective of the child's status.

<sup>66</sup> See section 3.2 of EMN focused study 'The Organisation of Reception Facilities for Asylum Seekers in different Member States' 2013, available from the [EMN website](#)

<sup>67</sup> Ireland and the United Kingdom do not take part in the adoption of this Directive and are not bound by it.

<sup>68</sup> The model of care, including accommodation, provided to UAMs in Ireland is now much improved. Since 2010 there has been an end to hostel-based care for UAMs, a system that was widely criticised as exposing already vulnerable children to harm. Now all UAMs in TUSLA care are provided with dedicated foster care, supported lodgings or residential placements.

<sup>69</sup> A UAM may be put in more independent living arrangements if older.



success in preventing disappearances (see also Section 5) and protecting these children from further vulnerability as a result of trafficking (see Box 10).

#### Box 10: Protected reception of UAMs (potential) victims of trafficking in the Netherlands

In 2008 the **Netherlands** launched the pilot programme Protected reception following the disappearance of a large number of UAMs from open reception centres. The programme is a result of a cooperative partnership between the Central Agency for the Reception of Asylum Seekers (COA), the implementing organisation Jade Zorggroep and the guardianship organisation Stichting Nidos. The programme targets in particular UAMs who are suspected to be (potential) victims of trafficking. A rigorous coaching of these UAMs takes place over six months in the protected reception in order to 'sever the ties' between the children and the traffickers.

In 2010, the pilot programme was evaluated by the Research and Documentation Centre<sup>71</sup> which noted among others that the percentage of disappearances from reception centres in the Netherlands, including protected reception, had dropped. Research by the Minister for Immigration in 2013<sup>72</sup> also showed that the number of disappearances from protected reception is virtually nil. In 2012 only one UAM absconded from the protected reception centre (concerning a minor who was later found abroad, united with the mother). As well, in 2013 there was one UAM who absconded from the protected reception to an unknown destination.

*Source: Dutch National Report*

The provision of special reception facilities for children is ensured **throughout the entire asylum procedure**. Those (Member) states (Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden, Norway)<sup>73</sup> that have established systems whereby asylum applicants are first received in initial/ transit facilities also provide for special facilities during this initial reception phase. These include either a designated area within the mainstream reception centre (Austria, Belgium, Czech Republic, Luxembourg, Slovak Republic, Norway), separate facilities specifically designed for UAMs (France, Germany, Ireland, Italy, Poland, Portugal, Spain, Sweden), or foster families in Germany (but not in all cities).

In Luxembourg, national legislation does not contain provisions regarding the accommodation of non-asylum seeking UAMs. However, in practice, they are usually granted an authorisation of stay for private reasons based on humanitarian motives of exceptional gravity, and authorities try to find a suitable

accommodation taking into account their special needs, either in the same reception facilities as for international protection seekers, or in other national children's homes (dependent on their age and availability of the facilities).

## 4.2 STAFF RESPONSIBLE FOR THE RECEPTION AND CARE OF UAMS

This sub-section outlines the main tasks and categories of professionals working in the reception or care facilities with UAMs, as well as the ratio of staff to UAMs in these institutions. It is important to note that all of the below-mentioned elements – i.e. optimal ratio of reception staff per UAM, quality of training of staff and services offered to UAMs – must be present in a child protection system to ensure the rights and well-being of these children are safeguarded.

### 4.2.1 SUPERVISION RATE

The supervision rate for UAMs in reception facilities varies across the EU. Factors affecting the supervision rate in the (Member) States include: the type of facility, which, in some (Member) States, is linked to the migration status and/or the phase of the migration/asylum procedure; the age of UAMs accommodated; the services available to UAMs in the facility; and whether the facility caters for UAMs with special needs or not. It ranges from 1 staff member per 20 UAMs (Austria) to a staff of eight or nine therapists or counsellors and a director for each 10-15 housing places (Sweden). In Belgium, the supervision rate differs according to the reception phase. There are 30.5 employees for 50 UAMs in each centre for observation and orientation, 14 employees for 40 UAMs during the second phase of reception, and 1 fulltime and 1 part-time staff member for eight UAMs in the third phase in the local reception initiatives.

It has to be noted that limited information is available on the staff/ UAM ratio in the reception facilities (information is available for 10 (Member) States)).

### 4.2.2 TASKS OF STAFF

The main tasks of the staff in reception facilities are supervising, counselling and providing social support to UAMs. They are responsible for identifying and addressing the needs of UAMs. Thus, in most (Member) States, the staff operating in the reception facilities provide psychological support (Belgium, Croatia, Cyprus, Estonia, Finland, France, Luxembourg, Poland, Slovak Republic, United Kingdom, Norway), assist UAMs in the administrative procedures (Austria, Belgium, Croatia, Finland, France, Luxembourg, Poland, Slovenia, United Kingdom, Norway), provide education, language or training courses to UAMs

<sup>71</sup> Research and Documentation Centre, Having control and supervision, an evaluation of the pilot 'protected reception for UAMs' considered to be a risk

<sup>72</sup> Letter to the Lower House of Parliament dated 3 June 2013, Parliamentary paper 27062, no. 89.

<sup>73</sup> EMN focused study 'The Organisation of Reception Facilities for Asylum Seekers in different Member States' 2013

(Austria, Cyprus, France, Lithuania, Luxembourg, Slovak Republic, United Kingdom, Norway) and are responsible for the organisation of leisure or recreational activities (Austria, Belgium, Cyprus, Finland, Luxembourg, Poland, Slovak Republic, Norway). In some (Member) States, they monitor the UAMs' education plans (Belgium, Finland, Lithuania, Luxembourg, Norway) or oversee the benefit entitlements to the health care system for UAMs (Croatia, Norway).

A good practice is found in Belgium, Finland and Norway, where each UAM is assigned an individual contact person in the reception centre to help and advise them more personally.

#### 4.2.3 TRAINING OF STAFF

In order to perform those tasks, some (Member) States require the staff in the reception facilities to be appropriately qualified to work with UAMs, by holding a degree in a relevant field (i.e. being graduated social workers, educators). This is the case in Belgium, Croatia, Czech Republic, Cyprus, France, Italy, Slovak Republic, Sweden, the Netherlands, United Kingdom, Norway, and for certain positions in Finland.

Other (Member) States do not require any specific qualification but provide ongoing training to their staff (Hungary, Latvia, Lithuania, Slovenia).

In Belgium, Cyprus, Finland, France, Ireland and the Netherlands, the staff receives training in addition to their qualification to deal with UAMs or with asylum seekers in general (e.g. Slovak Republic).

In Austria, the basic welfare support legislation does not foresee any minimum qualification or experience requirements for supervisors of UAMs, and in Cyprus, the residential care officers are not provided with any specific training in accommodating the needs of UAMs.

At EU level, EASO is currently developing a training module on reception conditions for staff involved in the process.

#### 4.2.4 TYPES OF PROFESSIONALS

As a result, the staff responsible for the care of UAMs is composed of a wide range of professionals. Where reported by (Member) States, these include:

- ★ **Social workers** (e.g. Austria, Belgium, Croatia, Czech Republic, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy,

Lithuania, Luxembourg, Malta, Slovenia, Slovak Republic, United Kingdom, Norway)<sup>74</sup>

- ★ **Psychologists** (e.g. Austria, Croatia, Czech Republic, Greece, Hungary, Italy, Latvia, Luxembourg, Slovak Republic)
- ★ **Teachers** (e.g. Czech Republic, Greece, Hungary, Italy, United Kingdom)
- ★ **Educators** (e.g. Belgium, Croatia, Czech Republic, Estonia, Italy, Luxembourg).

Some (Member) States additionally employ other highly specialised professionals such as romologists and teachers of romology<sup>75</sup> (Hungary). Some less common staff members may further include: lawyers (Croatia, Greece, Italy), nurses (Greece, Finland, Latvia), or interpreters (Greece).

#### 4.3 OTHER MATERIAL RECEPTION CONDITIONS FOR UNACCOMPANIED MINORS

The Reception Conditions Directive (Art. 13) and its Recast (Art. 17) stipulate that "Member States should ensure the availability of material reception conditions to applicants for international protection sufficient to provide dignified living conditions". Material reception conditions include housing, food and clothing, and a daily expense allowance, which aim to ensure applicants' subsistence and basic needs during their stay at reception facilities. These may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.<sup>76 77</sup>

Table A3.3 in [Annex 3](#) provides an overview of the material reception conditions for UAMs in the reception facilities in the different (Member) States as to food, clothing and financial allowance.

Most of the provisions apply both to asylum-seeking and non-asylum-seeking UAMs, as (Member) States seem not to make any differentiation or not to have specific provisions for the latter category in their legislation. However, in Latvia some provisions apply to non-asylum-seeking UAMs specifically (see table for details).

#### 4.4 NON-MATERIAL RECEPTION CONDITIONS FOR UNACCOMPANIED MINORS

This sub-section focuses on (Member) States' **non-material reception conditions** (e.g. access to legal advice, healthcare, education, employment, etc.) **provided to both asylum-seeking and non-asylum seeking UAMs**. For asylum-seeking UAMs and those granted international protection, the EU acquis lays down certain common reception standards and content of the protection granted.<sup>78</sup> For example, the recast

<sup>74</sup> In other Member States, e.g. Latvia, social workers are available only at child care facilities.

<sup>75</sup> Romology, or Romani studies is an emerging interdisciplinary ethnic studies field concerned with the experiences of the Romani people. Particular areas of focus include the origins of the Romani people, experiences of persecution and political oppression, the Romani language,

Romani society and culture, and Romani customs and traditions.

<sup>76</sup> Directive 2003/9/EC, Article 2 and 13(5).

<sup>77</sup> EMN focused study 'The Organisation of Reception Facilities for Asylum Seekers in different Member States' 2013

<sup>78</sup> See for asylum seeking UAMs: the recast Reception Conditions Directive, Art. 14 (education), 15 (employment),

Asylum Procedures Directive stipulates the right for asylum-seekers to receive legal assistance (see Art. 19-23), whilst the recast Reception Conditions Directive stipulates the right for asylum seekers to education (Art. 14), employment (Art. 15), vocational training (Art. 16), and health care (Art.19). A full overview of the rights granted to asylum-seeking UAMs is provided in Table A3.5 in [Annex 3](#). Moreover, for UAMs granted international protection the recast Qualification Directive ensures that all (Member) States provide the following common rights, e.g. access to employment (Art. 26), access to education (Art. 27), access to procedures for recognition of qualifications (Art. 28), social welfare (Art. 29), healthcare (Art. 30), access to accommodation (Art. 32) etc. The recast Qualification Directive also ensures that UAMs who have been granted international protection continue to be represented by a legal guardian and are placed in appropriate facilities. Finally, it also sets the conditions for the withdrawal and cessation of international protection and the rights attached to such status.

As shown in the box below, some (Member) States (e.g. Finland) go one step further by also tailoring non-material reception conditions to the individual and specific circumstances of a UAM seeking asylum.

**Box 11: Good practice example of non-material reception conditions tailored to the individual and specific circumstances of UAMs in Finland**

In **Finland** different personalised plans may be developed for UAMs with a view to tackling possible challenges they may face. These plans, which are drawn up together with the child in line with Article 12 of the UN CRC, include:

- ★ A client plan which is drawn up for all asylum-seeking UAMs by a social worker at the accommodation unit taking into account the child's situation and needs for support. The client plan broadly defines the means and measures aimed at yielding a positive impact on the child's situation;
- ★ A care and upbringing plan which complements the client plan. It is developed by an assigned counsellor at the accommodation units. In this plan the above-mentioned means and measures are concretised into everyday actions;
- ★ A care and upbringing plan is also drawn at the accommodation unit for UAMs receiving international protection. The plan is updated every three months and is a tool for agreeing on providing tailored support to the minor;
- ★ Finally, an independence promotion plan is drawn up when UAMs receiving international protection come of age. This plan includes sports and hobby activities, private tuition and support for school attendance. In cooperation with the former UAM receiving

international protection, the Employment and Economic Development Office and/ or the municipality also draws up an integration plan that includes integration training, as well as other measures and services that support integration, employment and social inclusion.

*Source: Finnish National Report*

The added-value of this Study concerns the provision of information on non-material reception conditions to non-asylum seeking UAMs. An overview of these rights is provided in [Annex 3](#). The table overview shows that non-asylum seeking UAMs benefit from similar rights afforded to asylum-seeking UAMs. Exceptions may apply. For example, Slovenia does not provide legal assistance or psychological support/ counselling to non-asylum seeking UAMs.

