

*Unaccompanied Minor Asylum-seekers:
Overview of Protection,
Assistance and Promising Practices*

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English language editor

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Acronyms

BIC	– best interest of the child
BID	– best interest determination
CAUAM	– Best Practices for a Coordinated Approach to Assist Unaccompanied Minors in the EU
CRC	– United Nations Convention on the Rights of the Child
DRC	– Dutch Refugee Council
EC	– European Commission
ECJ	– European Court of Justice
EMA	– Educational Maintenance Allowance
EMN	– European Migration Network
ERF	– European Refugee Fund
FE	– Further Education
FRA	– European Union Fundamental Rights Agency
fUAMAS	– former Unaccompanied Minor Asylum-Seeker
GCSE	– General Certificate of Secondary Education
IOM	– International Organization for Migration
PACCT	– Psychiatry Assisting Culturally Diverse Community in Creating Healing Ties
SCEP	– Separated Children in Europe Programme
UAM	– Unaccompanied Minor
UAMAS	– Unaccompanied Minor Asylum-Seeker
UNHCR	– United Nations High Commissioner for Refugees
UNICEF	– United Nations Children’s Fund

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Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices

Foreword

Safeguarding and respecting the rights of unaccompanied minor asylum-seekers (UAMAS) – children who have been separated from their families and are outside their country of citizenship – are at the forefront of the migration agenda of many governments and organizations. Article 22 of the United Nations Convention on the Rights of the Child (CRC) in particular obliges Member States to ensure that in providing asylum-seeking children with protection and humanitarian assistance, there should be no distinction made between those who are accompanied and those who are not.

At the European Union (EU) level the European Parliament, in its resolution of 25 November 2009 on the Stockholm Programme, spells out the Union's obligation to protect the "most vulnerable groups" and clearly distinguishes unaccompanied minors as a "vulnerable group" that requires "special attention and devotion". The Commission Action Plan on Unaccompanied Minors 2010–2014 identifies the need for greater coherence and more cooperation within the EU which "should be based on the respect for the rights of the child as set out in the EU Charter of Fundamental Rights and the UNCRC, in particular the principle of 'the best interests of the child' which must be the primary consideration in all action related to children taken by public authorities" (Commission Action Plan, 2010:3).

In the past few years, the number of unaccompanied minors, or children under 18 years of age who migrate to the EU and are without a parent or guardian, has been on the rise. Although precise statistics on these arrivals are difficult to come by, this much is known: In 2008, more than 11,000 unaccompanied minors lodged applications for asylum in 22 European Member States – a 40 per cent increase from 2007. The following year, in 2009, more than 15,000 unaccompanied and separated children claimed asylum in the EU, Norway and Switzerland, according to the United Nations High Commissioner for Refugees (UNHCR).

Whether they migrate to join family members or are sent by family members to another country, the goal is the same: to seek a better life and gain access to appropriate education, health and other services. However, having escaped war, poverty or persecution, children find themselves facing an uncertain future in their new circumstances. Sometimes children are separated from their caregivers en route to their destination. Their precarious plight makes them particularly vulnerable and increasingly they fall prey to trafficking for sexual or labour exploitation.

In light of these challenges, the European Council urged that the Stockholm Programme effectively address the protection of unaccompanied minors and the prevention of their future irregular migration through the development of common approaches. The focus is on exchange of information and best practices and increased cooperation with countries of origin (see the conclusions of the Justice and Home Affairs Council of 21 September 2009).

In response, the International Organization for Migration, in cooperation with 13 partners and with funding by the EU, initiated the project "Best Practices for a Coordinated Approach to Assist Unaccompanied Minors in the EU (CAUAM)".¹ Launched on 15 July 2010, the project covered 10 countries in Europe that have high numbers of unaccompanied minors – Austria, Belgium, the Czech Republic, France, Hungary, Italy, the Netherlands, Slovenia, Slovakia, and the United Kingdom.

Over the 18-month life of the project, IOM and its project partners carried out a situation assessment in the 10 target countries under the coordination of Dr. Blanka Hancilova of the ARC Network. Interviews were held with unaccompanied minors themselves to identify their most urgent needs, and with practitioners, policymakers and former unaccompanied minors to gather suggestions on how best to assist migrant children who are without caregivers. IOM and its project partners also reviewed existing policies, legislation and practices to identify gaps in assistance and draw attention to projects and programmes with the greatest impact. Considerable efforts were also made to identify promising practices that could serve as models for other EU Member States as part of a coordinated approach.

The present report is a consolidated account of the findings of the assessment and also includes recommendations on how to assist unaccompanied asylum seeking children in Europe as effectively and efficiently as possible. We hope this publication will serve as a useful tool in the hands of policymakers and practitioners alike, ultimately raising the standards and quality of care given to unaccompanied minors.

The authors would like to thank Olga Byrne, Jyothi Kanics, Daniel Senovilla Hernandez, Daja Wenke, and Anna Hardy for their valuable comments.

¹ For further details see http://www.iom.hu/index.php/projects/browse-all.html#best_UAM_research.

Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices

Executive summary

This report has been prepared within the project, “Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-seekers (UAMAS) and Former UAMAS (fUAMAS) in EU Member States”. It surveys and compares national systems for the protection of and assistance to UAMAS and fUAMAS with the aim of contributing to the development of a coordinated approach towards addressing the needs of these vulnerable groups.² The project was implemented by the International Organization for Migration (IOM), with funding by the European Union, between June 2010 and December 2011.

This report documents the experiences and views of UAMAS and fUAMAS concerning the assistance and protection provided to them in 10 EU Member States (Austria, Belgium, the Czech Republic, France, Hungary, Italy, the Netherlands, Slovakia, Slovenia and the United Kingdom). It adds to available information on UAMAS in several key areas through the following:

- It provides information from and about fUAMAS.
- It provides more detailed information and a new typology of guardianship systems for UAMAS (in the section on guardianship).
- It presents information on skills development (in the sections on education and employment).
- It carries detailed information about three Central European EU Member States (the Czech Republic, Slovakia and Slovenia) that were not studied in the 2011 report of the Fundamental Rights Agency (FRA) on separated, asylum-seeking children in European Union Member States.
- Furthermore, the report fills knowledge gaps and fosters intracountry as well as intercountry dialogue by, among others, identifying promising practices and solutions to common challenges. In doing so, the report promotes a coordinated approach towards assisting UAMs.

The approach taken was guided by international human rights standards, most significantly by the CRC.

The report is based on desk reviews and 323 semi-structured interviews with 192 UAMAS and fUAMAS and 131 adults who served or were serving in the roles of guardians, care workers, attorneys and other experts in charge of implementation of child protection and immigration policies. Notably, the views and opinions of the young people and experts were often diametrically different.

Key findings

Good practices

The national teams and the assessment coordinator listed and reviewed 18 practices that various countries use in ensuring that UAMAS and fUAMAS are cared for and protected. They then ranked these according to replicability, verifiability and comparability, sustainability, cost-effectiveness, ownership and contribution to desired results. The top-ranked practice was the United Kingdom’s placement of UAMAS below 16 years of age with foster families, garnering 400 points or 79 per cent of the maximum number of points. It is significant that the practice that received the highest positive ratings from both interviewed UAMAS and experts has been under implementation for several decades now and is firmly institutionalized. It is also state-regulated and state-funded (families receive contributions to cover their fostering expenses), and is subject to rigorous monitoring.

Monitoring and evaluation

There is a scarcity of independent mechanisms to monitor and evaluate the quality of protection and care of UAMAS and fUAMAS. When mechanisms are in place, they are often only at a formal level, such as reports to the courts. As a result, there is a substantial lack of documented evidence on the various ways and means of handling the UAMAS issue and their impact. This in turn has made it difficult for the assessment team to identify good and promising practices for this study.

There was clear consensus that in any assessment, the voices of UAMAS and fUAMAS must be better reflected than was the case in the past.

²The assessment team recognized that unaccompanied minors without regular residence status are generally even more vulnerable than UAMAS.

Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices

Best interest of the child

Authorities responsible for determining the best interest of the child (BIC) often act without sufficient guidance on how the principle should be implemented and subject it to individual interpretations. Legally regulated formal mechanisms to determine BIC are not in place in any of the studied countries. Despite the fact that guardians are specifically tasked to look after the best interest of the child and often take part in identifying solutions, the reality on the ground reveals that the asylum procedure sets the pace and rhythm, prevailing over many other concerns of UAMAS. The study found serious gaps between obligations codified in international law and reality on the ground.

Another constraint worth noting is that since many guardians do not establish close and regular contact with children under their care, it is not clear to what extent they are able to make decisions based on their best interest. Overall, findings suggest that the best interest of the child is often perceived primarily in terms of board and lodging, and that emotional and psychological needs tend to be underestimated. Lack of sensitivity on the part of host country authorities who protect and care for the child and insufficient resource allocations were mentioned as the main constraints to acting in the child's best interest.

Right to information

This report found widespread agreement among UAMAS, fUAMAS and experts that despite efforts to inform minors about the asylum procedure and other relevant aspects of their situation, they are still not fully apprised of essential information and are consequently unable to make informed decisions on matters affecting them. This is in part because some key care personnel, including guardians, have a limited understanding of immigration and refugee law and its associated rights and entitlements. They are therefore not able to provide needed support during the legal procedure. The overwhelming majority of UAMAS and fUAMAS described how they were sometimes provided with incomplete or inconsistent information and said they would have wanted to obtain more comprehensive information much earlier. In some EU Member States, both children and adults repeatedly mentioned limited access to and the poor quality of interpretation services.

Guardians and other statutory equivalents

This 10-country assessment has revealed an extremely broad range of guardianship concepts and practices. This lack of clarity and overlapping terminology has complicated – and at times even prevented – analytical description. The ambiguous terminology also partly explains the glaring lack of evidence on the effects of various guardianship regimes, thus making comparisons impossible. The guardianship practices in EU Member States are sometimes not in accordance with the concept of guardianship and legal representation put forward by CRC General Comment No. 6, paras 33–38. A particular matter of concern is that not all unaccompanied children are provided with a guardian.

Qualified legal assistance

This assessment shows that in some countries the state does not provide UAMAS with adequate access to qualified legal assistance. Several non-governmental organizations (NGOs) do provide legal aid but their funding can be uncertain. At times, the legal aspect of the situation of UAMAS tends to be underestimated by their guardians and other care staff.