#### 4.5 TOWARDS 'DURABLE SOLUTIONS' FOR UAMs

The Action Plan on Unaccompanied Minors 2010-2014<sup>79</sup> calls for **durable solutions for unaccompanied minors based on an individual assessment of the best interests of the child**. The durable solutions referred to in the Action Plan include: return and reintegration of the UAM in the country of origin; granting of international protection status or another legal status allowing the minor to successfully integrate in the Member State of residence; and resettlement.

In the majority of Member States, **a durable solution for a UAM is not defined in legislation**. In Belgium, however, Article 61/14 to 61/25 of the Belgian Immigration Act provides for a specific residence procedure for UAMs and defines a durable solution as a family reunification in the country where the parents have legal residence, a return to the country where the UAM has legal residence (and where adequate reception is available) or settlement in Belgium. A recent bill also makes it possible for asylum-seeking UAMs who may have been issued a negative decision to access the above-mentioned procedure. Legislation is planned in Italy, where in 2014, a bill has been submitted to the Parliament which provides for the establishment of a National System for the reception of unaccompanied minors with the aim of ensuring durable solutions in the child's best interests. In other (Member) States (Ireland, Lithuania) no such provisions exist in legislation for the definition of durable solutions for UAMs.

The majority of (Member) States including Norway have however highlighted **specific efforts made to identify durable solutions for unaccompanied minors**, including return and reintegration (Belgium, Cyprus, Estonia, Germany, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovenia, Spain, Sweden, the United Kingdom, Norway), where

16 (vocational training), 19 (health care); the recast Asylum Procedures Directive; Art. 19, Art. 20, Art. 21, Art.

22, Art. 23 (legal assistance). See for UAMs granted international protection the recast Qualification Directive  
<sup>79</sup> COM(2010)213 final

this is in the best interests of the child. In this context, the contribution of efforts to bring about family reunification (Austria, Belgium, Czech Republic, Germany, Ireland, Netherlands, Slovak Republic, Spain, Sweden) are also highlighted. Integration in the (Member) State as a durable solution is highlighted in Belgium, Czech Republic, Finland (where family reunification is not possible), France, Germany (where family reunification is not possible), Malta, Poland, Spain (where return is not possible), Sweden, Norway.

Competent authorities deciding on the durable solution for the child include a range of organisations, for example, the Immigration Office (Belgium), Youth Welfare Office (Germany); Ministry of Justice (France); Child and Family Agency (TUSLA in Ireland); the Police (Slovenia); the Directorate of Diversity and Inclusion (IMDi) in Norway (when the chosen durable solution is integration); and the Home Office, as well as local authorities in the United Kingdom. In practice, the deciding authorities take account of the views of the minor, the minor's guardian and other agencies involved, and in some situations, may involve the minor directly through an interview (Belgium).

In several (Member) States (Belgium, Cyprus, Germany, France, Ireland, Latvia, Slovenia, Slovak Republic, Spain, United Kingdom, Norway), **a best interests determination procedure is in place to support the competent authority's decision on a durable solution for the UAM**. Organisations or individuals representing the UAM, or the UAM directly, may be involved in the procedure in about a third of (Member) States, including: the legal guardian of the UAM (Belgium, France, Germany, Slovenia, Slovak Republic, Spain); the UAMs themselves (Belgium and Spain, under specific circumstances); and social workers (Ireland).

Whilst it may be in the best interests of the UAM to find a durable solution as quickly as possible, in reality **the timeframe for the determination procedure varies across (Member) States, and in most cases, is not limited**. Examples of average timeframes include an average of under 3 months (Norway); 3-6 months (Germany); and 4-6 months (Slovenia). Decision making is shaped by the circumstances of individual cases, and may be determined in part by the outcome of other procedures, for example, to establish asylum status, to trace the UAM's family, or to determine age. It is noted also in Belgium that what constitutes a durable solution for the UAM may change over time, for example, where unsuccessful family tracing may result in integration options being a more durable solution than return.



## 5 Unaccompanied minors who go missing or abscond from reception and care facilities

This section focuses on the issue of unaccompanied minors who go missing or abscond from reception and care facilities in the EU. It provides limited data and information on the number of such disappearances in some (Member) States, as well as the socio-demographic profile of children who are likely to go missing or abscond. It also discusses possible reasons for disappearances of UAMs from reception and care and how the timing of disappearances links to this. Finally, the section provides an overview of (Member) States' measures to prevent and respond to the issue, along with examples of good practices in these areas.

The issue of missing children has been recently highlighted by the European Parliament's 'motion for a resolution' on the 25<sup>th</sup> anniversary of the UN CRC,<sup>80</sup> which stressed the need for a more coordinated approach to finding missing children in the EU and called on (Member) States to: increase police and judicial cooperation in cross-border cases involving missing children; strengthen the use of hotlines for missing children; and support victims of child abuse.

### 5.1 DATA ON UAMS WHO GO MISSING OR ABSCOND FROM RECEPTION AND CARE

In 2013, the EC-commissioned study on *Missing Children in the European Union: Mapping, data collection and statistics*<sup>81</sup> identified 'unaccompanied migrant children' as a specific category of missing children in the EU. The study provided data on the numbers of missing UAMs in 12 EU Member States (Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Slovak Republic, Slovenia, Spain and Sweden), ranging from 1,754 in Italy to 1 in Cyprus (2012). The study also highlighted differentiated responses to missing unaccompanied children as opposed to responses to missing national children.

Indeed, an assessment of the magnitude and nature of the problem of children going missing or absconding is hampered by the fact that only half of the (Member) States hold **statistics on UAMs who went missing or absconded; where statistics are available, these are often not comparable or not systematically collected**. As outlined below, the magnitude of the problem, the magnitude of the problem also relates to the size of the inflow and numbers of UAMs in a (Member) State. Bearing these

caveats in mind, the highest absolute numbers of disappearances have been reported by Sweden and Belgium, respectively 399 and 124 disappearances from their reception systems in 2013,<sup>82</sup> whereas other (Member) States do not report<sup>83</sup> any disappearances at all, as shown in [Annex 1](#).

In terms of rate of absconding, a number of (Member) States have reported a **high rate of UAMs going missing**, for example: according to a 2010 study in France, 40% of the total number of UAMs abscond from child welfare (ASE) establishments<sup>84</sup>; 42% (or 10,000) of the total number of UAMs over the period 2006-2010 absconded from initial reception facilities in Italy; an absolute majority of non-asylum seeking UAMs abscond in Lithuania; there is up to 50% flee rate of asylum-seekers in Slovenia, including UAMs (only about 10% of these absconders have returned through the Dublin procedure).

Some (Member) States, such as Ireland, have observed that the **number of children going missing has decreased, partly as a result of a decrease in numbers of children arriving overall**. In particular, Dublin's Social Work Team for Separated Children Seeking Asylum in Ireland (SWTSCSA) data indicate a consistent decrease in the number of children going missing as a percentage of total referrals, from 24% in 2009 to 4% of October 2014. As discussed later in the section, measures taken to address the issue of UAMs who go missing or abscond have also contributed to the decrease of disappearances in some countries.

Ireland and Italy report a significant decrease in the number of UAMs going missing. Studies<sup>85</sup> in Ireland have attributed the decrease of UAMs going missing since 2010 in part to the closure of hostels that were used to accommodate unaccompanied minors, as well as the introduction of a policy (also in 2010) that aimed to raise the level of care offered to UAMs to equal that provided to other children in the care system. Similarly, a report published in 2012 in Italy, suggest that immediate reception and integration of the children by municipalities and reception centres (in so-called 'bridge facilities') had played a major role in reducing disappearances. This suggests that institutions play an important role in preventing disappearances. Specific prevention measures used to good effect in some (Member) States are discussed in Section 5.5.

<sup>80</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+MOTION+B8-2014-0285+0+DOC+XML+V0//EN>

<sup>81</sup> [http://ec.europa.eu/justice/fundamental-rights/files/missing\\_children\\_study\\_2013\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf)

<sup>82</sup> These figures were reported separately by Belgium and Sweden, i.e. in the National Reports and not in Annex 1.

<sup>83</sup> (Member) States who have (almost) no disappearances of UAMs may not measure their number at all.

<sup>84</sup> However, the professionals interviewed for this study in France indicate that, generally, they note very few cases of UAMs absconding within the long term reception framework. UAMs seem to abscond more frequently during the shelter phase.

<sup>85</sup> For example: Charles, K (2009). Separated children living in Ireland: A report by the Ombudsman for Children's Office. Office of the Ombudsman for Children: Dublin. Barnardos (February 2011). Missing Separated Children in Ireland. Available at <http://www.barnardos.ie>.



## 5.2 POSSIBLE REASONS FOR THE DISAPPEARANCES OF UAMS

(Member) States have reported that it is difficult to identify the reasons for the disappearances of UAMS. One of the most commonly reported possible reasons is **UAMs wishing to transit to another (Member) State** (Austria, Bulgaria, Belgium, Cyprus, Czech Republic, Greece, Finland, France, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Sweden) or to another part of the same state (e.g. Spain) where UAMs may have family/ friends/ diaspora (Austria, Belgium, France, the Netherlands, Poland, Portugal, Slovenia, Spain), or it is more likely that they can access the labour market due to better economic conditions in the country (Bulgaria, Slovenia, Spain), or where they have pre-arranged a job opportunity (Czech Republic).

Other possible reasons for why UAMs may disappear reported by (Member) States include:

- ★ **Fear of a negative decision on application for international protection and/ or fear of removal (including Dublin transfers)** (Austria, Belgium,<sup>86</sup> Ireland, Luxembourg, Luxembourg, the Netherlands, Slovenia, Sweden, Norway);
- ★ **They are victims of trafficking in human beings** (though they may not recognise themselves as victims) (Austria, Belgium, Finland, the Netherlands, Sweden, United Kingdom, Norway);
- ★ **To avoid age assessment** (Hungary, Spain) or for **fear that the age assessment will not support the claim that they are children** (Austria, Norway).

Furthermore, Belgium Luxembourg and the Netherlands **distinguish between 'voluntary leavers' and 'worrying disappearances'**. Worrying disappearances refer to UAMs who risk becoming victims of trafficking and/ or smuggling, whereas voluntary leavers in Belgium concern:

- ★ Children who disappear during the first days (or even first 24 hours): they are often reluctant to be registered and/or taken to reception facilities, for example: those who may be on their way to join their family/ diaspora in Belgium or abroad; may be using the reception centre as a temporary shelter while they are having problems within their community; or may have another final destination (e.g. United Kingdom, Scandinavia);
- ★ Children who disappear further on during the 2<sup>nd</sup> and 3<sup>rd</sup> phases of reception in Belgium, for example: UAMs who find it difficult to adapt to the life in a reception centre; UAMs under a removal order disappearing just before they turn 18; or those who have received negative decisions in one

of the procedures that could have provided them with a residence permit; or they just decide to seek their future elsewhere.

## 5.3 PROFILE OF UAMS WHO GO MISSING OR ABSCOND FROM RECEPTION AND CARE

Few (Member) States have information on the socio-demographic profile of UAMs who disappear from reception and care facilities, notably:

- ★ **Age and gender:** Many (Member) States (e.g. Belgium, Finland, Ireland, Latvia, Lithuania, Poland, Portugal, and the United Kingdom) have reported that UAMs who went missing were **mostly boys; in some of these countries they were close to the age of majority (15-17 years old)** (e.g. Finland). (Possible) negative asylum decision and/ or fear of deportation on turning 18 (see above in Section 5.2) may be possible explanations for this trend. With regard to gender, research in Ireland shows that more males go missing than females (57% to 36% respectively in the period 2009 – August 2014);<sup>87</sup>
- ★ **Asylum-seeking vs. non-asylum seeking:** The evidence as to whether the risk to go missing or abscond from reception and care facilities is higher among asylum- or non-asylum seeking UAMs is not conclusive, with findings suggesting both scenarios across (Member) States. For example, all UAMs who go missing in Finland, the Netherlands and the United Kingdom are seeking asylum; on the other hand, most UAMs who disappear in Belgium and Lithuania are non-asylum seeking;<sup>88</sup>
- ★ **Nationality:** UAMs who go missing or abscond from reception and care facilities concern children from the following countries: **Maghreb countries, especially Morocco** (Belgium, Finland, Portugal, Spain, Sweden, Norway) **and Algeria** (Belgium, Finland, Spain, Sweden, Norway); **Syria** (Italy, Latvia); **Roma community** (Belgium); **Mali, Guinea-Conakry** (Portugal); **Afghanistan** (Hungary, Sweden); **Vietnam** (Lithuania); **and Pakistan** (Hungary);
- ★ In some of the above-mentioned (Member) States UAMs disappear even before a guardian is appointed (Belgium) or conversely, despite having been assigned a representative (Finland, Latvia, the Netherlands).