Accommodation

Accommodation is a key concern in the situation of UAMAS because it has a bearing on the availability of support from guardians and care staff and its quality, on access to education and leisure activities, and on the potential for interaction with the host society and other groups.

The 10 EU Member States accommodate UAMAS either in specialized reception facilities for UAMs and UAMAS or in mainstream childcare facilities for those left without parental care. The survey could not identify which option was used more often. Views also vary on the advantages and disadvantages of the two alternatives. Overall, being housed in mainstream childcare facilities is perceived as enabling UAMs and UAMAS to integrate more easily into the host society – although it might be that these facilities are not able to meet the special needs of this particular group. The study found that children and young adults prefer small facilities to large accommodation centres. Although in most of the 10 Member States UAMs and UAMAS can live with foster families, the practice is followed only by a few. Among children interviewed, only the ones in France, the Netherlands and the United Kingdom had experienced living with one.

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The standard and quality of accommodation provided to unaccompanied children vary considerably from country to country, authority to authority and placement to placement. Similarly, the quality of support from professionals is inconsistent and is often linked to resources available.

There were complaints about general accommodation conditions, such as food, cleanliness, restriction of movement and access to communication technology. In some countries, children were lodged in what could be described as inadequate facilities, such as hotels or accommodation centres for adults.

With a few exceptions this study found that overall, UAMs do not have many opportunities for meaningful leisure and recreation. In virtually all countries in this study, football was the most frequently mentioned leisure and recreational activity. The interviews revealed that in general, leisure activities are geared towards boys rather than girls, reflecting the fact that boys make up the majority of UAMAS. Still, there is scope for broadening activities for girls.

Religion

Available information suggests that despite serious efforts of EU Member States to respect the religion of UAMAS, they cannot always practise it as they wish. An obvious factor is proximity to a place of worship and availability of transportation.

Health care

Most children interviewed said they are able to access health-care services when needed and had no complaints about their treatment or the manner in which medical staff conducted themselves. At least in some countries, female physicians attend to the medical needs of female UAMAS. However, access to professional psychological help is considerably uneven in various countries. This branch of medical service is generally less accessible than other health care provisions. In addition, most countries identified a glaring lack of interpretation during medical consultations and of culturally appropriate medical health care. Experts also underlined the low level of cultural sensitivity of some health-care providers.

Education and skills development

Many children and young adults considered education an important aspect in their lives.

This assessment noted the lack of a systematic approach towards the education of UAMs in several countries. In practice, a number of administrative obstacles inhibit UAMAS and fUAMAS from continuing their education and only certain schools are willing to enrol UAMAS. Legal provisions guaranteeing UAMAS enrolment beyond obligatory schooling seem to offer ample room for interpretation and for de facto denial of access. This results in unequal treatment of UAMAS and in limited choices of education and professional training.

Experts also felt that the uncertainty surrounding the situation of UAMAS makes it difficult for them to concentrate on their education. Some noted that after being highly motivated initially, many young people become discouraged, lose interest and motivation and stop going to school. Some also noted that children who apply for asylum are often under pressure to earn a living.

This assessment furthermore revealed that access to education is particularly difficult for UAMAS and fUAMAS who happen to be parents. Their parental obligations and lack of child daycare arrangements seem to be the major constraints. So far, Belgium's Kirikou childcare centre appears to be one of the few promising practices in this area.

Many experts felt it more advantageous for UAMAS to enrol in vocational training, which could potentially prove more useful in case they had to return to their country of origin. However, putting this into practice is not as easy as it sounds because obtaining a work permit that would enable youngsters to undergo on-the-job training – an integral part of vocational training – is difficult, or almost impossible. In addition, vocational training may not be in accordance with the wishes of the child.

Experts are still debating whether it is better for UAMAS to be integrated into regular, mainstream schools or to attend specialized education facilities. Just as with accommodation facilities, both approaches have advantages and disadvantages. Specialized education is better placed to address this group's special needs but curtails opportunities for growth and development through, for example, exposure to the host country language. Children often preferred being able to attend classes with children of the host country.

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Employment

In interviews, children and their caretakers bewailed the generally limited opportunities of former UAMAS (fUAMAS) to be employed in regular jobs. Bureaucratic obstacles and lack of written documentation about education and vocational training completed abroad were just some of the many frequently cited practical difficulties in finding employment. Respondents noted that having a job empowers adolescents, improves their psychological health and well-being, and boosts their self-confidence. Many fUAMAS said that being in a work environment fosters social interaction.

Interviews in this study revealed that children often feel uncomfortable living at the expense of the host society and are keen to engage in paid employment. Many UAMAS and fUAMAS reported feeling discriminated against on the labour market.

Given the complex legal framework governing access to the official labour market, employers do not always know the rules and regulations regarding hiring people with a certain legal status – for example, someone with subsidiary protection. It often falls on the UAMAS to prove to a prospective employer that they do have a right to work.

A significant and unfortunate consequence of the legal and practical roadblocks encountered by UAMAS and fUAMAS in entering the formal labour force is that they are often left with no recourse except to turn to the informal labour market.

Transition from UAMAS to former UAMAS

The consequences of turning 18 sparked a great deal of negative comments among professionals who took part in this study. They bewailed the fact that from one day to the next, adolescents and young adults are confronted with the loss of support systems that had sustained them in the past. There was consensus that EU Member States need to prepare UAMAS for the upcoming changes and provide better support for fUAMAS.

In most of the countries in this study, care staff did discuss the changes related to the minors' turning 18, but young people still did not seem to be fully aware of the workings behind the asylum procedure, guardianship, family tracing and reunification.

Former UAMAS reported that they wished they had been informed much earlier about what to expect so that they could have prepared themselves better. Interviewed experts called for a more consistent and systematic approach to filling this information vacuum.

In addition, UAMAS and fUAMAS in many Member States were concerned that their reaching the age of majority had now lessened their chances of regularizing their residence status.

Lodging asylum claims and asylum procedure

Overall, the assessment found that in most countries, children and experts from NGOs reported negatively on the asylum interview. Although in most countries at least some officers have been trained in interviewing children and some efforts are made to conduct interviews in a child-friendly manner, this assessment identified numerous instances where this was not the case.

Children often complained about the tense atmosphere surrounding their substantive asylum interviews and felt that these were held under difficult conditions. They also complained that they were not briefed before the interviews. Experts sometimes felt that social workers might not be fully aware of the asylum procedure and are therefore not in a position to provide their wards with advice on the legal aspects of the asylum procedure.

Several children complained about the poor quality of interpretation, with some feeling that it had directly contributed to the negative outcome of the asylum-seeking procedure.

In some of the 10 countries assessed, decisions on asylum applications of UAMAS are taken relatively swiftly, with the final decision expected within a few months. However, in certain cases, the asylum procedure can take years.

Many experts felt that protracted asylum procedures had a negative impact on the well-being of young people. This was confirmed by children who wished for more clarity about their future. Experts criticized the fact that the lengthy asylum procedure confines UAMAS too long within the foreign community and holds back their potential to integrate within society at large.

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Age assessments

To ascertain chronological age in disputed cases, EU Member States employ various techniques such as assessing physical appearance and psychological maturity and examining dental and wrist bone X-rays.

Age assessments continue to be seriously contentious, not least because currently available methods, which have a two-to-three-year margin of error, are ill-suited for settling many age disputes. The interviewed children themselves considered age assessment procedures “unfair” and feared them.

Detention

The study found that in some Member States where UAMs are detained, often in connection with an irregular border crossing or a pending removal. Although Article 37 of the CRC stipulates that detention of children should be used only as a measure of last resort and for the shortest appropriate period of time, it appears from the reviewed information that this was not always the case.

Missing children

Disappearances of UAMs and UAMAS continue to be a major concern for many of the EU Member States. The extent of the problem is largely unknown. Information from Member States suggests that children and young persons are more likely to disappear shortly after being identified by authorities or following a negative asylum decision which they fear could result in their removal. Disappearances seem to be more pronounced in new EU Member States, which many UAMs regard as transit countries on their way to their final destination – usually older Member States such as Austria, France, Germany, Italy, the United Kingdom and Scandinavian countries.

According to experts, children are also more likely to disappear when the care they receive is of insufficient standards or is culturally inappropriate.

I Objectives and methodology

This report has been prepared within the project, “Best Practices for a Coordinated Approach to Assist Unaccompanied Minor Asylum-seekers (UAMAS) and Former UAMAS (fUAMAS) in EU Member States”. It surveys and compares national systems for the protection of and assistance to UAMAS and fUAMAS with the aim of contributing to the development of a coordinated approach towards addressing the needs of these vulnerable groups.³ The project was implemented by IOM and with funding by the European Union.

The project’s overriding goal was to contribute towards a coordinated approach to the assistance and protection of UAMAS and fUAMAS. Such an approach builds on a sharing of knowledge about various mechanisms and practices across 10 EU Member States.

In brief, the project:

- conducted a situational and policy assessment in 10 EU Member States, the results of which are presented in this report;
- organized an international conference to discuss the study’s findings and recommendations;
- prepared informational leaflets for UAMAS.

10 EU Member States

- Austria
- Belgium
- Czech Republic
- France
- Hungary
- Italy
- Slovakia
- Slovenia
- Netherlands
- United Kingdom

The study complements several recently published reports on separated children asylum-seekers in EU Member States. These include research undertaken by:

- the EMN, on UAMs (EMN Synthesis Report, 2010 and EMN national reports);
- the FRA, on Separated, Asylum-Seeking Children in EU Member States: An examination of living conditions, provisions and decision-making procedures in selected EU Member States through child centered participatory research (2010);
- the IOM, on Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors (2008).

All these studies called for further research on the issues surrounding UAMAS, reflecting the fact that the many facets of their situation, including development of skills, knowledge and capabilities and the implications of their turning 18, remain relatively little-known and little-analysed to this day.

Most of all, this report eliminates knowledge gaps and fosters intracountry as well as intercountry dialogue by, among other things, identification of promising practices and solutions to common challenges. In this way, the report promotes a coordinated approach to assisting UAMs.

³ The assessment team recognized that unaccompanied minors without regular residence status are generally even more vulnerable than UAMAS.