## 5.4 TIMING OF DISAPPEARANCES OF UAMS

Unaccompanied minors are **most likely to disappear within the first few days or weeks of arrival in the (initial) reception facility** (Austria, Belgium, Czech Republic, Croatia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Slovak Republic, Norway). In Belgium, for example, out of 96 disappearances in the first seven

<sup>86</sup> Unaccompanied minors under a removal order disappearing just before they turn 18.

<sup>87</sup> Note that there is limited information on gender differences for 2012 and 2013.

<sup>88</sup> No exact number is provided in the National Report.

months of 2014, 69 happened during the 1<sup>st</sup> phase of reception (observation and orientation centre), 23 during the 2<sup>nd</sup> reception phase (usually federal collective reception centre) and four during the 3<sup>rd</sup> reception phase (local reception initiatives). Similarly, in Norway, a 2013 review of statistics (2008-2012) of UAMs who had left reception centres without notifying found that over half absconded or disappeared within the first few weeks of arrival. The likely reason for the timing of these disappearances, as suggested in Section 5.2, may be to transit to another (Member) State, including possible involvement of traffickers/ smugglers, to avoid waiting for what they expect to be a negative decision on application for international protection, a return decision, or the initiation of an age assessment.

Some (Member) States further report that children may disappear from the reception facilities **during the night** (Italy) **or on weekends** (Lithuania).

Many disappearances of UAMs also occur **during the admission** (Dublin Regulation) **or asylum procedure** (Austria, Portugal, Latvia, the Netherlands, and Norway).

## 5.5 MEASURES TO PREVENT DISAPPEARANCES

The measures that (Member) States put in place to prevent disappearances focus on a range of strategies from building relationships of trust with the UAMs, through close monitoring to involving multiple stakeholders who may come into contact with the children. These are discussed further below.

Some (Member) States (Belgium, Finland, France) have reported that they focus on developing **relationships with UAMs staying in state residences**. For example, Finland and France report aiming to establish a safe atmosphere, trust-based relationships with adults and peer support. A good practice example of efforts made to prevent absconding of UAMs from the Minor-Ndako reception centre in Belgium is described in Box 12.

### Box 12: Prevention of disappearances at the Minor-Ndako reception centre in Belgium

The reception centre Minor-Ndako in **Belgium** accommodates extremely vulnerable children (children less than 12 years old, victims of trafficking) who have a high risk of absconding. Minor-Ndako is a protected but not closed reception centre and as such it has established a good balance between securing its premises on the one hand and ensuring UAMs' right to freedom on the other hand.

The reception centre is organised into small living units (maximum of 10 UAMs in one group) and has specially trained staff in: estimating the risk of absconding (based on a checklist developed with the police and Child Focus); standard reception procedure aiming to prevent disappearances (picture taken + identification list); first

encounter/ conversation with the UAM. At the beginning of each shift, one educator/ assistant is assigned to monitor the minor/ situation. In addition, all staff at the centre, including kitchen and cleaning staff, are encouraged to get to know the children and interact with them. The centre also tries to prevent children from absconding in the first 24h, by washing their clothes and choosing the longest washing and drying programme to buy time.

The centre provides UAMs with a cell phone/ SIM card and money to buy phone credit; it also encourages them to open an e-mail account – all means by which UAMs can be contacted or get in touch with the centre if they go missing. In 2013, one minor went missing from Minor-Ndako and in 2014 no cases of disappearances of children occurred.

*Source: Belgian National Report*

Various (Member) States set up **systems to register and monitor UAMs**. Belgium, Croatia, Ireland, Malta, the Netherlands, the Slovak Republic and Spain each take **fingerprints and/ or photographs of UAMs at first contact with border guards/ police to serve as an aid for tracing of disappearances**. (In Belgium they only do this for children aged above 12 years, in the Netherlands for children below the age of 12 too, in the Slovak Republic fingerprints are taken for those aged above 10 years and in Ireland only when it is in the child's best interests). In some (Member) States, such as Finland and the Netherlands, UAMs suspected to be (potential) victims of trafficking are placed in **protected reception** (see Box 10 in Section 4), whereas intensive supervision takes place over UAMs residing at the open/ campus location. In Portugal, UAMs are required to ask permission to leave an open centre and are usually accompanied by an assistant.

Since 2014, a **fast-track procedure for obtaining asylum** in Norway aims to reduce disappearances of UAMs. As illustrated in Box 13, the aim is to provide immediate protection and clarity on his/ her prospects in the (Member) State towards the UAM and this as quickly as possible (e.g. by conducting the age assessment immediately).

### Box 13: Fast-track asylum procedure aiming to reduce disappearances of UAMs in Norway

In June 2014, Norway's Immigration Authority (UDI) introduced a new fast-track procedure for cases of UAMs where there was a perceived risk that the minor could disappear or be in need of urgent assistance both due to security issues (trafficking in human beings, forced marriage or other forms of severe abuse) or due to severe health problems. In the fast-track procedure the registration by the National Police Immigration Service (PU), the initial conversation by the UDI and the carpal and teeth x-rays are all carried out on the same day, or as fast as practically possible. The purpose is to secure enough information at an early stage in order to carry out the age assessment, to

make a decision in the asylum case, and to follow up on identified needs.

The initial conversation with UDI, in addition to mapping the reasons for seeking protection, also investigates whether the UAM is at risk of issues such as trafficking, violence or health issues. If there is concern about such risks or other forms of severe abuse, Child Welfare Services are notified of this concern, and the minor may be referred to special accommodation by Child Welfare Services (see above). The following groups of asylum seeker UAMs are put through the fast-track procedure: those from North-Africa, those who apply for asylum after having been apprehended by the police, those who have resided in Norway for some time already, those who have previously absconded from reception centres, and those who can be at risk of trafficking or other forms of severe abuse (indicator-based approach). The fast-track procedure also aims to better coordinate between the different agencies that work with UAMs who disappear.

Source: Norwegian National Report

Belgium, Finland, Ireland, the Netherlands, Spain, the United Kingdom and Norway each put in place **protocols/ guidance to facilitate cooperation between authorities**. In Belgium, a Ministerial Task Force 'Minors Travelling Alone' has been set up and in Finland, work instructions for assisting child victims of trafficking have been prepared for relevant authorities (*Alaikäisten ihmiskaupan uhrien auttaminen*). In Ireland, the Joint Protocol on Missing Children between the Health Service Executive (HSE) and An Garda Síochána includes a mechanism to identify children in care who are frequently reported as missing; and a protocol between An Garda Síochána and TUSLA (the Child and Family Agency) facilitates combined police/ social worker interviews, identification, accommodation and age assessment for UAMs arriving at Dublin airport. In the Netherlands, a protocol for missing persons has been introduced at campus locations as a regulation to prevent and trace disappearances. In Spain, as mentioned previously, a Framework Protocol for Unaccompanied Foreign Minors has been signed. The Eastern Regional Office, Norway's immigration authority (UDI) and the Department for Education in the United Kingdom have also produced guidance for relevant authorities on how to act in the case of disappearances of UAMs (see Box 14).

#### Box 14: Statutory guidance on children who run away or go missing from home or care in the United Kingdom

In January 2014 following a public consultation, the **UK's Department for Education**, published statutory guidance on children missing from home or care.<sup>89</sup> The guidance sets out steps local authorities and their partners (e.g. police, schools, etc.) should take to prevent children going missing and to protect them when they do. As part of the guidance,

local authorities have a duty to interview children who have been missing within 72 hours of their return to reduce their likelihood of going missing again.

The guidance includes specific reference to **unaccompanied minors from abroad, who may have been trafficked**. Local authorities should assess the needs of these children as soon as they are identified. The assessment must seek to establish relevant details about the child's background before they came to the United Kingdom and an understanding of the reasons why s/he came to the country, as well as an analysis of his/ her vulnerability to remaining under the influence of traffickers. The assessment should inform the placement of the local authority commissions to accommodate the child, to maximise the opportunities for offering the child safe, stable care to minimise the chance of their going missing or being re-trafficked.

Source: UK National Report

## 5.6 MEASURES TO REPORT AND RESPOND TO DISAPPEARANCES

Disappearances of UAMs are **in principle reported by the reception facility to the guardian of the minor, the police and other relevant authorities** (e.g. local child welfare authorities, competent courts, etc.) (Austria, Belgium, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden, Norway).

**National hotlines for missing children** exist in all (Member) States but Finland, and are notably administered by different organisations in the (Member) States responsible for the European Hotline for Missing Children (116 000). Some (Member) States also operate a child alert system (or amber alert), which consists of a mechanism to alert the public in cases of worrying disappearances through TV, radio, billboards and other channels. One practical issue with the 116 000 hotline reported by some (Member) States such as Hungary is that it is only available in the national language, hence UAMs are not able to make use of it.

Actions and alerts in cases of missing children, including UAMs, are in many Member States coordinated by NGOs such as Child Focus in Belgium, Association for the Prevention and Handling of Violence in the Family (SPAVO) and "Hope for Children" UNCRC Policy Centre in Cyprus, The Smile of the Child in Greece – which all belong to the European network Missing children Europe.

The practice in most (Member) States is that **once the police are notified, they are responsible for undertaking a preliminary/ full investigation of the disappearance of a minor**, launching a missing

<sup>89</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307867/Statutory\\_Guidance\\_-\\_Missing\\_from\\_care\\_3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307867/Statutory_Guidance_-_Missing_from_care_3.pdf)

persons' alert, etc. Some (Member) States, such as Finland and Lithuania, have explicitly mentioned that upon receiving information about a missing minor, the police must act as in the case of a disappearance of a minor citizen of the country. Other examples of how (Member) States deal with disappearances of UAMs are presented below:

- ★ In Ireland, a missing persons report and a photograph of the child (if one exists) is distributed to the local Child Care Manager who in turn will distribute these to all other Child Care Managers on a national scale. The minor's social work team may also submit a completed Garda form, for the missing child to be placed on an Irish and international online missing persons website, provided that it is deemed to be in the minor's best interests.
- ★ As part of the AMBER Alert Hellas system which is activated soon after the police in Greece has reasonable grounds to suspect a child is missing, public broadcasting of the missing person is undertaken through TV/ radio channels, along with distribution of photographs of the missing child online and across police vehicles. Similar measures are undertaken in other (Member) States which operate missing children hotlines.
- ★ In Spain, after a minor has been reported as missing or as having absconded from a protection centre where s/he was housed, guardianship is cannot be terminated due to the disappearance. Guardianship continues to be exercised in order to locate the minor, or in the event that s/he reappears.
- ★ When a minor goes missing in Norway, the police keep the reception centre, the minor's representative and lawyer informed throughout the investigation process. The representative of the minor ensures that the follow-up from the police and the local child welfare services (Bufetat) is satisfactory.

With regard to the timing of reporting disappearances, the police is informed **immediately** (Czech Republic, Ireland, Lithuania, Slovak Republic, Norway); **within or after 24 hours of the minor's absence from the reception facility** (Belgium, Cyprus, Finland, Hungary, Malta, Netherlands, Poland, Slovenia); **or after a number of days of absence from the reception facility** (e.g. after three days of absence in Luxembourg).

If a UAM disappears during the asylum procedure, such as in Slovenia, the authority responsible for issuing a decision on the asylum application dismisses the case. In Finland, a decision on the expiry of an asylum application is made after a minor has been missing for a minimum of two months.

## 5.7 CHALLENGES ASSOCIATED WITH THE ISSUE OF UAMS WHO GO MISSING OR ABSCOND

One of the primary challenges associated with the issue of UAMs who go missing or abscond is **prevention** (Austria, Belgium, Czech Republic, Finland, Hungary, Ireland, Lithuania, the Netherlands, Spain, Sweden, United Kingdom), i.e. ensuring the safety of UAMs – both those in reception and care and missing/ absconding UAMs who run the risk of being trafficked or smuggled – along with **early identification of victims of trafficking**. The lack of data on this group is also pointed out by most (Member) States as a main challenge.

Some (Member) States, such as Belgium, Hungary, Sweden and Norway, call for **more coordination at national level, a clear allocation of responsibilities and better information sharing between relevant actors** (e.g. police, child protection authorities, NGOs, etc.) when preventing and dealing with disappearances. Belgium and Norway further emphasise the need for greater follow-up by local child protection services in general or follow-up of specific cases of UAMs (e.g. UAMs detected at some point on the territory, but who are not put in reception centres and do not report themselves further to the authorities).