This report adds to the available information on UAMAS in five key areas through the following:

- It provides information from and about fUAMAS.
- It provides more detailed information and a new typology of guardianship systems for UAMAS (in the section on guardianship).
- It presents information on skills development (in the sections on education and employment).
- It carries detailed information about three Central European EU Member States (the Czech Republic, Slovakia and Slovenia) that were not studied in the 2011 report of the FRA on separated, asylum-seeking children in European Union Member States.
- Furthermore, the report fills knowledge gaps and fosters intracountry as well as intercountry dialogue by, among others, identifying promising practices and solutions to common challenges. In doing so, the report promotes a coordinated approach towards assisting UAMs.

The 18-month project was launched in July 2010. Its overall implementation was guided by an Assessment Group, comprising the Assessment Coordinator and representatives from IOM national offices and partner NGOs from 10 EU Member States.

The Group met in September 2010 to develop the study's implementation methodology. From October 2010 to March 2011 (and in some cases until August 2011), national teams collected data and prepared national reports. In September 2011 the Assessment Group met again, this time to discuss the main findings, based on a draft comparative report prepared by the Assessment Coordinator. The Group also looked closely into promising practices and explored the possibility of identifying minimum standards towards a common approach. The final report and recommendations, based on national assessments from each of the 10 participating states, were presented at an international conference organized by IOM Budapest for experts, practitioners, policymakers and decision makers all across the EU.

The report is organized according to these themes: Following objectives and methodology (Chapter 3), the report reviews key EU legislation and policy on UAMAS (Chapter 4) and information on trends in UAMAS (Chapter 5). It then identifies good practices (Chapter 6) and describes monitoring and evaluation mechanisms (Chapter 7), followed by best interest of the child (Chapter 8) and right to information (Chapter 9). Coming in for discussion are guardianship (Chapter 10) and qualified legal assistance (Chapter 11). The succeeding chapters examine various aspects of care for UAMAS starting with accommodation (Chapter 12), religion and culture (Chapter 13), access to health (Chapter 14), education, skills and competencies development (Chapter 15) and access to employment (Chapter 16). Family tracing and reunification (Chapter 18), deportation and return (Chapter 19) and the issue of missing children (Chapter 22) are also looked at in depth. The report identifies additional protection and care gaps (Chapter 23) and presents conclusions (Chapter 24).

1.1 Methodology

The assessment team undertook a situational analysis of how UAMAS and fUAMAS are protected and assisted according to standards set by international and EU legislation. The focus was on the key areas of guardianship, care and accommodation, access to skills and capacity development, various aspects of the asylum procedure and the right to information.

The assessment team focused on four questions:

- What are the main gaps in protection and assistance?
- What is the environment and what are the circumstances in which UAMAS and fUAMAS are enabled to develop their skills and competencies?
- Which good or promising practices can be identified?
- What common approaches, including minimum standards, can be put in place to address the needs of UAMAS and fUAMAS?

1.2 Unaccompanied and separated children – definition of terms

The EMN defines a “separated child” as a “child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Some may be totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments” (EMN Glossary, 2010).

“Unaccompanied minor”, which the EMN defines more narrowly than “separated child”, is a “third-country national or stateless person below the age of 18, who arrives 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, or minors who are left unaccompanied after they have entered the territory of the Member States” (EMN Glossary, 2010).

In its report on separated, asylum-seeking children in European Union Member States, the FRA does not provide an explicit definition of terms used, but it is clear that in its research, it has combined the two definitions: separation from the primary caregiver (and not necessarily from other adult relatives) as well as being stateless or a third-country national indicate that someone is a “separated child” (FRA, 2011).

This report defines “unaccompanied minor asylum-seekers” (UAMAS) as third-country nationals or stateless persons who have not reached the age of majority and who have arrived in the territory of EU Member States unaccompanied by their legal or customary primary caregiver (for as long as they have not been taken under the care of such a person). The term also refers to minors who are left unaccompanied after they have entered the territory of Member States and who have applied for asylum (but are still awaiting a final decision) in one of the EU Member States participating in the study.

“Former UAMAS” (fUAMAS) is a term used for those who have attained the age of majority and/or persons under 18 years of age who have either been granted asylum or whose asylum application was rejected. In countries participating in the study, young people are considered as having reached the age of majority upon turning 18 years of age; the only exception being Scotland (part of the United Kingdom) where the age of majority is 16. The term also refers to those who have returned or have been returned to their countries of origin. This group is, however, outside the scope of this study.

This study is based on individual national assessments, each comprising desk research and interviews with UAMAS and fUAMAS and the many people responsible for them – including guardians, care workers, attorneys and other experts who implement child protection and immigration policies. The goal of these twin activities was threefold:

- to explore whether previously identified gaps in protecting and assisting UAMAS have been addressed;
- to assess shortcomings in legal and administrative frameworks and their day-to-day implementation;
- to identify promising approaches and initiatives, including minimum standards.

The national assessments took a qualitative approach, which means that the findings have to be seen within a particular context and cannot be generalized.

Primary data was collected through semi-structured, face-to-face interviews (or phone interviews, in exceptional cases) with the following: UAMAS over 14 years of age and fUAMAS; key people responsible for this group’s care and protection (including representatives of state and local authorities in charge of child care, civil society, the academic community, youth and education ministries, law enforcement bodies and the justice system); psychologists working directly with UAMAS; interviewers during the asylum procedure; staff responsible for age assessment; and guardians and foster parents.

The interviews were guided by a detailed outline of questions covering such issues such as the right to information, the asylum procedure, guardianship, family tracing, accommodations and education and skills development.

Data collection methods

- desk review
- semi-structured interviews with key expert
- semi-structured interviews with UAMAS and fUAMAS
- facilitated assessment of key gaps and promising practices by the
- assessment team (20 team members from 10 EU Member States)

The project set a goal of at least 25 interviews in each Member State, with an emphasis on interviews with UAMAS. These would ideally comprise 8 to 15 interviews with various assistance providers, 13 to 20 interviews with UAMAS, and 8 to 15 interviews with fUAMAS. Respondents were selected based on purposeful sampling; due attention was paid to include girls and boys from various cultural backgrounds with a wide range of experiences in the asylum process. In several countries that were not hosting too many UAMAS, the interviews obviously fell short of the envisaged number.

Table 1: Overview of interviews conducted

	UAMAS		fUAMAS		Experts
	Female	Male	Female	Male	
Austria	4	9	4	6	13
Belgium	1	13	1	6	16
Czech Republic	1	3	2	7	8
France	3	9	3	5	18
Hungary	0	4	1	14	9
Italy	0	10	0	7	13
Netherlands	7	9	6	9	10
Slovakia	0	2	1	5	17
Slovenia	0	3	2	9	15
United Kingdom	3	12	3	8	12
Subtotals	19	74	23	76	131

1.3 Ethical considerations: children-related research

This assessment was guided by the principle of best interest of the child. Team members were trained in ethical and child-sensitive research. Overall, their approach was informed by ethical practices in conducting research with children and educational research (BERA, 2004; British Sociological Association, 2002; Save the Children, 2003; Social Research Association, 2003).

The research team paid due attention to ensuring data confidentiality and respecting the privacy of respondents.⁴

The team had earlier discussed the potential need to compromise the principles of confidentiality and anonymity, for example in cases involving the abuse of children. National experts were duty-bound to offer help to those who happened to reveal serious

⁴The assessment was carried out in line with the IOM Data Protection principles.

problems during the interview, such as abuse or exposure to certain risks and dangers. In the course of this research, no such cases emerged.

Only UAMAS who were 14 years old and above – the main age group of UAMAS – were approached for interviews. There were concerns that younger children would not be able to give informed consent to take part in the research. Participants were told that they were free to withdraw their consent, that interviews were anonymous and that their decision whether to take part or not would have no bearing on their asylum procedure. Researchers also respected the child's wish to be interviewed by a person of a specific gender and in a preferred setting. The interviews were conducted in a child-friendly manner. The same approach was taken in interviewing UAMAS and fUAMAS.

Whenever interviews had to be conducted through an interpreter, the researcher ensured that the interpreter was acceptable to the respondent and that efforts would be taken to avoid relying on the same interpreter for the asylum procedure. As much as possible, the interviews were audio-recorded and a detailed transcript was prepared. To ensure confidentiality, written records were depersonalized by unique identifiers, which were used consistently throughout the reports and communications between the assessment groups.

1.4 Challenges and limitations

Establishing contact with UAMAS proved difficult for some national teams for a variety of reasons.

In some countries, researchers had the impression that state authorities did not welcome the assessment, perhaps anxious that it could reveal some substandard practices. There were also cases of guardians and care authorities refusing to authorize researchers to talk with the children. Concerned that UAMAS were always being approached to take part in surveys and research projects, some legal guardians were reluctant to allow team members access to their wards.

In one country, researchers felt that the guardian's insistence on being present at the interview had inhibited the UAMAS from speaking freely and expressing criticism. In a few instances, the researchers also happened to be the legal guardians of some of the minors interviewed.⁵ In several countries with relatively few UAMAS the researchers could not conduct the envisaged number of interviews.

- In the **United Kingdom**, after care staff indicated that it was common practice to thank UAMAS for participating in studies, the researcher handed each interviewed young person a voucher worth GBP 15 that could be redeemed in a food store.
- In **Slovakia**, a minor in one of the accommodation centres explicitly told the researcher: "We are tired of constantly talking to researchers because we don't see it making any difference in our situation."

The vast differences between EU Member States' systems of care and protection for UAMAS made it difficult to draw up meaningful comparisons, and efforts to identify commonalities and patterns run the risk of sounding trite and obvious.

It is also worth noting that because of the ongoing development of policies, protocols and practices related to the care and protection of UAMAS and fUAMAS throughout the duration of this assessment, this report could not always reflect the most up-to-date information.

The assessment team found it significant that it was not able to identify any promising practices in each of the areas examined in the report.

After careful deliberations, the assessment team decided that it is not in a position to put forward proposals for minimum common standards in the treatment of UAMAS. There are two key reasons for this:

- Current information about how EU Member States protect UAMAS and care for them is limited and key issues, for example guardianship, have not yet been discussed at the national and European levels in sufficient depth.
- Certain minimum standards have already been set out in international human rights provisions, in particular the CRC, which is binding for all EU Member States. The discussion, the assessment team felt, should focus instead on what needs to be done to ensure full compliance with these standards.

⁵ Members of the assessment team discussed the ethical implications of this dual role in advance and decided to allow the interviews. They felt it could even prove beneficial since a relationship between both sides would already have been forged and the child would be more forthcoming in sharing relevant information with the guardian than with an external researcher. The risk was that respondents would be hindered from expressing any critical comments about their guardians and guardianship arrangements.