Other (Member) States, such as Hungary, have criticised the **lack of adequate legal representation by the case guardian during the asylum procedure, as well as late appointments of both case and child protection guardians** which has hindered the protection of UAMs and often led to disappearances.



## 6 Arrangements in the (Member) States for unaccompanied minors turning 18 years of age

This section discusses the arrangements in the (Member) States for UAMs turning 18 years of age, with an emphasis on the measures in place to provide support in advance of the transition, as well as afterwards.

### 6.1 SITUATION IN THE (MEMBER) STATES OF UAMS TURNING 18 YEARS OF AGE

Depending on their migration status, **UAMs turning 18 may experience a change in residence permit provisions**. This, in turn, may have implications for their access to rights, such as education and employment.

This is less applicable to **asylum-seeking UAMs** in the EU, as well as those UAMs who have been granted international protection. Upon reaching the age of 18:

- ★ All (Member) States will allow the UAM to legally remain on the territory, while his/her application for international protection is being assessed; ;
- ★ All (Member) States will ensure that the UAM, who had been granted refugee status or another type of international protection, is issued with a long-term residence permit and can/ continues to access the same rights as adult refugees or other TCNs benefiting from international protection;
- ★ Victims of trafficking may also be issued with a permanent residence permit in some (Member) States.

For **non-asylum seeking UAMs** turning 18 years of age, as well as UAMs whose application for international protection has been rejected, the situation may drastically change:

- ★ These former UAMs may be 'found to be **illegally present**' by the authorities **and may be returned to the country of origin** by some (Member) States (Belgium, Cyprus, Estonia, Italy, Lithuania, Slovenia, Poland, United Kingdom, Norway);
- ★ If, however, these former UAMs have a **valid reason to stay in the country, for example if s/he is attending school or is employed, some (Member) States may issue a temporary residence permit for the duration of the pending obligations** (Belgium, Estonia, Germany, France, Italy, Luxembourg, Slovak Republic, Poland).

Exceptions to the above scenarios exist in some (Member) States, notably in the Czech Republic, where a former UAM may apply for a permanent residence permit for humanitarian reasons or for any other special reason worthy of consideration, or in Finland, where victims of trafficking in human beings or persons who do not receive international protection (or any other kind of residence permit) can – on a case-by-case basis – be issued with a residence permit on compassionate grounds, or a residence permit which

precludes aliens from removal. As well, authorities in the United Kingdom would take into account whether the UAM was a child or an adult at the time of trafficking, particularly with respect to the issue of consent and whether it would be safe or practical for the individual to return to his/her country of origin.

With regard to accommodation arrangements and non-material reception conditions, UAMs who are still awaiting a decision on their application for protection when they turn 18 will – in some (Member) States – be moved to an adult reception centre (e.g. Norway) and thus lose access to the integration measures that are normally in place for UAMs (e.g. access to education). In general, former UAMs may need to change accommodation upon reaching the age of majority in several (Member) States (Austria, Belgium, Finland, Hungary, Ireland, Latvia, the Netherlands, Poland, Spain, Sweden, Norway); in most of these countries former UAMs **move to organised reception facilities for adults or individual accommodation**. On the other hand, several (Member) States may allow former UAMs to stay in the same accommodation/ care **until they reach a certain age (usually ranging from 21 to 25 years)**, if they are in school/ university/ employment, or if they are deemed exceptionally vulnerable (Austria, Belgium, Czech Republic, Ireland, Luxembourg, Poland, Sweden, United Kingdom).

#### Box 15: (Member) States examples on continuing care for former UAMs

To support UAMs' transition to adulthood, some (Member) States provide for the possibility for UAMs to continue to receive state care until they reach a certain age. In **Austria, Belgium and Sweden** UAMs may continue to receive state care until 21 years of age and in **Poland** until 25 years of age, as follows:

- ★ Support measures may continue to be provided within the Youth Welfare framework in **Austria** to UAMs turning 18 up to a maximum age of 20 years. At present, however, there is no common practice in the country on when and what kind of continued support should be provided to former UAMs, suggesting that this is done on a case-by-case basis;
- ★ If the minor stays in a service of the mainstream Youth Care in **Belgium**, the care can be extended until s/he is 20 years old (foster care) or 21 years old (other services);
- ★ In **France**, young adults aged under 21 years who experience difficulties in social insertion due to lack of resources and sufficient family support can be temporarily taken under the care of the Social Child and Youth Care services, whereby UAMs most often commit to finishing their training in return for material care (e.g. accommodation, financial aid, etc.). This 'young adult contract' is an optional form of aid;
- ★ In **Sweden**, support is often provided for the former UAM when s/he has just moved to their own housing, if there is a decision on continuing care under the Social Services Act. In this case the social services are responsible for the young person who is the object of a care programme until 21 years of age;



★ In **Poland**, a young person/ UAM who attained 18 years of age and who remains in foster care may decide to stay in his/ her current foster family, foster home or institutional care and education centre until attaining 25 years age, if s/he remains in school, teacher training centre, university or in employment in order to receive vocational training, etc.

Similarly, in **Ireland** UAMs in the international protection process upon turning 18 years of age transfer from the care of TUSLA to RIA direct provision accommodation, **except** in the case of persons deemed to be exceptionally vulnerable by the TUSLA social worker. A transfer into the direct provision system is also often delayed until the young person in question has completed the academic year in order to avoid disruption to his/ her studies.

*Source: Austrian, Belgian, French, Irish, Polish and Swedish National Reports*

## 6.2 MEASURES IN PLACE TO SUPPORT UAMS IN ADVANCE OF THE TRANSITION

Few (Member) States appear to have measures in place to support UAMs in advance of the transition to adulthood, which are elaborated below. Paragraphs 131-136 of the UN Guidelines for the alternative care of children are useful in this context.<sup>90</sup>

This most commonly includes support for UAMs' move to a different accommodation, where applicable (Belgium, Finland, France, Latvia, Poland, Spain).

Several (Member) States draft individual after-care plans which are prepared together with the UAM turning 18 years well in advance of the transition to adulthood. A notable example in this respect is Ireland where a UAM in the care of the Dublin SWTSCSA usually has a statutory care plan, which includes an after-care plan. A social worker begins to work on the after-care plan with each UAM when the young person reaches the age of 16. If a UAM is referred to the Service at age 16 and over, work on the after-care plan begins after an appropriate time has lapsed and the young person is more settled.

As well, every looked after child/ UAM in the United Kingdom will be allocated a personal Independent Reviewing Officer (IRO) responsible for scrutinising and reviewing the plan for his/her care and for ensuring it takes account of his/her individual wishes and feelings; IROs are also required to ensure that children understand their entitlements to access independent advocacy support. From age 16 looked after children/ care leavers (including UAMs) must be allocated a Personal Adviser (PA) who must coordinate a pathway plan (based on the care plan for a looked after child) setting out the services the child will access to support his/her aims and ambitions as s/he make

the transition to adulthood. This pathway planning in the United Kingdom is further highlighted in Box 16.

### Box 16: Pathway planning for UAMs turning 18 years in the United Kingdom

From age 16 looked after children/ care leavers in the **United Kingdom** must be allocated a Personal Adviser (PA) who must coordinate a pathway plan drawn up with the young person's participation.

The pathway plan to support a UAM's transition to adulthood covers all areas addressed within all looked after children's plans (employment, accommodation, education and health), as well as any additional needs arising from their immigration status. For example, the plan should always consider the implications for the young people if their application to extend their leave to remain is refused, or their appeal against refusal of that application is dismissed, as in such circumstances the care leaver may become ineligible for further support and assistance. The pathway plan will map out a route to independence for these young people and will be reviewed 28 days after a care leaver moves into new accommodation, then three monthly and six monthly thereafter, as well as whenever there is a change in the care leaver's circumstances (e.g. if they make an unplanned move to new accommodation). The PA must remain in touch with care leavers, including as an emergency contact, until they are 21 or longer, depending on their continuing engagement with education and training.

*Source: UK National Report*

Similarly, other (Member) States, including the Czech Republic and Finland, prepare UAMs for the transition to adulthood through plans supporting their independence: In the Czech Republic the UAM is prepared for independence approximately one year before leaving the Facility for Children. They are provided with important information on their rights and assistance possibilities, key contacts (e.g. the curator, the Employment Office, etc.), and their accommodation and employment options are jointly surveyed. In Finland, an 'independence promotion' plan is drawn up for persons receiving international protection at least six months before the UAM turns 18 years of age. This plan includes integration training, as well as other measures and services that support integration, employment and social inclusion (e.g. dealing with authorities, doing laundry etc.).

Other (Member) States which have after-care plans in place for UAMs turning 18 include Hungary, Poland, Slovak Republic and Sweden.

Finally, some (Member) States, such as Belgium, prepare non-asylum seeking UAMs for a possible return to the country of origin upon turning 18 years of age. The guardian of the minor, together with social workers, elaborate the different possibilities with the

<sup>90</sup> <http://www.refworld.org/docid/4c3acd162.html>

minor (return, illegal stay) and the necessary steps are taken to prepare the UAM for this transition, including access to the voluntary return programme, access to services for undocumented people, etc. The United Kingdom also offers help and advice to UAMs who wish to return home voluntarily via the Assisted Voluntary Return for Families and Children programme. The programme was introduced in April 2010 and is available to, among others, those under 18 with no immigration status in the country, whether asylum claimants or irregular migrants.

### 6.3 MEASURES IN PLACE TO SUPPORT UAMS AFTER THE TRANSITION

In many (Member) States, after-care services seem to be available primarily to UAMs who have been granted international protection. For example, in Lithuania, UAMs who have been granted asylum and have completed school after reaching 18 years move to reside in municipalities where they undergo an integration programme lasting 12 months. The former UAM is assigned an integration coordinator, who helps him/ her to solve everyday issues. All former UAMs participating in the integration programme are paid a monthly allowance for basic needs (food, clothing, personal hygiene, public transport); their rent and utility expenses are also covered. Norway has a similar integration programme for former UAMs but its duration is longer, usually two years.

A small number of (Member) States have reported to provide after-care services to asylum- and non-asylum seeking UAMs alike, such as the Czech Republic, Finland,<sup>91</sup> Slovenia and the United Kingdom.

### 6.4 MONITORING MECHANISMS

As discussed above, reaching 18 years of age is a critical moment for UAMs as their status may radically change, obliging them to face challenges they may not be ready for. In order to assist the UAMs in their transition to adulthood, monitoring mechanisms have been put in place in some (Member) States. The application of such mechanisms varies considerably among EU countries:

- ★ Several (Member) States (Austria, Belgium, Cyprus, Estonia, Italy, Lithuania, the Netherlands, Slovenia, Slovak Republic, Spain, Norway) **do not have any type of monitoring system in place**, however, Cyprus reported that an after-care system is being developed;
- ★ Other (Member) States have reported that **whilst monitoring systems are not in place at national level, local institutions still provide monitoring on their own initiative or on the basis of a delegated responsibility** (Greece, France, Ireland, Latvia, Sweden);

- ★ Finally, some (Member) States **do not seem to distinguish between monitoring mechanisms and aftercare systems**, notably countries which provide former UAMs with support until they reach a certain age, as mentioned previously (Belgium, Finland, Hungary, Poland, Norway).

### 6.5 CHALLENGES ASSOCIATED WITH THE IMPACT OF UAMS TURNING 18

Upon reaching 18, UAMs may face a number of challenges, as discussed above.

The change of accommodation is commonly considered by (Member) States as a cause of major distress for UAMs: first, because it may mean that UAMs move to a different city/ region, thus causing them to abandon school and other established social networks; second, because the move to an adult reception centre can represent a shock for UAMs, as the new environment and supports are different from those found in facilities for children. Moving to individual accommodation can be an overwhelming experience for UAMs as well, for example, due to the transition from living in a house with many other young persons to living in an apartment alone. This has been highlighted as a challenge by Greece, Italy and Sweden.

The end of support by housing institutions and/ or the guardian/ counsellor (Belgium, Cyprus) may also create a number of difficulties for UAMs, such as:

- ★ **Former UAMs expected to deal with several administrative procedures and documents without any further assistance** (Cyprus, Greece, Latvia);
- ★ **UAMs expected to be self-sufficient and take care of their life, educational and economic needs** (Cyprus, Greece, France, and Latvia).