2 EU legislation and policy

The Lisbon Treaty, which entered into force in December 2009, significantly widened the EU's competences in asylum and immigration: Article 78 of the Treaty states that any policy on asylum must be in accordance with international law on refugee protection. The Treaty charges the EU with the specific responsibility of developing "common policies" for both asylum and immigration (legal as well as illegal) and accordingly empowers it to legislate "uniform standards" (as opposed to the "minimum standards" provided for in the Amsterdam Treaty).

In addition, the Lisbon Treaty removed restrictions on the jurisdiction of the European Court of Justice (ECJ) over asylum and immigration policy, which had effectively prevented immigration cases from being brought before the ECJ before they had been taken to the highest court in the Member State concerned.

The Treaty of Lisbon also gave full legal effect to the Charter of Fundamental Rights of the European Union, which enshrines political, social and economic rights. The Charter (Article 24) mirrors the CRC in stating that in all actions relating to children, the child's best interests must be a primary consideration and that children shall have the right to such protection and care as is necessary for their well-being.

Article 18 of the Charter sets out the right to claim asylum within the rules of the 1951 Refugee Convention (and 1967 Protocol). Article 19 prohibits removal to a state where there is a serious risk that the returnee will be subjected to the death penalty, torture, or other inhuman and degrading treatment or punishment.

The Stockholm Programme (2010) defines the framework for EU police and customs cooperation, rescue services, criminal and civil law cooperation, asylum, migration and visa policy for the 2010–2014 period. It specifies that "children in particularly vulnerable situations should receive special attention" (Stockholm Programme, 2009: 9) and includes UAMs in this category.

Based on the Stockholm Programme, the European Commission drafted the Action Plan on Unaccompanied Minors (2010–2014), which was adopted by the European Council on 6 May 2010. The Action Plan proposes an EU approach based on three pillars:

- prevention of unsafe migration and trafficking;
- reception and procedural guarantees in the EU;
- identification of durable solutions.

The Action Plan also specifies that "this common approach should be based on the respect for the rights of the child as set out in the EU Charter of Fundamental Rights and the CRC, in particular the principle of the best interests of the child which must be the primary consideration in all action related to children taken by public authorities" (Action Plan, 2010: 3).

The Action Plan discusses:

- prevention of unsafe migration and trafficking;
- protection programmes in third countries;
- procedures at first encounter and standards of protection;
- age assessment and family tracing;
- return to and reintegration in the country of origin;
- international protection status, other legal status and integration of UAMs;
- resettlement.

The Stockholm Programme (2010: 5) commits EU Member States to the creation of a Common European Asylum System⁶ by 2012, but progress has been modest so far (see FRA, 2010: 29). Currently, the six key EU legal instruments concerning asylum and immigration law are under revision, as follows:

- the Long-term Residents Directive;
- the Reception Conditions Directive;

⁶ The UK, Ireland and Poland have various opt-out provisions from the Area of Freedom, Security and Justice (AFSJ), a collection of EU policies designed to ensure security, rights and free movement within the EU, which includes asylum policy.

- the Qualification Directive;
- the Asylum Procedures Directive;
- the Dublin II Regulation;
- the Eurodac Regulation.

So far, there is only one EU legal instrument specifically dedicated to the protection of UAMs – Council Resolution of 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03). There are concerns that the rights of separated, asylum-seeking children are not taken into consideration systematically and strategically.

The FRA (2011: 82) has concluded that “at present, no comprehensive or articulate system exists for the protection of separated, asylum-seeking children in the EU. The relevant CRC provisions, which are essential for the protection of these children, are often not effectively implemented, although, as noted in the Stockholm Programme adopted by the European Council, ‘the rights of the child (...) must be systematically and strategically taken into account with a view to ensuring an integrated approach’.”

3 Trends in UAMAS

According to Eurostat (2011), 257,815 children and adult applicants for asylum were registered in the 27 EU Member states in 2010 – 6,000 less compared with 2009. Afghanistan, Russia and Serbia were the three leading countries of origin, accounting for 20 per cent of the total number of asylum applicants.

Eurostat (2010) has made available more data on UAMAS. In 2009, nearly 60,500 asylum applicants in the EU-27 were minors, representing a quarter of the total number of asylum applicants. One fifth of these minors (12,210) were unaccompanied and predominantly male, with 38 per cent (4,600) coming from Afghanistan, the leading country of origin of UAMAS. Afghanistan was followed by Somalia (1,800), Iraq (830), Eritrea (410) and Nigeria (330).

On average, only 3 per cent of the asylum applicants below 13 years old were UAMs. However, this still added up to 1,255 unaccompanied children. UAMAS between the ages of 14 and 17 totalled 9,875, representing more than half of the total number of asylum-seekers within this age category (Eurostat, 2010).

In addition to these findings, a considerable number of unaccompanied and separated children have not applied for asylum in present EU territory. Out of the large numbers of UAMs received by Italy and Spain, for example, only a few actually apply for asylum (EMN, 2010: 122).

The European Commission Action Plan on Unaccompanied Minors (2010–2014) traces the substantial gap in data collection concerning UAMs and separated children to the fact that, under the Statistics Regulation (Regulation (EC) No 862/2007), Member States are obliged to transmit annual disaggregated figures only on UAMs who are applicants for international protection. This acts as a constraint to ongoing efforts to harmonize and collect comprehensive statistics on all UAMs arriving on EU territory (Action Plan, 2010: 3).

As it is, available assessments of the size and origin of undocumented migrant populations are often vague and of unclear origin (see Hellenic Foundation for European and Foreign Policy, 2009).

Table 2. Number of UAMAS per country covering 2005–2010, based on national assessment reports

	2005	2006	2007	2008	2009	2010
Austria	881	488	582	874	1,185	934
Belgium	655	491	555	667	935	962
Czech Republic	100	81	51	35	12	no data
France	735	571	459	410	447	610
Hungary	41	61	73	176	270	150
Italy	no data	31	197	409	320	229
Netherlands	515	410	436	731	1,073	701
Slovenia	82	21	27	18	26	34
Slovakia	101	138	157	72	28	7
United Kingdom	2,965	3,245	3,525	4,285	2,99	1,595

4 Good practices

There is a broad variation in definitions and terminology related to “best practices”. As there is no generally accepted definition of a “best”, “good” and “effective” practice, these terms are sometimes used interchangeably.

For the purpose of this report, the assessment team has defined “practice” as “a programme, activity or strategy used by an organization that has clearly defined parameters that can be assessed for effectiveness and compared against other similar practices”. Furthermore, the team has used criteria for identifying good practices in social care for refugee and asylum-seeking children as listed by Newbigging and Thomas (2011).

Using the “good practices” framework put forward by the Administration for Children of the U.S. Department for Health and Human Service (Identifying and Promoting Promising Practices, s.a.), this assessment has defined three levels of good practices:

- **Research-validated good practice:** A programme, activity or strategy that has the highest degree of proven effectiveness, potential for taking the intervention to scale and generalizing results to other settings and populations, and is supported by objective and comprehensive research and evaluation. (Validation refers to the process of conducting a comparative assessment using objective and subjective data to evaluate the effectiveness of a practice in solving the targeted problem. (For more information, see: http://www.acf.hhs.gov/programs/ocs/ccf/ccf_resources/identifying_promoting_effective_practices08.html#appendix_b, accessed on 20 September 2011.)
- **Field-tested good practice:** A programme, activity or strategy that has been shown to work effectively and produce successful outcomes and is supported to some degree by subjective and objective data sources.
- **Promising practice:** A programme, activity or strategy that has worked within one organization and shows promise during its early stages for becoming a best practice with long-term sustainable impact. A promising practice must have some objective basis for claiming effectiveness. It must have the potential for replication among other organizations, with at least preliminary evidence of effectiveness in small-scale interventions, or have the potential to generate data that will be useful for making decisions about taking the intervention to scale and generalizing the results to diverse populations and settings. (Department of Health and Human Services Administration for Children and Families Program Announcement. Federal Register, Vol. 68, No. 131, (July 2003: 40974), quoted in Identifying and Promoting Promising Practices, s.a.: 3)

Given the high standards of accountability associated with research-validated “good practices” and “field-tested good practices”, the assessment team opted for identifying promising practices.

However, even when identifying promising practices, the national teams were confronted with the challenge of widespread lack of evidence documenting the practices and their impact. Furthermore, where the team collected primary information to assess certain practices, interviewed persons often had different and at times opposing views on which practices would qualify as promising ones.

The national teams repeatedly noted differences between the views of the state institutions, civil society and UAMAS and fUAMAS. In some cases, their assessments were diametrically different: for example, interviewed experts in **Slovakia** suggested that an accommodation facility for UAMs with strict supervision rules is good practice, while fUAMAS spoke about their time there rather critically and reported that “it felt like a jail”.

Another issue discussed was whether it is sound to designate as promising those practices that are innovative (and promising) in the national context, but at the same time “merely” and partially implement existing national and international obligations codified in the law. The assessment team felt, on the one hand, that minimum standards for the care and protection of UAMAS are in fact codified by the law, including international law, and that practices that come short of meeting legal obligations should not be designated as “promising”; and that on the other hand, there is a need to promote practices that facilitate in practice access to effective enjoyment of all rights guaranteed by the law.

In addition, when the assessment team discussed various practices proposed as “promising”, it became clear that many suggested practices:

- are not systemic but rather reflect the individual engagement of care providers and other staff who go over and beyond their professional competences in order to meet children’s needs;

- are not sustainable due to limited, vulnerable funding or were in place only for a short time;
- are not sufficiently codified – that is, did not have clearly defined parameters; as a result of this lack, it was not clear if they should be called “practices” and if they could be assessed for effectiveness and compared with other similar practices.

At the same time, it could well be that in certain contexts, lack of codification and institutionalization in fact promotes access of UAMAS to the effective enjoyment of their rights. Some national teams observed situations when the lack of codified practice facilitated an individualized approach and assessment and thus was fully in the best interest of the child.

There was clear consensus that in any assessment, the voices of UAMAS and fUAMAS must be better reflected than was the case in the past.