Specific challenges are related to UAMs who are/ were victims of trafficking in human beings. For example, in Finland it is estimated that victims of trafficking need more time to be educated to a different type of life, in particular if they have been exposed to abuse for a long time; there is a higher risk of disappearance and re-victimisation as well.

The United Kingdom has highlighted the complexity of claiming asylum – involving inter-agency information sharing with a thorough understanding of each service's roles and responsibilities – which can present challenges for the professionals (e.g. social workers/ PAs, asylum case owner, legal representative, etc.) involved.

Finally, (Member) States have underlined the difficulties of putting in place monitoring systems for former UAMs (Cyprus) due, in particular, to a lack of

<sup>91</sup> In Finland after-care services are not provided for those asylum seekers who turn 18 during the asylum procedure. After-care is only provided for those UAMs whose cases

are decided while still below the age of 18 and who receive international protection or residence permit.

resources (Italy), causing also a high variability in assistance and support offered to UAMs across the different regions/ municipalities of a country (France).

## 6.6 GOOD PRACTICES

Good practices in relation to UAMs turning 18 reported by (Member) States are presented below:

### Box 17: Role of NGOs and other organisations in supporting (former) UAMs in the transition to adulthood

In **Austria**, the project “Connecting People”,<sup>92</sup> implemented by the NGO *Asylkoordination Österreich*, aims to bring together (former) UAMs who seek asylum or have already been granted refugee status with Austrian sponsors who support them in their integration (e.g. through leisure activities, educational support or handling of administrative procedures).

Also in **Austria**, the project CulTrain – Cultural Orientation Trainings for Young Refugees,<sup>93</sup> which is being implemented by IOM since 2012, provides orientation to young refugees including (former) UAMs with regard to social, cultural and other aspects of daily life in Austria.

In **Belgium**, Caritas International launched in 2014 a specific programme for UAMs granted international protection which provides training that should allow the young adults to live autonomously.<sup>94</sup>

Also in **Belgium**, the concept of developing a ‘life project’<sup>95</sup> for the UAM is applied. The UAM develops a ‘life project’ together with his/ her guardian and social workers which means that an individualised approach, corresponding to the UAM’s specific situation/ capabilities, is applied. The ‘life project’ often requires the UAM to be in close contact with his/ her guardian, lawyer, social worker, teacher and friends at school, as well as an active member of any sports, cultural associations or religious associations, and to adapt him/ herself to his/ her current environment. The ‘life project’ also includes projects which aim to prepare the UAM for being an adult (e.g. possibility to prepare his/ her own meals, learn how to manage finances, etc.).

Source: Austrian and Belgian National Reports

<sup>92</sup> Connecting People, [www.connectingpeople.at/index.htm](http://www.connectingpeople.at/index.htm)

<sup>93</sup> CulTrain, <http://www.iomvienna.at/en/cultrain-cultural-trainings-young-refugees>

<sup>94</sup> Caritas International, <http://www.caritas-int.be/en/node/1423>

<sup>95</sup> The Council of Europe ‘Life Project’ concept was accepted by the Committee of Ministers on 12<sup>th</sup> July 2007. A Life Project is a plan, drawn up and negotiated between the minor and the authorities in the host country, represented by a designated professional, with contributions from a variety of other professionals.

## 7 Return practices of (Member) States, including reintegration of unaccompanied minors

### 7.1 RETURN<sup>96</sup>

The Return Directive<sup>97</sup> includes unaccompanied minors among the category of 'vulnerable persons'<sup>98</sup> and therefore fixes specific limits and guarantees with regard to their return and removal. Before issuing a return decision in respect of an UAM, a Member State shall grant "assistance by appropriate bodies other than the authorities enforcing return", and give "due consideration to the best interests of the child"<sup>99</sup>. Before enforcing the removal of an UAM, Member States "shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return".<sup>100</sup>

Ireland and the United Kingdom opted out of the Return Directive, therefore they are not bound by its provisions. The possibility of voluntarily returning UAMs as well as reintegration projects in third countries however exist in both Member States and are described below. Norway, while not a member of the EU, is bound by the Return Directive as part of the Schengen *acquis*.

#### 7.1.1 VOLUNTARY RETURN OF UAMS

Most (Member) States **provide for the possibility of voluntary return of UAMs** (Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, the United Kingdom and Norway) (see [Annex 4](#)). Spain has a specific procedure in place for the return of UAMs, which does not have a punitive character and always counts on the General Prosecutor to ensure that any proceeding related to the UAM protects his/ her best interests.

(Member) States apply **special circumstances under which UAMs may return voluntarily** to countries of origin:

- ★ In order to protect the minor, responsible authorities perform an inquiry regarding **the situation and conditions in the country of origin** paying particular attention to the **best interests of the child**. Since December 2013 UNICEF National Committees in some Member States such as Belgium, the Netherlands and Sweden have been working on the development of child-specific country of origin reports, as part

of a project which is financially supported by the European Commission. These Child Notices describe the situation of children in countries of origin of migrant children. The ultimate aim of the Child Notices project is for national authorities to use the information collected by UNICEF in the procedures affecting these children.<sup>101</sup>

- ★ Once a child is **successfully identified and his/ her age established**, travel documents may be issued by the competent authorities and steps may then be taken with regard to voluntary return.
- ★ **Some (Member) States also perform family tracing** and assessment is performed in the country of origin in order to evaluate the family situation, living conditions and family's capability to take over the responsibility of the minor (Cyprus, Ireland, Slovak Republic, United Kingdom, Norway).
- ★ In France voluntary return in theory is possible only for the purpose of family reunification in the country of origin and upon judicial decision. The return of the UAMs must take into account the best interests of the child. In practice, this return procedure is rarely implemented.

(Member) States set up different measures and arrangements in order to ensure the best interests of the minor during the return procedure, for example:

- ★ **Verification that the minor will be handed over to a parental authority or an appropriate institution/ care centre** (Austria<sup>102</sup>, Estonia, Finland, France, Germany, Latvia, Lithuania, Netherlands, Poland, Slovak Republic, and Sweden).
- ★ **Written agreement of a parent/ relative or a legal appointed guardian** (Austria,<sup>103</sup> Belgium, Finland, Germany, Poland, Slovenia, Norway), who has to pick up the minor at the arrival destination and take care of him/ her.
- ★ **Assistance provided by appropriate services before departure, different from those dealing with the return of adults** (Greece).
- ★ Very young children are **accompanied to the country of origin or another third country by the appointed guardian** (e.g. Belgium, Poland), or in the case of Finland minors below the age of 15 are escorted by IOM.

With regard to cases when the child's age is not established, no specific differences have been identified: in most cases (e.g. Austria, Netherlands, Poland, Slovak Republic) it was highlighted that voluntary return can be carried out only when a minor has travel documents, meaning that his identity,

<sup>96</sup> For an overview of (Member) States programmes across Europe to support return and reintegration in third countries, see the EMN REG Directory "Connecting Return Experts across Europe".

<sup>97</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on "Common standards and procedures in Member States for returning illegally staying third-country nationals".

<sup>98</sup> Article 3.9 of the Directive.

<sup>99</sup> Article 10 of Directive 2008/115/EC.

<sup>100</sup> Ibid.

<sup>101</sup> UNICEF, Child Notices project, <http://www.unicef.nl/wat-doet-unicef/kinderrechten-in-nl/child-notices/english/>

<sup>102</sup> This is not provided by the State but depends on the organisation that supports the UAM's voluntary return.

<sup>103</sup> Ibid.



including age, is established. However, if the UAM is thought to be significantly older than 18 years, they would be treated as an adult (e.g. the United Kingdom).

### 7.1.2 FORCED RETURN OF UAMS

Several (Member) States (Austria, Belgium, Croatia, Cyprus, Estonia, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovenia, Sweden, the United Kingdom and Norway) **may (forcibly) return unaccompanied minors provided that the conditions laid down in the Directive are satisfied**. More specifically:

- ★ All (Member) States provide for adequate assistance, as well as a prior assessment of the best interests of the child before returning an UAM. Upon return, the minor has to be handed over to a family member, an appointed guardian or an appropriate care centre.
- ★ In Belgium and Germany, the authority further assesses whether the minor needs to be accompanied when leaving the territory and until the arrival at the country of destination.
- ★ In Lithuania, the competent authority takes into consideration the needs, age and level of independence of the UAM before deciding on the return.

Even though according to national legislation the (forcible) return of UAMs is provided for, in practice this may not always occur, see also section 3.1.

- ★ In the United Kingdom, forced returns of UAMs are carefully considered on a case-by-case basis, though these are very unlikely to take place. In addition, control and restraint (force) on children is not used to ensure they comply with a requirement to leave the United Kingdom, unless this is necessary to prevent harm to the child or any individual present.
- ★ Norway carefully considers forced returns of UAMs on a case-by-case basis, and these are very unlikely to take place.

Unaccompanied minors **cannot be subject to forced returns in a few (Member) States**, either by law (France, Italy and Slovak Republic) or by established practice (Finland, Ireland, and Luxembourg). In Finland forced returns of UAMs are unlikely to take place, because tracing the parents and ensuring the safe return is extremely difficult. A minor is usually issued with a residence permit on compassionate grounds to stay in the country.

### 7.1.3 REINTEGRATION SUPPORT AND MONITORING SYSTEMS<sup>104</sup>

More than half of the (Member) States provide **reintegration support** in countries of origin to UAMs who (voluntarily) return (Austria, Belgium, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Malta, Poland, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway), as opposed to seven (Member) States (Bulgaria, Croatia Cyprus, Czech Republic, France, Lithuania) where reintegration plans have not been implemented<sup>105</sup> or information was not provided.

In several (Member) States the reintegration support provided is **tailored to UAMs as vulnerable persons** (Belgium, Ireland, Luxembourg, Slovak Republic, Sweden, United Kingdom, and Norway). For example, in 2012 IOM Belgium launched a pilot project for an enhanced reintegration approach as a durable solution for Moroccan UAMs, and former UAMs (turning 18 years), identified in Belgium. In addition to the Assisted Voluntary Return for Families and Children (AVRFC) scheme and the Facilitated Returns Scheme (FRS) for Foreign National Offenders, the United Kingdom funds reintegration projects for returning UAMs in Jamaica and Afghanistan. Sweden implements a project aiming at the safe return of UAMs to Uganda, based on an agreement with the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN). The main objective of the project is to support sustainable and dignified reintegration of UAMs.

Offer of reintegration support to the UAM is **specific and tailored to the needs of the child**. Most of the programmes provide information and counselling and make an assessment of the reintegration needs of the minor with the involvement of social services. Reintegration plans are based on initial individual assessments of the child's needs (Belgium, Ireland, Italy, Slovak Republic, and Finland) or on grants where the responsible institution selects the best reintegration plans (Hungary). For example, Belgium and Finland reported having developed specific guidelines and internal procedures on return and reintegration assistance for UAMs.

For those (Member) States where reintegration support is provided to UAMs upon return in the country of origin, it consists of some of the following supports:

- ★ In-cash assistance that can be spent on school fees, housing or starting a small business.
- ★ Orientation in labour market or vocational training.
- ★ Schooling support and education plans;

<sup>104</sup> For an overview of the reintegration support provided by the (Member) States, see also the 2014 EMN REG Inform on "Incentives to return to a third-country and support provided to migrants for their reintegration"

<sup>105</sup> There may be various reasons why (Member) States have not implemented reintegration programmes for UAMs. For example, Czech Republic did not have cases of UAMs voluntarily returning and therefore did not implement reintegration programmes.



- ★ Healthcare, psychological assistance and rehabilitation support;
- ★ Accommodation/ lodging supplies.

**Monitoring mechanisms** to ensure the effective reintegration of UAMs are reported by several (Member) States (Austria, Belgium, Finland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Slovak Republic, Sweden, United Kingdom and Norway). Specific examples of such monitoring procedures were reported by Belgium, Finland, Ireland and Norway. In these (Member) States the monitoring mechanisms envisage **regular follow-up procedures and contacts with the minor and his/ her caretaker**. The monitoring mechanism is usually based on regular telephone conversations, home visits and interviews with the minor and his/ her caretakers.

- ★ In Belgium local partners of the organisation responsible for voluntary return perform the follow-up and report on the progresses and implementation of reintegration activities.
- ★ In Ireland the overall monitoring takes place in the country of origin of the UAM; however the information has been regularly referred back to the past social worker of the UAM in Ireland.
- ★ In Norway the reintegration plan is closely followed-up by the local IOM office. In case the plan developed prior to departure is not in line with the minor's needs, the plan can be revised and budget reallocated.

Monitoring systems are also foreseen in Austria, Slovak Republic and Sweden. In Austria the monitoring mechanism depends on the return programme and the responsible organisations. In the Slovak Republic the recipients of reintegration assistance are monitored up to 3 months after the last payment made during the implementation of the reintegration programme.

## 7.2 UAMS IN DETENTION AND ALTERNATIVES TO DETENTION<sup>106</sup>

### 7.2.1 DETENTION OF UAMS

Article 17 of the Return Directive provides that detention measures of children within the return procedure should be a "measure of last resort and for the shortest appropriate period of time".<sup>107</sup> Given the exceptionality of detention measures, the provision sets up several **safeguards towards children in detention with the aim of ensuring their best interests pending the removal procedure**. These safeguards are:

- ★ Access to **leisure activities** which are appropriate to the age of the minor;

- ★ Access to **education**, depending on the duration of stay before return;
- ★ In particular with regard to unaccompanied minors, Article 17 provides that they have to be, as far as possible, provided with **accommodation in institutions with personnel and facilities which take into account the needs of persons of their age**.

As set out above, Ireland and the United Kingdom are not bound by the Return Directive but they do provide for specific guarantees to UAMs in detention and alternatives to detention, as described hereafter.

Around half of the (Member) States adopt **detention measures for unaccompanied minors awaiting return**, according to national legislation (Austria, Croatia, Czech Republic,<sup>108</sup> Finland, Greece, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovenia, Sweden, United Kingdom, Norway).

However, in contrast, in several (Member) States UAMs cannot be detained whilst awaiting return (Belgium, Bulgaria, Estonia, France, Hungary, Ireland, Italy, Lithuania, Portugal). Belgium and France do not detain UAMs awaiting return except in the following situations:

- ★ In Belgium, UAMs who arrive at the border and whose age is doubtful can be held in detention for three working days;
- ★ In France, UAMs apprehended at the border and refused entry are put in a waiting area before their departure for a maximum of 20 days. As mentioned above, the return of the UAMs must take into account the **best interests of the child**. In practice, this return procedure is rarely implemented.

In Germany, the possibility of detaining an unaccompanied minor before return differs across Federal *Länder*: whilst some *Länder* do not allow detention of UAMs, other set a lower age limit for detention of children (14-16 years depending on the *Länder*), or allow for detaining a UAM only if s/he has a criminal record.

In the Slovak Republic, UAMs are never detained.

Further information about the detention of UAMs whilst awaiting return (also as part of the asylum procedure) is provided in the 2014 EMN Focussed Study on *The use of detention and alternatives to detention in the context of immigration policies*.<sup>109</sup>

<sup>106</sup> See also the 2014 EMN Study on "The use of detention and alternatives to detention in the context of immigration policies".

<sup>107</sup> Article 17 of Directive 2008/115/EC

<sup>108</sup> In practice, UAMs are almost always not subject to detention; only UAMs from 15 to 18 years and only on special grounds can be subject to detention.

<sup>109</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_study\\_detention\\_alternatives\\_to\\_detention\\_synthesis\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf)

### 7.2.2 SPECIAL CIRCUMSTANCES UNDER WHICH UAMS CAN BE DETAINED

Most (Member) States, where the law foresees or allows for the detention of UAMs awaiting removal, have laid down **conditions to limit the use of detention**, such as:

- ★ **Age limits:** UAMs are not held in detention under certain age limits<sup>110</sup> (Austria, Cyprus, Czech Republic, Latvia, and Poland). In the Czech Republic and Poland for example, only UAMs aged over 15 may be detained and for a short period of time. UAMs under 15 years are placed in special facilities.
- ★ **Exceptional reasons** justifying detention as a measure of last resort: UAMs are detained if they committed a criminal offence or pose a serious risk and a decision has been made to remove them (Austria, Cyprus, Netherlands, United Kingdom), or when normal supervision is insufficient to ensure the enforcement of removal (Austria, Greece, Sweden) and there is risk of absconding (Austria, Finland, Latvia, Netherlands, Norway).
- ★ **Appropriate accommodation:** in some (Member) States UAMs awaiting return have to be placed in specific accommodation separated from adults and suited to their needs (Austria, Croatia, Germany, Greece, Luxembourg, Poland). In Austria, Croatia, Greece and Luxembourg special facilities exist including leisure activities, while in Germany UAMs are detained in single rooms.
- ★ **Time limit:** all (Member) States detain UAMs only for the shortest time possible to enforce the return. The maximum length of detention can vary between countries: for example, 72 hours in Finland<sup>111</sup> and Sweden, two weeks in the Netherlands, two months in Austria and three months in the Czech Republic and Slovenia (with possibility of one month extension). In Norway, while detention of UAMs is very unlikely, any detention lasting more than 24 hours will be assessed before a court.

### 7.2.3 ALTERNATIVES TO DETENTION OF UAMS

Unaccompanied minors are normally entitled to **alternatives to detention** in most (Member) States (Austria, Belgium, Croatia, Cyprus, Estonia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovenia, Sweden, the United Kingdom and Norway).

Alternatives to detention implemented for UAMs are the following:

- ★ Some (Member) States usually place UAMs in **special youth centres/ shelters, social institutions or reception facilities** (Belgium, Croatia, Cyprus, Estonia, Germany, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Spain).

These centres are tailored to the child's needs and UAMs are held separately from adults.

- ★ Finland, Sweden and Norway law prescribes **interim measures**, such as an obligation to regularly report to the police; such a measure however is not used in practice as UAMs are supervised in reception centres.
- ★ Luxembourg provides for **home custody** which has been applied in practice in a very small number of cases.
- ★ An unaccompanied minor in the United Kingdom may be granted **temporary admission**. In the event international protection is refused and adequate reception arrangements are absent in the country of return, they are granted limited leave to remain which is valid until the child is 17½. Between the 17<sup>th</sup> and 18<sup>th</sup> birthday of the UAM, the Reporting Centre manager may set up a one-off reporting event, liaising with social services, the child's guardian or care worker, to introduce the child to the reporting process. The decision on requiring the UAM to report is made on a case by case basis taking into account the best interests of the child.

<sup>110</sup> In Finland, a governmental proposal under discussion in the Parliament, excludes the detention of an unaccompanied minor aged under 15 years.

<sup>111</sup> According to the government's proposal mentioned in the previous footnote, for special reasons the detention could be prolonged by another 72 hours.

## 8 Overview of the international and EU legislative framework

This section reviews the EU legal framework guiding national legislation in relation to unaccompanied minors. It provides a mapping of the substantive and procedural provisions in the EU *acquis* that regulate the protection of UAMs. The section also highlights how the EU *acquis* relates to the broader international legal framework on UAMs.

Further information on the EU *acquis* on unaccompanied minors is also available in the Reference Document on Unaccompanied minors<sup>112</sup> developed within the CONNECT project<sup>113</sup> funded by the European Commission.

### 8.1 INTRODUCTION

Whereas a number of international human rights treaties<sup>114</sup> contain detailed obligations, which guarantee rights of children, the main one being the UN Convention on the Rights of the Child (CRC),<sup>115</sup> only few provisions in these treaties especially refer to rights of children who are unaccompanied. These Conventions do not define the term unaccompanied minors either. However, all obligations pertaining to the rights of the child have to be respected whether these children are accompanied or not.

All EU Member States, and indeed all countries in the world apart from South Sudan and the United States of America, have ratified the CRC and most EU Member States are bound by the other treaties guaranteeing the rights of the child.<sup>116</sup> The Convention on the Rights of the Child applies to all children. Member States have to respect these obligations in their national law, not only when they legislate autonomously but also when they implement EU legal acts and transpose Directives. Furthermore, although the EU has not acceded to the UN Convention on the rights of the child, the Treaty on the European Union sets an objective for the promotion of the protection of the rights of the child and the EU has committed itself to respect core human rights treaties, such as the CRC and the 1951 UN Convention Relating to the Status of Refugees (1951 RC).<sup>117</sup> Accession to the ECHR is currently in preparation.

There are quite a number of reasons why only within the last decade it was seen necessary to create special rights to protect unaccompanied minors. The main reason may be seen in the fact that only with growing numbers of arriving UAMs the necessity to extend the legal framework for their protection became obvious.

As a consequence obligations for States to grant additional rights to UAMs are mainly contained in recent legislation, mainly in the legal acts comprising the Common European Asylum System (CEAS), in legal acts related to immigration and return and also in legal acts related to prevention of trafficking and abuse.

The obligations contain different types of guarantees for UAMs. One group of rights are procedural rights regarding entry, asylum procedures, procedures determining their residence status and also provisions on appropriate legal representation in these proceedings. Another group of rights concerns the reception of unaccompanied minors including social rights, such as housing, education and access to medical care. A third group is related to the protection of unaccompanied minors from being trafficked, exploited or abused.

### 8.2 PROVISIONS IN PLACE TO ADDRESS THE HUMAN RIGHTS OF UAMS

The CRC applies to all children and defines in its Article 1 that a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. The Convention however does not address the situation where minority is disputed and does not refer to the critical issue of age assessment procedures and necessary guarantees in these procedures. The protection of unaccompanied minors was not a key issue when the CRC was drafted. This is detectable from the text and also from the *travaux préparatoires*.<sup>118</sup> Art. 22 is the only Article which directly refers to UAMs. It deals with unaccompanied refugee children and obliges Member States to take appropriate measures to ensure that a child, whether accompanied or unaccompanied, who is seeking refugee status or who is considered a refugee shall receive appropriate protection and humanitarian assistance. The Convention does not contain an exact definition of “unaccompanied” children – but simply refers to a minor not accompanied by an adult – and Art. 22 only comprises children seeking protection and children who are considered to be a refugee. All rights provided for in the CRC however have to be guaranteed to all children and Art. 22 only provides for additional guarantees for those who are unaccompanied. This Article furthermore states that efforts have to be undertaken by states to protect and assist such a child and to trace the parents or other members of the family, subject to a best interests assessment. The tracing obligations also play an important role in the legal acts establishing the CEAS. However, in 2005 the UN Committee on the rights of

<sup>112</sup> [http://www.connectproject.eu/PDF/CONNECT-EU\\_Reference.pdf](http://www.connectproject.eu/PDF/CONNECT-EU_Reference.pdf)

<sup>113</sup> <http://www.connectproject.eu/>

<sup>114</sup> Footnotes to these international treaties are provided throughout this section.

<sup>115</sup> Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3.

<sup>116</sup> See for the status of ratification

<https://treaties.un.org/pages/Treaties.aspx?id=4>.

<sup>117</sup> Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 150.

<sup>118</sup> Cf Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the “Travaux Préparatoires”*, Nijhoff, Dordrecht 1992.

the child adopted General Comment No 6 on the treatment of unaccompanied and separated children outside their country of origin (GC No 6).<sup>119</sup> GC No 6 recalled that unaccompanied and separated children are holders of all of the rights in the Convention and sought to issue guidance to help tackle some of the protection gaps already identified for these children.

In the report of the UN Committee on the rights of the child's general day of discussion on the rights of all children in the context of international migration, the Committee made a series of recommendations to States Parties, many of which are relevant to the themes addressed in this report<sup>120</sup>.

Other UN Human Rights Treaties contain provisions on the protection of the right to family life and also special rights for children. The Covenant on Civil and Political Rights<sup>121</sup> provides for the protection of family life in its Art. 12 and guarantees special rights for children in Art. 24. Unaccompanied minors are only covered by these general rules, there are no special guarantees for unaccompanied minors. The UN Covenant on Social, Cultural and Economic Rights<sup>122</sup> again contains guarantees for the protection of children in Art. 10 but does not refer to unaccompanied minors either.

The 1951 Refugee Convention does not deal with procedures in general and does not guarantee special rights for children. The Final Act of the Conference that adopted the 1951 Convention aims to provide for family unity.

The Hague Convention on Parental Responsibility and Measures for the Protection of Children does not guarantee special rights for unaccompanied minors either.<sup>123</sup> The same goes for the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>124</sup>

On the level of the Council of Europe, the ECHR provides for the protection of the right to family life in Art. 8. In exceptional cases this provision could even oblige states to unite children with family members and allow these family members to enter the country and to stay there.<sup>125</sup> The ECHR however does not

contain provisions guaranteeing special rights of children or unaccompanied minors.