4.1 Barriers and facilitators to good practices

The assessment team identified a whole range of facilitators of the establishment of good practices:

- Political will (the team felt that political will is the first and most important prerequisite for the establishment and sustainability of good practices);
- Evidence (for example, in the form of individualized needs assessments) as a basis for further decisions, establishment of operational procedures, relevant quality standards and decisions on good practices);
- Engagement of the population of the host country (for example, in the form of families interested in fostering, “godmothers” and “godfathers” and other integration activities);
- Critical mass of beneficiaries (the team felt that when there are low numbers of asylum-seeking children, states may be reluctant to put a robust system in place to safeguard their rights and the best interest; furthermore, low numbers of beneficiaries may not facilitate the development and exchange of quality standards, since many issues are simply dealt with on an ad hoc basis);
- Availability of durable solutions and future perspectives;
- Availability of financial means;
- Good cooperation with the sending country where needed (for example, with respect to issuing missing documentation).

The key barriers identified were:

- anti-immigration attitude of the host society;
- lack of cooperation between relevant actors;
- lack of experience with “good standards of care and protection” partly due to the low number of UAMAS;
- lack of financial means;
- language and cultural differences;
- lack of durable solutions for UAMAS; lack of future perspectives;
- unclear concept of child’s best interest;
- lack of cooperation on side of the country of origin authorities.

4.2 Identified promising practices

The national teams and assessment coordinator drew up a list of 18 practices that they considered “promising”. The template contained a brief description of the practice itself and the rationale behind the choice, structured along the following categories:

- **Replicability:** Can the practice be replicated effectively in another setting (another community, district, region, or country)? Why do you think so?

- **Verifiability/comparability:** Is the practice evidence-based? Are the results comparable to those obtained in similar interventions? How do the results compare with the results before the practice was put into place?
- **Sustainability:** Is (or can) the practice be integrated into local/national policies/strategies/protocols to ensure institutionalization? Can the practice be maintained without or with minimal external technical and financial support (from the European Refugee Fund (ERF) or other EU funding)?
- **Cost-effectiveness:** Can the practice be maintained effectively and generate the desired results within a reasonable and appropriate budget?
- **Ownership:** Are governments and communities invested in the practice/intervention? How is the practice culturally relevant, appropriate and acceptable?
- **Contribution to desired results:** What are the desired results? How does the practice contribute to desired results?

The assessment team members⁷ then allocated to each practice between 0 and 4 points (with 4 points being the best) across seven areas:

- significance (addressing key issues);
- significance (reaching out to a high number of beneficiaries);
- replicability;
- verifiability/comparability;
- sustainability;
- cost-effectiveness and ownership;
- not applicable (in case it was felt that the given aspect could not be assessed due to missing information).

The maximum score that one practice could receive from one evaluator was 28. The peer review group consisted of 16 representatives from 10 EU Member States. Six countries had two representatives and four countries had one representative. Where there was only one representative per country, the points allocated by the representative were doubled to ensure comparability of scores across EU Member States.

The maximum achievable score was 504 (18 times 28 points, corresponding to 2 observers multiplied by 9 countries multiplied by the maximum of 28 points per observer).

The team ranked the promising practices according to scores, with the top one scoring 400 points (79% of all possible points), and the lowest one scoring 239 points (47% of all possible points). For a brief description of the top three practices, refer to annex.

Top practices

- The top-ranked practice with 400 points (79% of all possible points) is the placement of UAMAS under 16 years of age with foster families, as practised in the UK. It is significant that this practice, ranked highly positively by both interviewed UAMAS and experts, has been implemented for several decades now and is well institutionalized, is state-regulated and funded (foster families receive contributions to cover their expenses associated with fostering), and is subject to rigorous rules and monitoring.

Comparisons were made between the UK practice and similar practices in other EU Member States such as the Netherlands or France, where children are also placed with foster families. Compared with the UK, placement of children in other countries does not take place on such a wide scale, foster families do not receive state support, and only younger children benefit (in the Netherlands children up to 13 years of age and children who are considered vulnerable).

Several other countries, including Belgium, Czech Republic, Hungary, Italy, Slovakia and Slovenia, mentioned that finding foster families is difficult. Societies are not as ethnically diverse as in the UK and families are often reluctant to receive people from different ethnic backgrounds. In addition, Central European countries have a strong tradition of institutionalized care and finding foster families is not a priority for state institutions responsible for childcare.

⁷ Team members from the same country that had the suggested practice did not vote for the practices from their respective countries.

- The second top-ranked practice (387 points, 77%) is Austria's Connecting People. It aims to provide UAMs and young adult refugees with a long-term and stable relationship with a Pate/Patin (godfather/godmother) who supports them in their daily lives and provides them with guidance and safety. The project has been run for some 10 years by a Vienna-based NGO, asylkoordination österreich, and is partly funded by various state bodies.
- The third top-ranked practice (351 points, 70%) is the provision of psychological help for UAMAS in Belgium by Solentra, an association of psychologists specialized in ethnopsychiatry, child psychiatry and child trauma related to conflicts and the migration process. The association was initiated in 2001 and in 2006 it started providing assistance to UAMAS on a larger scale.

Considering the dearth of empirical evidence on the effectiveness of care and protection practices concerning UAMAS, singling out top practices should be seen as an exercise in exploring which practices are worth subjecting to further evaluation. Clearly, more documentation is needed to identify promising field-tested and research-validated good practices.

5 Monitoring and evaluation mechanism

This assessment has confirmed that there is a scarcity of independent mechanisms to monitor and evaluate the quality of protection and care of UAMAS and fUAMAS in the 10 Member States. When mechanisms are in place, they are often only at a formal level, such as reports to the courts. In most countries, general standards of quality for provision of social care apply.

5.1 Complaints procedure

This assessment found that complaint mechanisms, other than complaints filed in courts, are either not in place or are ineffective. Children are often not informed about them. Interviews with UAMAS and fUAMAS revealed their inability to demand changes.

Austria, the **Netherlands** and **Slovenia** have some feedback and complaints mechanisms, but they do not appear to be used frequently. In the **Netherlands**, two respondents reported that their mentors did not pay much attention to their requests and suggestions. One girl related an unpleasant experience: "I was complaining to someone from the COA [Central Agency for the Reception of Asylum-seekers] about the size of my room when another COA worker overheard me. She got angry at me, pulled me by the shoulder and told me never to come to her when I needed anything."

In **Austria**, monitoring of the execution of the Basic Welfare Support Agreement during the admission procedure lies within the competence of the Interior Ministry. An interviewed expert reported: "We don't have any concrete official monitoring in place, but we do get feedback on site. We have implemented joint projects with an NGO that serve as a clearing and stabilizing function. That means that the needs of unaccompanied asylum-seeking minors are assessed, which is of prime interest in the initial stage of the asylum procedure. So in a way I can say we have an ongoing monitoring of sorts."

Quality of guardianship is not monitored. According to the Civil Code (Art. 216), in case of neglect of guardianship duties a complaint can be filed with the District Court, which acts as a monitoring instance. However, it is not clear who can file this complaint. In any case, the assessment did not identify a single case of a complaint being lodged.

As far as the work of legal representatives is concerned, there are no monitoring and evaluation mechanisms either. However, one respondent stated: "Evaluation on my work as legal representative is not institutionalized, but if there are any unaccompanied asylum-seeking minors who feel they are poorly represented, they generally approach someone in the accommodation facility who, in turn, calls me and forwards the complaint to me."

The Federal Asylum Office has launched an initiative to look into the quality of legal practice and interview techniques with minors. In 2010, within a quality assurance project of UNHCR, a bilateral evaluation was carried out.

In **Belgium**, there are no regular quality checks on the guardians' job. The only controls are based on the reports legal guardians have to draft about each UAMAS, describing actions taken. In the past, the Guardianship Service tried to develop a quality check system through annual evaluations but due to lack of agreement on evaluation criteria, the practice was discontinued.

The **Czech Republic** does not have any direct monitoring and evaluation system in place. It seems practically impossible for a ward to file a complaint against the guardian in court as the complaint would, ironically, have to be placed by the guardian.

In **Hungary**, children and staff are interviewed by the UNHCR as part of the implementation of the UNHCR's Age, Gender and Diversity Monitoring strategy. A report is published annually.

In Slovakia, an effective state-run monitoring and evaluation system is non-existent. The situation of UAMs and the implementation of legal provisions, policies and guidelines have been monitored only recently by UNHCR, IOM and NGOs. The Human Rights League has undertaken complex research on the legal status of UAMs and their integration possibilities (Slovakia, 2009).

The UNHCR visits the children's home for UAMs in Horné Orechové annually, monitoring its conditions and evaluating developments over the past year. This is part of the UNHCR's annual monitoring visits to facilities accommodating foreigners who are of interest to the organization, including UAMs. The results are summarized in a short evaluation report as part of a longer report describing the situation in all facilities since the last visit (UNHCR Slovakia, 2009). The impact of the monitoring is, however, unclear as there seems to be lack of coordination among the respective parties, who hold different attitudes towards the evaluation.

A representative from an NGO reported: "We are part of what we call a multifunctional team. There's always a representative from the Migration Office, Ministry of Labour and Central Labour Office, but sometimes participation is merely formal. There's a bit of a

problem with these institutions' perception of monitoring since the information we gather is published annually. It is perceived as an attack and critique on the work they are doing. Despite this, we have managed to improve something. But it's a struggle. We need to keep the dialogue going to continue improving."

In the **United Kingdom**, the record-keeping and the monitoring of the treatment of UAMAS and fUAMAS appear to function well at the level of individual organizations. Many in the volunteer sector are also involved in forums that monitor and advocate on issues affecting UAMAS and fUAMAS. However, grassroots organizations and social services departments can hardly manage to provide feedback on their monitoring, evaluation and experiences to the UK Border Agency (UKBA). When they do, it is only at the level of individual cases, rather than an overview of general trends and concerns.

One worker employed by social services said: "Besides our responding during government consultations, our only official system is the one we use to contact the UKBA to obtain updates on individual cases." Even at this level, communication between UKBA and frontline workers is not ideal.

Another social worker complained about the ongoing lack of communication between UKBA case owners and social workers. A London-based voluntary sector worker said: "The only way to make UKBA hear our voice is to let them know the impact of their decisions on the ground through the Refugee Children's Consortium and similar forums."

Voluntary sector workers based outside London find it even more difficult to feed the results of their monitoring activities back to the UKBA. One said: "There are no feedback mechanisms at all. We should have reference meetings. There used to be a monthly Local Authority consortium meeting with a representative from the Home Office but that doesn't happen anymore."