Though there are no explicit guarantees in the ECHR, the ECtHR has developed a constant jurisprudence that Member States are obliged to take the especially vulnerable situation of children into account. Children are considered to be generally vulnerable and this vulnerability is enhanced when they are unaccompanied. In several cases the Court found that minor unaccompanied asylum seekers are in a state of particular vulnerability.<sup>126</sup> The Court constantly refers to obligations of Member States deriving from the CRC. According to the ECtHR the CRC obliges States to take into account the best interests of the child (Art. 3 CRC), to respect the needs of children when they are deprived of their liberty (Art. 37 CRC) and to take appropriate measures to ensure that a child who is seeking refugee status shall, whether unaccompanied or accompanied, receive appropriate protection and humanitarian assistance (Art. 22 CRC).<sup>127</sup>

EU Directives and Regulations contain norms guaranteeing the rights of children and also the rights of UAMs. The EU acquis, especially the revised legal acts establishing the second phase of the CEAS improved the protection of UAMs considerably. This development was a reaction to the factual situation and it was strongly influenced by the jurisprudence of the CJEU and also by the jurisprudence of the ECtHR. As well, the European Parliament's resolution of 12<sup>th</sup> September 2013 called on the Commission to adopt a number of strategic guidelines in areas which are core areas for the protection of UAMs, namely access to the territory, identification of UAMs, in order to assess the individual circumstances and specific protection needs and prevention of detention of UAMs. The Parliament called on the Commission to draw up these strategic guidelines, which should address each stage in the process, "from the arrival of a minor in European territory until a durable solution has been found." The Commission is developing such guidelines on a sectorial basis. The EU also adopted an Agenda for the Rights of the Child.<sup>128</sup> These activities sought to promote the protection of the rights of unaccompanied children.

Article 24 of the Charter of Fundamental Rights of the EU stipulates that *children shall have the right to such protection and care as is necessary for their well-being*.

<sup>119</sup> <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

<sup>120</sup> <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>

<sup>121</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

<sup>122</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3,

<sup>123</sup> Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, 19 October 1996, available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=70](http://www.hcch.net/index_en.php?act=conventions.text&cid=70).

<sup>124</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, G.A. Res. 54/263, Annex II.

<sup>125</sup> See ECtHR, *Sen v. the Netherlands*, App. No. 31465/96, 21 December 2001 and ECtHR, *Tuquabo-Tekle and Others v. the Netherlands*, App. No. 60665/00, 1 December 2005.

<sup>126</sup> See e.g. ECtHR, *Rahimi v. Greece*, App. No. 8687/08, 5 April 2011, § 86.

<sup>127</sup> ECtHR, *Muskhadzhiyeva and Others v Belgium*, App. No. 41442/07, 19 January 2010, § 62; ECtHR, *Popov v France* App nos 39472/07 and 39474/07, 19 January 2012, 91.

<sup>128</sup> [http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm)



*They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his/her parents, unless that is contrary to his or her interests.* The Charter is binding on the EU institutions in all their actions and it is binding on national authorities when applying EU law.

Whereas the Convention on the rights of the child provides a clear definition of a 'child', the recasts of the Qualification, Procedures and Reception Conditions Directive and the Dublin III-Regulation define UAMs identically as "third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes children who are left unaccompanied after they have entered the territory of the Member States."

The recast of the Dublin Regulation<sup>129</sup> provides for enhanced guarantees for UAMs during the process of establishing the State responsible for examining the application. It contains specific obligations on the treatment of children, including unaccompanied minors, in Art. 6.

Art. 6 (2) refers to the obligation to ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. Art. 8 sets out the criterion that UAMs should be united with family members or siblings who are legally present. The Preamble of the Regulation stresses that specific procedural guarantees for unaccompanied minors are necessary "on account of their particular vulnerability".<sup>130</sup>

In general, the Dublin III-Regulation enhances the protection of UAMs which marks an improvement in comparison to the Dublin II-Regulation. The Regulation stresses the importance to take the best interests of the child into account and provides for a number of procedural rules to reach that aim.

In the case *MA, BT, DA*<sup>131</sup> based on the provisions of the Dublin II-Regulation the CJEU had decided that the best interests of the child is the primary goal when States implement EU legal acts containing rights of children. The Court based the interpretation on object and purpose of the Regulation and came to the conclusion that the best interest of the children requires the determination procedure to be as short as possible. In these joined cases UAMs had lodged asylum applications in more than one Member State. The Court decided that the Member State where the children are present is responsible in order to avoid lengthy determination procedures.

As a reaction to the judgment, the Commission published a proposal for an amendment of Dublin-III in June 2014.<sup>132</sup> The text should finally determine the responsibility of the State where the minor is present and should leave no interpretative uncertainties.

Also the revised Qualification Directive<sup>133</sup> extends the protection of children and especially of rights of UAMS. Art. 31 of this Directive refers to rights of UAMs who have been granted international protection. These rights include legal representation, family unity with siblings, tracing of family members and placement in suitable accommodation for children.

The revised Asylum Procedures Directive<sup>134</sup> extends the protection of UAMs as well. It contains procedural guarantees for them, such as the conduct of the personal interview and also information obligations for States. Art. 25 also provides for legal representation of UAMs. The Directive also determines that Member States may regulate the question if and under which circumstances a minor – including an UAM – can make an application on his or her own behalf and when it has to be lodged by a representative. Thus States have the possibility to control the access of UAMs to status determination proceedings.

The revised Reception Conditions Directive<sup>135</sup> ensures that a standard level of reception conditions is guaranteed to all applicants for international protection. The Directive allows detention for UAMs only as a measure of last resort (Art. 10), it limits the use of detention by providing an exhaustive list of possible detention grounds (Art. 8) and regulates the detention conditions for UAMs as well. The Directive obliges States to trace family members of UAMs (subject to an assessment of their best interests), which is essential to reach the goal to unite them with

<sup>129</sup> Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 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, OJ L 180, 29 June 2013, 31.

<sup>130</sup> Supra, recital 13.

<sup>131</sup> CJEU, Case C-648/11 *The Queen, on the application of MA, BT, DA v Secretary of State for the Home Department*, OJ C 225, 3 August 2013, 18.

<sup>132</sup> Proposal for a Regulation amending Regulation 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, COM(2014) 382 final, Brussels, 26 June 2014

<sup>133</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of *international protection*, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20 December 2011, 9.

<sup>134</sup> Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 60.

<sup>135</sup> Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 96.

their families. In general the Directive establishes detailed rules for the reception and treatment of children and UAMS (see especially Art. 24). Art. 21 defines special categories of vulnerable applicants (including UAMS) and obliges States to account the specific situation of these vulnerable persons.

Also other EU legal instruments contain provisions which should ensure the protection and rights of UAMS. The Anti-Trafficking Directive<sup>136</sup> is to be seen as an important step in the enhancement of their protection. Art. 16 contains detailed rules on assistance, support and protection for UAMS who are victims of trafficking. The Preamble rightly stresses the importance of extended protection mechanism for UAMS in this area. The Directive on the issuance of residence permits to third-country nationals who are victims of trafficking in human beings also provides for protection of UAMS.<sup>137</sup> According to Art. 10(c) MS are obliged to ensure legal representation to UAMS in accordance with their national law. They also have to establish the identity, nationality and the status as an unaccompanied minor. The Directive also includes the obligation to trace the families of these minors as soon as possible, subject to an assessment of their best interests.

Art. 20 of the Directive on combating the sexual abuse and exploitation<sup>138</sup> obliges states to appoint a special representative to protect unaccompanied child victims in criminal investigations and proceedings. Art. 24 of the Directive establishing minimum standards on the rights, support and protection of victims of crime<sup>139</sup> also provides for the appointment of such a representative.

Art. 19 of the Schengen Borders Code<sup>140</sup> provides for specific rules for the control of certain categories of persons including children, which should be laid down in Annex VII. This Annex however only stipulates that Border guards shall pay particular attention to children, whether travelling accompanied or unaccompanied, but that checks on entry and exit should be the same as for adults.

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unaccompanied, but that checks on entry and exit should be the same as for adults.

### 8.3 THE PROTECTION OF UNACCOMPANIED MINORS IN INTERNATIONAL LAW AND THE EU ACQUIS

The recasts of the legal acts building the CEAS and also in other EU legal acts have strengthened the protection of unaccompanied minors in law, and it has been recognised as essential to protect UAMS from being trafficked and to protect them when they are victims of traffickers.

Although the protection of children has been considerably improved in law, potential gaps remain in EU legislation concerning the conditions of entry of UAMS, where only a few specific provisions are in place. The Schengen Borders Code refers to special rules which should be laid down, but then foresees the same standards of control as for adults and does not provide for special guarantees for minors.

While a set of rules and standards regarding the protection of UAMS has been laid down in the EU asylum acquis, there are only very few specific guarantees for UAMS who arrive in a Member States without applying for international protection.

<sup>136</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 1.

<sup>137</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 262, 19.

<sup>138</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 1.

<sup>139</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 57.

<sup>140</sup> Regulation 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) OJ L 105, 1 (as amended).

<sup>141</sup> Regulation 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) OJ L 105, 1 (as amended).

## 9 Conclusions

This EMN Focussed Study – an update of a previous EMN study carried out in 2008-2009 – presents a comparative analysis of EU (Member) States' policies and practices on unaccompanied minors, from the moment they arrive at the border or are intercepted on the EU territory until a durable solution may be found.

To the extent possible, the Study distinguishes between (i) UAMs applying for asylum and those who have been granted international protection, and (ii) unaccompanied minors not applying for asylum, including those who entered irregularly and/ or child victims of trafficking. This Synthesis Report may serve to inform further development of EU and/ or (Member) States' approaches to safeguarding unaccompanied minors.

Overall, a number of issues emerge from this Study:

### Scale of the issue of UAMs in the EU plus Norway

**More than 24,000 UAMs applied for asylum** in the EU plus Norway in 2014. The numbers of unaccompanied minors seeking asylum has steadily **grown** in recent years – especially in Sweden, Germany, Italy and Austria. At the same time, the overall proportion of asylum applicants who are unaccompanied minors in the EU plus Norway has decreased since 2009, accounting for 4% of the total number of asylum applications in 2014. Most of the UAMs applying for asylum in the EU plus Norway were **boys (86%)**, as opposed to girls (14%), and **between 16 and 17 years of age (65%)**. In 2014, the **main countries of origin** of these minors were Afghanistan (26% of the total number applying for asylum in the EU), Eritrea (19%), Syria (13%), Somalia (10%), The Gambia (4%) and Morocco (3%).

Only seven (Member) States could provide data on the numbers of unaccompanied minors arriving in Europe and **not seeking asylum**. The data show that there is some evidence of increases within some (Member) States, particularly Italy. The Study finds that there is also limited qualitative information available regarding non-asylum seeking children, pointing to the **need for further research** not only on the socio-demographic profile, but also on the specific situation of this group of unaccompanied minors within and across (Member) States.

### Motivations of UAMs for entering the EU

Often the decision to migrate is not made by the minor but his/ her parents or other family members. Nevertheless, this Study finds that UAMs have different motivations for entering the EU, reflecting their individual life stories, experiences during the unaccompanied journey and their hopes and dreams about a new life in Europe. Overall, motivations for

fleeing the country of origin and for entering a particular (Member) State are varied. In spite of holding preferences for a particular (Member) State of destination, in reality, where a UAM actually arrives, is trafficked/ smuggled, or is intercepted **can be unintentional and wholly dependent on external factors** (e.g. smuggling routes, etc.).

Similarly, although asylum- and non-asylum seeking UAMs constitute two different (legal) categories of unaccompanied migrant children, their motivations for arriving in the EU are **not always aligned with their migration status**. For example, some UAMs do not give the reasons for leaving their country of origin, some of which may actually provide them with the grounds for applying for asylum; due to trauma or for other reasons this information may not be shared with (the appropriate) authorities. Therefore, whilst this Study finds that asylum-seeking UAMs may fear persecution, harm and/ or human rights violations in the country of origin and non-asylum seeking UAMs may often be seeking better education and economic prospects, both groups of UAMs are **ultimately looking for a better future in Europe**. Therefore, the differences between the motivations of UAMs – regardless of whether they are seeking or not seeking asylum – should be interpreted bearing the above-mentioned **caveats** in mind.

### Circumstances of UAMs entering the EU

The circumstances of entry point to the prevalence of UAMs wishing to **transit from Eastern and Central European countries to Western European and Nordic Countries**. Furthermore, some (Member) States<sup>142</sup> reported possible cases of **smuggling and/ or trafficking in human beings**. The Study shows that the majority of (Member) States address this issue by providing **special training on identification** of victims to border guards and/ or police authorities; a number of countries have also either continued or put in place further new measures to strengthen the protection of child victims of trafficking in human beings, such as Finland, the Netherlands and the United Kingdom.

### Entry and assessment procedures, including border controls for UAMs

In line with EU *acquis* and international obligations, **asylum-seeking UAMs will always be allowed entry into the EU territory**, regardless whether they meet the entry requirements. This is **not always the case for non-asylum seeking UAMs** for whom the possibility of return to the country of origin if they do not meet the entry conditions exists extensively across (Member) States' national legislation. However, the Study finds that in practice this measure **is not often applied to non-asylum seeking UAMs**. Many (Member) States thus grant non-asylum seeking UAMs access to the territory on **humanitarian grounds**,

<sup>142</sup> E.g. DE

giving priority to the fact that they are first and foremost children (rather than migrants) and allowing them to enter the EU. Similarly, (Member) States who may refuse entry to UAMs, including non-asylum seeking children, make decisions on return procedures on a case-by-case basis, taking account of the best interests of the child, as foreseen by the Return Directive.

Whilst different assessment procedures of whether a UAM fulfils the entry requirements or not apply at the border or upon interception on the EU territory, the **correct identification of these children is crucial for ensuring that they are treated first and foremost as children** in subsequent procedures and processes. However, this Study finds that border guards and/ or police authorities in most (Member) States **do not receive specialised training on establishing the identity of UAMs, nor on safeguarding children**, apart from training on identification of victims of trafficking. To ensure the correct and prompt referral of UAMs to child protection/ welfare agencies, it is **important that child-specific training is regularly provided** by (Member) States to border control authorities. Some (Member) States, for example, the Netherlands has taken steps in a similar direction by concluding **protocol agreements** for the referral of UAMs to child protection/ welfare agencies – with a view to adopting an integrated, child-centred approach making sure that the UAM is, as quickly as possible, provided with the specific care s/he needs, and preventing possible exploitation or abuse in the case of victims of trafficking.

When it comes to national asylum procedures, EU *acquis* ensures that **special safeguards are provided to asylum-seeking UAMs** throughout the entire process. As for non-asylum seeking UAMs, it is important to note that some (Member) States, such as Finland and Norway, **do not have legislation that acknowledges non-asylum seeking UAMs** – and instead generally direct all UAMs to the asylum procedure (including cases of victims of trafficking in human beings). Practices in similar cases, for example, Ireland and Sweden where **legislation does not distinguish between asylum-seeking and non-asylum seeking UAMs**, show that **non-asylum seeking UAMs** are recognised as being just as vulnerable (as their asylum-seeking counterparts) and therefore **have access to similar provisions**.

Although **age assessment** and **appointment of a guardian/ representative** are not extensively covered in this Study,<sup>143</sup> the general approach of (Member) States is to give the 'benefit of the doubt' to

UAMs who claim to be minors when assessing their age. Nevertheless, in some (Member) States the number of self-declared UAMs whose age was refuted is significant.

In most (Member) States it is common practice to **appoint a guardian and/ or legal representative** to UAMs. Despite the 'universal' application of the latter across the EU, a couple of (Member) States **do not have guardianship arrangements** in place for UAMs (excluding legal representation) and for non-asylum seeking children in particular.

#### Reception conditions, including integration measures for UAMs

The organisation of reception facilities for UAMs **differs** between (Member) States, in terms of **type of facilities** accommodating these children (e.g. separate facilities specifically for minors, mainstream facilities with provisions for minors, foster care) and the **actors involved** in the provision of reception (e.g. central and/ or local government responsibility). With a few exceptions,<sup>144</sup> most (Member) States apply a **similar reception system for all UAMs**, hosting asylum- and non-asylum seeking minors in similar facilities.

With regard to **integration measures**, this Study outlines the provisions available to non-asylum seeking UAMs. Though **non-asylum seeking UAMs benefit from similar rights, exceptions may apply** (e.g. lack of legal advice or lack of basic medical care provided) which practically hinders the protection of these children.

With regard to **durable solutions**, the Study finds that most (Member) States do not **define** this in legislation, though some of them plan to introduce such a provision in the future. A '**best interests' determination procedure** is in place in several (Member) States to support the competent authority's decision on a durable solution for the UAM following asylum/ immigration procedures and in several, though not all (Member) States, UAMs are directly involved in this procedure.<sup>145</sup>

#### UAMs who go missing or abscond from reception and care facilities

The precise **numbers of UAMs who go missing or abscond from reception and care facilities are not known**, which makes it difficult to provide an adequate assessment of the issue of absconding in the (Member) States, as well as at EU level. Further efforts made to better **record disappearances** and/ or make these publically available would widen understanding

<sup>143</sup> For further information about age assessment and guardianship, (Member) States are suggested to review the recent guidance on *Age Assessment Practice in Europe* and *Guardianship for children deprived of parental care*, respectively published by EASO and the FRA.

<sup>144</sup> AT, FI, HU and SI

<sup>145</sup> For further information on best interests determination procedure, please review the UNHCR and UNICEF renewed guidance on this for European States: *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, <http://www.refworld.org/docid/5423da264.html>



of this issue, and suggestions how data collection might be improved are provided further below.

The Study identifies **prevention measures** as one of the most important areas of intervention when it comes to disappearances of UAMS, with the **first 24 hours upon arrival of a UAM in such a facility seen as critical** for establishing a relationship of trust with the child and reducing chances of his/ her disappearance. (Member) States report the need for **greater collaboration between all authorities** dealing with UAMs who may be prone to disappear. To date, a few (Member) States, including Ireland, Spain and the United Kingdom have established **protocols between authorities** in order to prevent and/ or respond to the issue, and these are considered to be a good practice.

#### Arrangements in (Member) States for UAMs turning 18 years of age

As mentioned above, two thirds of all UAMs applying for asylum in 2009-2013 were aged 16 to 17 years and were/ are therefore already close to **the age of majority**. Until 18, in many (Member) States and in alignment with the UN CRC, UAMs are treated **first and foremost as children** and measures are in place to protect them whatever their migration status; at 18, however, the **migration status of UAMs takes precedence**, which as the Study shows may have implications for UAMs' access to rights such as accommodation, education and/ or employment and above all, on UAMs' legality of residence. This underlines the importance of ensuring that measures are in place in the (Member) States to support UAMs transitioning into adulthood. The UN Guidelines for the alternative care of children are useful in this context.

The Study finds that at present **there are few measures available in the (Member) States to support UAMs preparing for this transition**. For example, it is not always clear *if* and *when* UAMs are informed about the transition to adulthood and more importantly, the changes that this may bring as their migration status changes and when migration rules again take priority. Nevertheless, several (Member) States constitute good practices in that they provide accommodation and support to former UAMs until they reach a certain age (usually between 21 and 25 years).

#### Return practices of (Member) States, including reintegration of UAMs

Despite recent calls by European and international institutions to end detention of migrant children,<sup>146</sup> the Study finds that at present **most of the (Member) States' legislation still provides for the possibility to detain UAMs, albeit special conditions apply**. A

considerable number of (Member) States may also subject UAMs to **forced return procedures**.

Further, whilst most (Member) States provide appropriate safeguards under which UAMs may be returned voluntarily as well as detained, they do not consistently report on the extent to which reintegration programmes may be adapted to the needs of children overall and their specific circumstances.

#### Overall conclusions

Overall, the Study concludes that whilst **many provisions and measures are in place for asylum-seeking UAMs and those granted international protection** as part of EU *acquis* and international legislation (a special point of attention during the Recast of the Common European Asylum System *acquis*), **non-asylum seeking UAMs** do not appear to benefit from the same level of (legal/ legally ensured) protection. The Study highlights some **gaps and challenges** that still need to be addressed to ensure that all UAMs benefit from the same level of protection – which should also be equivalent to the protection afforded to national children deprived of parental care in the (Member) States. UAMs are not in all Member States **treated first and foremost as children**, and their protection needs as such are not always recognised fully by the competent national authorities, irrespective of their migration status.

The Study also identifies certain **gaps in the collaboration and cooperation that takes place between the various authorities dealing with UAMs** in the (Member) States. As mentioned above, this issue is apparent in relation to several procedures and processes, for example, in the process of identifying UAMs when crossing the border or when they are intercepted on the EU territory; in the process of ensuring that a guardian is appointed at the earliest opportunity to ensure the protection of the UAM; and the procedure to ensure that UAMs access appropriate reception support. This issue also relates to the prevention of disappearances of UAMs from reception and care facilities and is also a factor in the determination of durable solutions for UAMs, where cooperation between the authorities, the UAM plus individuals and agencies representing the child, has been reported in some (Member) States but not consistently across all.

A notable outcome of this Study is the identification of some very interesting **new practices and measures** developed in recent years in the (Member) States to address the above-mentioned issue of 'inequality' between asylum-seeking and non-asylum seeking unaccompanied minors, with some (Member) States ensuring that their national childcare policies take priority over migration law in respect of this target group of migrants. For example, in some (Member) States, notably Belgium, Germany, Ireland, the

<sup>146</sup> For instance, European Parliament (2014). *Motion for a Resolution on the 25<sup>th</sup> anniversary of the UN CRC*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=->

Netherlands and the United Kingdom, similar childcare systems work effectively to ensure that non-asylum seeking UAMs have equal access to the services for asylum-seeking UAMs and in fact all children from that (Member) State. Specific examples of good practice in the protection of UAMs highlighted in this Study include the following:

- ★ The official policy of Ireland not to refuse any minor entry to the Irish State ensures that all UAMs are treated first and foremost as children, irrespective of their migration status – as is the case in other Member States (e.g. Sweden);
- ★ The appointment of suitably qualified and trained staff to work with and for UAMs, and the involvement of child protection professionals in all procedures/ processes affecting these children. Good practice examples in this regard are the integrated approaches of the Netherlands and Spain for the referral of UAMs from border control to child protection authorities;
- ★ The special safeguards in place for UAMs during the asylum procedures in Belgium and the United Kingdom, including interview by specially trained case workers, prompt appointment of a guardian or referral to local social services, etc.;
- ★ The special/ protected reception of UAMs who are (potential) victims of trafficking in the Netherlands, which has also reduced disappearances and likely re-victimisation of this group of children;
- ★ The setting up of care standards for UAMs/ children, such as in the United Kingdom, as well as of robust monitoring and accountability measures;
- ★ The personalised care and/ or independence promotion plans drawn up together with UAMs in Finland, which take account of the child's particular situation and needs for support before and/ or after his/ her transition to adulthood;
- ★ Special prevention measures, fast-track asylum procedures or guidance for national authorities in Belgium, Norway and the United Kingdom, aiming to reduce the disappearance of UAMs;
- ★ Continuing care for former UAMs to support their transition to adulthood in a host of (Member) States, including Belgium, Poland and Sweden, and pathway planning to help UAMs leaving care in the United Kingdom to become independent.

Finally, the Study highlights the **general lack of comprehensive and comparable data** on the numbers of and outcomes for UAMs receiving some form of protection in the EU. The current obligation for (Member) States to provide annual data only on UAMs applying for international protection – and the limited data gathered on non-asylum seeking UAMs through this EMN Study – restricts the scope for properly assessing the situation of all UAMs arriving in the EU

and finding durable solutions, particularly for non-asylum seeking children. Without evaluation based on comprehensive and comparable data, it is difficult to assess the real scale of specific problems affecting asylum- and non-asylum seeking UAMs alike, such as the risk of absconding from reception and/ or care facilities.

More systematic data collection using common definitions on UAMs could improve the availability of information to better inform any further development of safeguarding practices of (Member) States. This might include:

- ★ Systematic collection from (Member) States of **annual disaggregated data on UAMs who are not applying for international protection**, such as total number of UAMs not applying for asylum, disaggregated by age and sex, grounds for residence permits granted to non-asylum seeking UAMs or other possible outcomes for such children (e.g. return);
- ★ Development of a **standardised method to record the disappearances of UAMs**, with annual data collection on the total number of UAMs reported as missing and/ or absconding from the care of asylum or other public authorities (and those then accounted for), disaggregated by age, sex, nationality, type of disappearances in terms of the migration status of the minor, including a distinction between the numbers of *children* and numbers of *cases* of disappearances of UAMs;
- ★ Development of **common indicators on durable solutions/ outcomes for UAMs**, both asylum- and non-asylum seeking;
- ★ Development of **common indicators on outcomes for UAMs turning 18 years of age**, disaggregated by sex and type of outcomes (e.g. permanent/ temporary residence permit, return, education/ employment, etc.).