6 Best interest of the child (BIC)

This report has been guided by international human rights standards, most importantly by the 1989 CRC, which has been ratified by all EU Member States. However, some Member States who took part in this study had expressed some reservations – Netherlands concerning Articles 22, 26 and 37(c) and Belgium concerning Article 2(1).

The CRC's four core guiding principles – non-discrimination (Art. 2), best interest of the child (Art. 3) right to life, survival and development (Art. 6) and respect for the views of the child (Art. 12) – are just as applicable to separated children as they are to any other child. The “best interest of the child” (BIC) is one of the most essential preconditions to realizing any right.

In 2005, the United Nations Committee on the Rights of the Child issued a General Comment No. 6 (2005) on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin. The goal was to draw attention to the particularly vulnerable situation of this group of children, outline the challenges faced in ensuring that these children can access and enjoy their rights, and provide guidance in the protection, care and proper treatment of unaccompanied and separated children based on the CRC legal framework. “The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated” (CRC General Comment No. 6, para. 79).

The main European Union Asylum Instruments treat the principle of best interest of the child as “a primary consideration” (but not “the primary consideration”) in dealing with UAMAS (Asylum Procedures Directive Art. 17; Qualifications Directive Preamble para. 12 and Art. 20; Reception Conditions Directive Art. 18).

The EU Action Plan on Unaccompanied Minors (2010–2014) emphasizes that every action related to children taken by public authorities has to be guided by the principle of “the best interests of the child” (EU Action Plan, 2010: 3), but falls short in further defining what this principle should encompass.

In determining the best interest of the child, the child's human rights should be considered holistically. In addition to norms within the CRC, there are other relevant legal bases, both at the international⁸ and the national⁹ level that could affect such decisions. In accordance with the CRC's Article 41, the higher standard must always apply (UNHCR, 2008a: 15).

Efforts to determine the best interest of an unaccompanied or separated child and identifying appropriate solutions must take a wide variety of factors into account, including the child's individual and family circumstances, the situation in the country or area of origin, the child's psychological and physical health, and level of integration in the host country.

6.1 Best interest of the child and durable solutions

A thorough assessment and determination of the best interests of an individual child will form the fundamental basis for the decision on a durable solution for the child.

UNHCR identifies three possible durable solutions for refugees and asylum-seekers: repatriation, local integration and resettlement in a third country in situations where a person's returning back home or remaining in the host country is deemed not possible. The EU Action Plan on Unaccompanied Minors promotes similar durable solutions, namely: return to and reintegration in the country of origin,¹⁰ granting of international protection status or other legal status allowing minors to successfully integrate in the Member State of residence, and resettlement.

The United Nations Committee on the Rights of the Child has indicated in its General Comment No. 6 (para. 79) that efforts to find durable solutions for unaccompanied or separated children outside their country of origin “should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated”.

According to the UNHCR's Guidelines on Determining the Best Interests of the Child (UNHCR, 2008a), lasting solutions that keep in mind the best interest of an unaccompanied or separated child are those that ensure adequate child participation without discrimination, allow the views of the child to be given due weight in accordance with age and maturity, involve decision makers with relevant areas of expertise and weigh all relevant factors to arrive at the best option. The UNHCR states that determining best interest should not have to wait until prospects for a durable solution emerge (UNHCR, 2008a).

The assessment team concurs with the UNHCR that coming up with durable solutions is not a prerequisite to determining a child's best interest. The team believes that providing young people with opportunities to develop themselves is in their best interest

⁸ These include international and regional instruments on general human rights, international humanitarian law, refugee law and child-specific instruments. Soft law, such as General Comment No. 6, and UNHCR Executive Committee Conclusion No. 107 on Children at Risk, are valuable interpretative sources.

⁹ National law and domestic jurisprudence could provide more specific guidance on general principles set forth in international instruments, and should be carefully analysed, bearing in mind, however, that best interest principles elaborated at national level may be specific to custody disputes or petitions for adoption

¹⁰ It is interesting to note that the EU Action Plan, in contrast to the UNHCR documents, does not include the word “voluntary”.

regardless of the special circumstances surrounding their asylum claim, the length of stay in the state where they are seeking asylum, and the duration of the asylum procedure. No matter what the outcome of the asylum request is, the new skills and capabilities they have acquired in the meantime lose none of their relevance. Personal motivation and self-confidence are enhanced, leading to a more robust and clearer perspective on life, whether it is in the host country or elsewhere.

6.2 Best interest of the child in practice

The assessment findings on the practical implementation of BIC in the 10 EU Member States are relatively coherent: they indicate that the implementation of the principle leaves ample room for improvement.

Most Member States mention the BIC principle or a principle of “interest and welfare” in their legislation, usually in connection with child protection and, to a lesser extent, in immigration law. However, because legislation, policies and court decisions do not define the principle in detail, authorities responsible for determining BIC often act without sufficient guidance on how the principle should be implemented and subject it to individual interpretations. Legally regulated formal mechanisms to determine BIC are not in place in any of the studied countries.

Belgium has a procedure of decision-taking in terms of durable solutions for UAMs who do not apply for asylum or whose application for asylum has been rejected. This procedure takes into account the best interest of the child, within the limit of the remaining legal possibilities. It has to be launched upon request of the legal guardian of the child. Responsibility for the procedure and for decision-making lies with the Minors Bureau of the Entry and Residence Directorate (MINTEH) of the Immigration Office.

The UK Border Agency makes clear that the **United Kingdom’s** ratification of the CRC does not mean that the primary consideration in determining a child’s application for asylum (or any other permission to remain in the UK) is in the best interest of the child. They argue that taking the view that the child’s best interests are a primary consideration that needs to be balanced and weighed against other primary considerations is consistent with the provisions of the CRC. Childcare legislation, however, is equally clear that when courts are making decisions in other settings, the best interest of the child is the paramount consideration, thus minimizing the need for balance against other considerations.

For many, there is a lack of clarity surrounding the resolution of tensions between childcare and immigration law. Similarly, UK childcare legislation acknowledges the principle that children need stability and permanence in their lives and specifies that any delay in the planning and decision-making process is deemed prejudicial to the child’s welfare. This would appear to be at variance with the current situation in which most unaccompanied children in the United Kingdom are granted Discretionary Leave to Remain, making it difficult for them to feel secure or to make long-term plans. This creates many difficulties for unaccompanied children – not least in accessing higher education.

Overall, findings suggest that care provided is perceived in terms of board and lodging, and that emotional and psychological needs tend to be underestimated. Professional psychological support appears to be made available only in cases of extreme need, such as when a child has attempted suicide. Lack of sensitivity on the part of host country authorities responsible for protecting and caring for the child and insufficient resource allocations were mentioned as the main constraints to acting in the child’s best interest. In many Member States, this report found that UAMAS are provided with care that is available, rather than with care addressing their specific needs and best interest.

Another constraint worth noting is that since many guardians do not establish close and regular contact with children under their care, it is not clear to what extent they are able to make decisions based on their best interest.

Best interest determination (BID)

Using strict procedural safeguards, “best interest determination” is the formal process aimed at determining the child’s best interest, especially concerning important decisions affecting the child. The process seeks to facilitate adequate child participation without discrimination, involve decision makers with relevant areas of expertise and weigh all relevant factors to come up with the best possible option.

A “best interest assessment” is carried out by staff taking action regarding individual children, except when a BID procedure is required. It is designed to ensure that such action gives primary consideration to the child’s best interests. The assessment can be carried out alone or in consultation with others by staff with suitable expertise and requires the participation of the child.

For more details, see: UNHCR, 2008b: 8.

One of the key gaps identified in all 10 Member States in this study was that the practical implementation of best interest of the child on behalf of UAMAS is severely circumscribed by the asylum procedure.

Despite the fact that guardians are specifically tasked to look after the best interest of the child and often take part in identifying solutions, the reality on the ground reveals that the asylum procedure sets the pace and rhythm, prevailing over many other concerns of UAMAS. The study found serious gaps between obligations codified in international law and reality on the ground.

Mougne (2010: 41) observes that in a number of EU Member States, returning to and reuniting with the family in the country of origin is often automatically considered as best interest. Similarly, the Action Plan states: “It is likely that in many cases the best interest of the child is to be reunited with his/her family and to grow up in his/her own social and cultural environment” (EU Action Plan, 2010: 13).

Even when a guardian does conclude that it would be in the child’s best interest to have access to specific options such as psychosocial care or to remain in the Member State, the assessment may not be shared – and indeed is often not shared – and respected by other authorities who have the final say in the legalization of the child’s stay.

7 Right to information

The CRC deals extensively with the child's right to information and participation. This encompasses children's right to express their views freely in all matters affecting them and to be heard in any judicial and administrative proceedings (Art. 12), as well as their right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds (Art. 13).

Since children can express their views on administrative procedures only when they have been explicitly informed about the opportunity to exercise their rights, the right to be heard implies a duty on the part of authorities to inform and to listen. The Committee on the Rights of the Child has dedicated a General Comment (General Comment No. 12, 2009) specifying the right of the child to be heard and the duties of the state parties.

The EU Asylum acquis describes duties of Member States to inform asylum-seekers through various instruments.

Asylum-seekers "shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure" (Asylum Procedures Directive, Art. 10). They shall receive the service of an interpreter, paid from public funds. While the application for asylum is pending, the Reception Conditions Directive obliges the Member States to inform – ideally in writing – asylum-seekers, within a reasonable time not exceeding 15 days after they have lodged their application for asylum, of at least any established benefits and of the obligations with which they must comply relating to reception conditions. Member States shall ensure that applicants are provided with information on organizations or groups of persons that provide specific legal assistance and organizations that might be able to help or inform them concerning the reception conditions, including health care.

7.1 How are UAMs and UAMAS informed?

As a rule, the main role of law enforcement bodies (police and immigration officials) – usually the first point of contact of UAMs who are potential asylum-seekers – is only to ascertain whether the child would like to apply for asylum. At that point, they refer the minor to authorities in charge of the asylum procedure.

Depending on the EU Member State, information on the asylum procedure is provided personally by guardians, legal advisers, care staff such as mentors and youth protectors, and other personal contacts of the UAMAS. Leaflets are also a source of information.

This report found widespread agreement among UAMAS, fUAMAS and experts that despite efforts to inform minors about the asylum procedure and other aspects of their situation, they are still not sufficiently apprised of essential information and are thus unable to make informed decisions on matters affecting them.

The overwhelming majority of UAMAS and fUAMAS described how they were sometimes provided with incomplete or inconsistent information and said they would have wanted to obtain more comprehensive information much earlier. For instance, a fUAMAS in **Slovakia** said he was confused about three contradicting pieces of information about subsidiary protection from three different sources and did not know which one to believe.

This study found that key care personnel, including guardians, often have a limited understanding of immigration and refugee law and its associated rights and entitlements, and cannot provide needed support during the legal procedure. In some Member States, such as **Belgium**, guardians are required to facilitate access to qualified legal assistance. In the **Netherlands**, Nidos provides its social workers with training on refugee law and associated rights and entitlements. In other countries, notably in **Slovakia**, it appears that guardians have only minimal training in asylum and immigration law. In these cases, administrative and legal aspects risk being underestimated, with potentially negative consequences for the UAMAS, such as the non-exhaustion of appeal rights. The lack of knowledge about rights and entitlements among key personnel can also affect the well-being of UAMAS and fUAMAS.

In several EU Member States, children can avail themselves of informational leaflets explaining the asylum procedure and related issues. However, as several professionals in various countries pointed out, leaflets are published only in a limited number of languages and contain rather generic information and could become outdated quickly. In addition, experts reported that the leaflets are often written in a style that children cannot fully comprehend.

In some countries, the inefficient distribution of informational leaflets was also identified as an issue.¹¹ As a result, many children turn to other asylum applicants or members of their ethnic community who give them inaccurate information (FRA, 2010b: 97). A legal adviser from Austria said: "Unfortunately, wrong information spreads quite quickly among UAMs. This leads to their arriving prematurely at wrong decisions."

¹¹ For example in Slovakia, in 2009, the NGO Human Rights League prepared a 20-paged illustrated information brochure written in a child-friendly style and translated into six languages. The brochure explained asylum and subsidiary protection, the asylum process and asylum facilities, the guardian's role, the placement of UAMs in a children's home and their rights, and vulnerability to human trafficking. The brochure also carried contact details of institutions and organizations that assist children. Civil society representatives said that young people still had not been provided with the brochure weeks after it was delivered to the children's home.

In addition, leaflets cannot be used for communicating information to illiterate children. In **Slovakia**, social workers explain the options as described in the leaflet, sometimes enlisting the help of other UAMs to act as interpreters. No checks are made, however, into the quality of interpretation.

Discussions are continuing on when exactly the child should be informed about the asylum procedure. Some think that this should be done as soon as possible, while others warn about “informational overload” and that children are simply not capable of properly absorbing and acting upon new information immediately after being admitted to the Member State and applying for asylum.

Many respondents underlined the inherent difficulties of communicating precise information on asylum matters in a child-friendly manner. Experts often stressed the complexity and constantly evolving nature of asylum matters and that even experts who deal with UAMAS do not have correct, up-to-date information.

In cases when the asylum process is communicated successfully, children interviewed in the **United Kingdom** said it is often due to the efforts of an effective social worker or foster caregiver who “gave me lots of information” or “explained things”. In the **Netherlands**, Nidos and the Dutch Council for Refugees received most of the credit for providing information on the asylum procedure. At the same time, despite the measures in place, all eight fUAMAS in the Netherlands who commented on this subject said that all too often they were too poorly informed about the procedure to fully understand it.

Interviews in **France** and the **United Kingdom**, among other countries, highlighted gaps in information on the asylum procedure, including how to apply, the procedure’s various stages and the potential for a successful application. Young people in the United Kingdom reported that no one had told them what to expect. Because they were not told the full significance of substantive interviews, they felt they were not able to place themselves in a strong position to communicate accurate information.

Children also felt uneasy about not being informed and consulted on upcoming changes in their accommodation, education and other life circumstances. For example, in the UK, young people wanted to be able to decide for themselves, together with their foster family, whether to leave the foster family at 16 or stay until 18 – and not have this decided for them by local authorities. Clearer information about when and why UAMs would be required to move out of foster care was also requested. In one of the countries in this study, when a boy insisted on returning to the facility where he lived before lodging his asylum claim, the government official described his action as “blackmail” instead of considering it as a legitimate wish that could be looked into.

The implications of turning 18 were also frequently brought up. As discussed in more detail in the section on fUAMAS, these young people are often unprepared for changes in their situation upon reaching the age of majority. While many are aware of some of the changes, they often do not have an idea how these translate into reality.

7.2 Interpretation services

In some Member States, both children and adults repeatedly mentioned the limited access to and poor quality of interpretation services. Interpretation issues seem to be tackled more effectively in Belgium, where guardians can rely on a pool of interpreters paid for by the guardianship service. Similarly, in the Netherlands, the NGO Nidos can arrange for interpreters in consultation with a professional institution, the TVcN Tolk - en Vertaalcentrum Nederland (Interpretation and Translation Centre Netherlands).

In some countries, especially in the smaller EU Member States, official interpreters in certain languages and dialects are simply not available (for instance, interpreters of Somali or Tamil, in the case of **Slovakia**). In **Slovenia**, two interviewed UAMAS mentioned difficulties in understanding the interpreter because he was interpreting in Persian while their mother tongues were Dari and Pashtu. Similarly, in the **Czech Republic** and the **United Kingdom**, several UAMAS and fUAMAS said they had problems understanding the interpreter; however, it appeared they never asked to interrupt the interview or change interpreters. One asylum-seeker in **France** reported that the interpreter for her asylum application interview recommended that she lie about her age to avoid being separated from her sisters.

Not surprisingly, requests for female interpreters (for female UAMAS) cannot always be accommodated.

Because of a shortage of appropriate interpreters, their services tend to be called upon only for “official” interviews and not for communication between guardians and wards. This negatively affects the well-being of UAMAS.

Some experts and UAMAS commented that during the official asylum interviews, they had the impression that interpreters sometimes focused only on some parts of the interview, merely provided a summary of the interview, added their own explanations

and views about the situation, or simply provided an incorrect interpretation due to lack of proficiency in a specific dialect. Furthermore, many interpreters who work with children are not trained in child protection issues or child-appropriate interpretation and can be dismissive of the child's story.

In **Slovakia**, UAMAS also complained about the insufficient explanation behind the decision taken in the asylum procedure (EMN Slovakia, 2009: 58).

Not only can inadequate interpretation cause problems in communicating with service providers, it can also give the impression that an applicant is not trustworthy, leading to refusal of asylum or even detention. In brief, its impact on the child's asylum application can be significant.

8 Guardians and other statutory equivalents

8.1 International legal standards on guardianship

Guardianship is regulated within the CRC, which stipulates that children deprived of their family environment are entitled to special protection and assistance provided by the state (Art. 20). It also affirms that the best interests of the child will be the guardian's basic concern (Art. 18).

The UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum of February 1997 encourage each country to identify or establish an independent and formally accredited organization that would be responsible for appointing a guardian or adviser as soon as an unaccompanied child is identified. These persons should possess expertise in childcare to ensure that the interests of the child are safeguarded. Their role is also to ascertain that the child's legal, social, medical and psychological needs are appropriately addressed throughout the procedures to determine refugee status and until a durable solution for the child has been identified and implemented (Art. 5.7).

The General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin sets out an authoritative interpretation of the rather generic provisions of the CRC.

To ensure that the best interest of an unaccompanied or separated child are respected, competent guardians shall be appointed as expeditiously as possible (CRC General Comment No. 6, para. 21) and guardianship arrangements shall remain in place until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the state (CRC General Comment No. 6, para. 33).

If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured (CRC General Comment No. 6, para. 34). In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian (CRC General Comment No. 6, paras 21 and 36).

A child should be referred to asylum or other procedures only after the appointment of a guardian (CRC General Comment No. 6, para. 21). The guardian and the legal representative should be present during all interviews conducted by representatives of the refugee determination authority (CRC General Comment No. 6, para. 72). Unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative (para. 63).

Children should be informed at all times of arrangements concerning guardianship (CRC General Comment No. 6, para. 37) and their views should also be taken into account (CRC General Comment No. 6, para. 25).

In accordance with CRC General Comment No. 6, para. 33, the guardian should:

- be consulted and informed regarding all actions taken in relation to the child;
- have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution;
- have the necessary expertise in the field of childcare;
- act as a link between the child and existing specialist agencies/individuals.

Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship (CRC General Comment No. 6, para. 33). Guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interest of the child (CRC General Comment No. 6, para. 34). Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship (CRC General Comment No. 6, para. 35) and guardians shall receive specialized training (CRC General Comment No. 6, para. 95).¹²

The United Nations Guidelines on the Alternative Care of Children apply to alternative formal care for all persons below 18 years of age. The guidelines (para. 144) strongly encourage states "to appoint a guardian or, where necessary, representation by an

¹² Training shall cover the Convention's principles and provisions, knowledge of the country of origin of separated and unaccompanied children, appropriate interview techniques, child development and psychology, cultural sensitivity and intercultural communication (CRC General Comment No. 6, para. 96).

organization responsible for his/her care and well-being to accompany the child throughout the status determination and decision-making process”.

The Hague Convention of 1996 on the International Protection of Children can assist by providing for cooperation procedures between states. These can be helpful when unaccompanied children cross borders and find themselves in vulnerable situations.

The Council of Europe’s European Convention on the Exercise of Children’s Rights aims to grant children procedural rights and facilitate the exercise of these rights by ensuring that children themselves, or through other persons or bodies, are informed and allowed to participate in proceedings affecting them before a judicial authority. The Convention’s Articles 9 and 10 set out the ways representatives are appointed and their duties.

Building on international standards, UNICEF has identified a clear role for the state in ensuring that the guardianship service is functioning properly, that it can be activated expeditiously while being sustainable, and that its resources enable guardians to spend time with children. The state must also ensure that the guardianship meets professional standards through sufficient training and oversight. United Nations Children’s Fund (UNICEF) Adviser Margaret Wachenfeld has defined a clear role for guardians (2011) in ensuring that separated children are regarded with dignity and respect, are supported and guided through often cumbersome systems that present complex, life-changing choices, and are treated with their best interests at heart.

8.2 EU standards and policies on guardianship and representation

International legal standards describe guardianship as a replacement for parental responsibilities, thus providing a broad definition of guardianship that spans across key areas relevant to a child’s development. The EU *acquis* on asylum uses a guardianship concept that is more limited, in some cases, to representation in administrative and judicial matters. In general, international standards set by the CRC and the CRC General Comment No. 6 are often higher than those afforded to children seeking asylum under the EU *acquis*.

Although the principle of best interest of the child is to be “a primary consideration” (but not “the primary consideration”) when dealing with UAMs (Asylum Procedures Directive, Art. 17; Qualifications Directive Preamble, para. 12 and Art. 20; Reception Conditions Directive, Art. 18), EU legislation makes only limited reference to guardians, who are also called “representatives”.¹³

Member States are required to take immediate measures to ensure the protection of UAMs through legal guardianship, or, where necessary, through representation by an organization that is responsible for the care and well-being of minors, or through other appropriate representation (Reception Conditions Directive, Art. 19). The appropriate authorities should make regular assessments of the guardianship (Reception Conditions Directive, Art. 19).

According to Asylum Procedures Directive, Art. 17, EU Member States shall promptly ensure that a representative represents and/or assists the UAM with respect to the examination of the [asylum] application. However, Member States do not have to appoint a representative (guardian) in the following cases:

- if it is likely the UAM will turn 18 years old before the initial decision is made;
- if the UAM can obtain free access to a legal adviser or counsellor;
- if the UAM is, or has been, married;
- if the UAM has turned 16 years old.

The Qualifications Directive, Art. 30, which focuses on the treatment of persons who have been granted asylum or subsidiary protection, urges Member States to appoint a guardian or representative for UAMs as soon as possible after the granting of the new status so that the minor’s needs (and not the best interest of the child) are duly met. The standard of meeting needs is lower than that of best interest. The Directive does not make explicit reference to the best interest of the child and falls short of the standards afforded under the CRC.

The Commission Action Plan on Unaccompanied Minors (2010–2014) identifies a need for greater coherence and more cooperation within the EU that “should be based on the respect for the rights of the child as set out in the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of the Child, in particular the principle of ‘the best interests of the child’ which must be the primary consideration in all action related to children taken by public authorities” (EU Action Plan, 2010: 3).

¹³ “Representative” means a person acting on behalf of an organization representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organization that is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests” (Asylum Procedures Directive, Art. 2).

Regarding guardianship, the Action Plan recommends that Member States:

- consider introducing review mechanisms to monitor the quality of guardianship to ensure that the best interests of the child are represented throughout the decision-making process;
- consider introducing review mechanisms to monitor the quality of guardianship;
- have a guardian present at all stages of the procedure and treat children as such until proven otherwise.

8.3 Understanding guardianship

This 10-country assessment has revealed an extremely broad range of guardianship concepts and practices (see also Nidos and Refugium, 2010: 10), as also reflected in the key ways EU Member States see the guardian's role.

A guardian can denote:

- a physical person or legal person (such as an NGO or a state authority) providing legal capacity to a minor so that the minor can take part in contractual legal relations (attorney-in-fact);
- a physical person or legal person serving as a guardian for special cases (short-term guardians) with duties limited to specific areas;
- a physical person or legal person appointed to safeguard the best interest of the child (long-term guardian);
- a physical person or legal person providing day-to-day care for the minor.

These functions can often be combined or fully or partly delegated to other persons and entities. Furthermore, since guardianship arrangements should include both adequate care provisions and qualified legal representation (Wachenfeld, 2011), sometimes the qualified legal representative (a solicitor, lawyer or attorney) who provides legal advice in administrative and judicial proceedings including the asylum procedure is also called a guardian or could be appointed as a guardian for special circumstances with limited duties (see section on legal assistance).

This lack of clarity and overlapping terminology has complicated – and has at times even prevented – analytical description. The ambiguous terminology also partly explains the glaring lack of evidence on the effects of various guardianship regimes, making comparisons impossible. This section further discusses the provisions of guardianship, though not in the sense of qualified legal assistance, which is discussed in a separate section on the topic.

8.3.1 Appointment and duration of guardianship

It matters at what point in time an unaccompanied child is appointed a guardian/attorney-in-fact, because without one, the child often cannot apply for asylum.

In **Austria**, a court appoints a guardian usually upon the request of the respective Youth Welfare Authority. It can take between one day and several months for the appointment. In exceptional cases, guardians are never appointed (Fronek, 2010: 137–138). In **Belgium**, once UAMAS are placed in one of the two observation and orientation centres, they should be assigned a guardian. In practice, however, they are sometimes appointed with significant delays due to a dearth of guardians.

In the **Czech Republic**, the **Netherlands**, **Slovakia** and **Slovenia**, it appears that guardians (sometimes guardians for special cases) are appointed for all identified minors within 24 hours to 30 days after their identification. In **France**, “guardians for special cases” (Administrateurs Ad Hoc) are supposed to be appointed for all UAMs in the waiting zone (in the airports’ international zone) and to all UAMAS on the territory. This is not always the case, however, resulting in UAMs not being able to file their asylum claim.

In **Hungary**, since May 2011, guardians started being appointed within 24 hours to 15 days after UAMAS have been accommodated and interim care arrangements have been decided. In **Italy**, appointing guardians takes up to several months, during which UAMs are left in a legally precarious position. Sometimes a guardian is not appointed at all (Furia and Gallizia, 2011: 22). The **United Kingdom** does not have a specific system of guardianship, but the legal responsibility for UAMAS (the statutory equivalent of guardianship), based on the Children Act (1989), rests with local authority child services.

In the majority of the 10 countries taking part in this study, guardians are appointed by the courts, including juvenile courts (**Austria, Czech Republic**,¹⁴ **France, Italy**, the **Netherlands, Slovakia**). In **Belgium**, the appointing authority is the Guardianship Service, under the authority of the Federal Public Service of Justice. Similarly, in **Hungary**, it is the Budapest 5th District Guardianship Office. In the **Netherlands**, the courts usually appoint as guardian the Nidos Foundation, an NGO specializing in the provision of guardianship.

In several EU Member States, the law prescribes that the territorially competent office of a given state agency should be appointed as guardians: the Youth Welfare Authority in **Austria**, the Department for Social and Legal Protection of Children in the **Czech Republic**, the territorially competent child care services in **France** and **Italy**, the territorially competent Office of Labour, Social Affairs and Family in **Slovakia**, the Centre for Social Work in **Slovenia**, and the Children's Department in the **United Kingdom**.

In the **Czech Republic, Slovakia** and **Slovenia**, this appointment procedure results in fairly centralized appointments: since UAMs and UAMAS are accommodated in a few specialized accommodation centres, the courts tend to appoint one and the same competent entity; within this entity, responsibility for all UAMs and/or UAMAS could fall on one and the same person.

In **Austria, France**, and in the **United Kingdom**, appointments are relatively decentralized – that is, different territorially competent childcare authorities are appointed. In **Belgium**, the Guardianship Service appoints private individuals, the Caritas NGO and the Red Cross as guardians. In **Hungary**, guardianship officially rests with the territorially competent child protection service. In Italy, guardians are appointed by the territorially competent Juvenile Courts and the Tribunal - Guardianship Judge (Furia and Gallizia, 2011: 15).

As a rule, guardianship arrangements are discontinued when a child reaches the age of majority, when parental authority takes over or when the child leaves the territory of the EU Member State. In some cases, when the child has been granted international protection status, the guardianship for special purposes, such as the one for the asylum procedure, is terminated and might not be replaced by other types of guardianship. In other cases, it is either replaced by a long-term guardianship, or an existing long-term guardianship could simply be allowed to continue.

8.3.2 Various concepts of guardianship in use

Austria does not have any specific regulation on the guardianship of UAMs. In accordance with the Civil Code, the courts usually vest the Youth Welfare Authority with this function.¹⁵ The Youth Welfare Authority has the right to delegate duties to third parties and to use existing structures – such as external accommodation facilities – within the basic welfare framework (Fronek, 2010: 139). The Youth Welfare Authority's guardianship provisions comprise care, education, property administration and legal representation in cases other than the asylum procedure (Civil Code, Art. 144).

According to the case law of Austria's Supreme Court, provisions of guardianship are more comprehensive than basic welfare support services for asylum-seekers, especially since guardianship also includes “the unfolding of physical, mental, spiritual and ethical abilities as well as the promotion of abilities, skills, learning and development potential of the minor”. It is worth noting that the Supreme Court also stresses that in this regard, differences should not be made between Austrian and non-Austrian citizens and that guardianship is to be implemented in the same way as for Austrian children and adolescents (Austrian Supreme Court, 19.10.2005, 7 Ob 209/05v).

In **Belgium**, when the police or other authorities such as the Immigration Office identify an UAM, they have to inform the Guardianship Office immediately, which takes charge of the minor. The Guardianship Office appoints a legal guardian, proceeds with the identification of the minor, coordinates the subsequent care and protection measures, including reception, accommodation and family tracing, endorses the nomination of future guardians, monitors all legal guardians appointed, and ensures that guardians take part in the obligatory training.

The Programme Law of 24 December 2002 on the Guardianship of Unaccompanied Asylum-Seeking Children lists the most common duties of guardians:

- to ensure that all decisions taken are in the child's best interests;
- to ensure that a separated child has suitable care, accommodation, education and health care provisions;
- to ensure that the child has suitable legal representation to deal with his or her immigration status or asylum claim, or any other jurisdictional or administrative procedure;

¹⁴ In the Czech Republic, the Interior Ministry appoints the guardian for special purpose, namely for the asylum procedure, which initially means lodging the child's asylum claim.

¹⁵ Initially, the Youth Welfare Authority was reluctant to serve as guardians because of its implications on human and financial resources (Fronek, 2010: 134ff). In 2005, however, they were obliged by the Supreme Court (Oberster Gerichtshof) to assume this role on behalf of unaccompanied minors (Supreme Court, Case No. 7 Ob 209/05v, 19 October 2005 or Case No. 4Ob7/06t, 14 February 2006).

- to consult and advise the child;
- to appoint a lawyer for the child;
- to contribute and make proposals for a durable solution in the child's best interest (voluntary repatriation/local integration/resettlement);
- to assist the minor to integrate into the new country and its environment;
- to advocate on the child's behalf where necessary;
- to explore the possibility of family tracing and reunification with the child;
- to administer the minor's assets.

Overall, the children appear to be pleased with their guardians, although they occasionally misinterpret their duties and powers. One said: "I wish I had another guardian. I would have preferred someone who would have accelerated my procedure. I've been waiting for more than a year now for my second interview, and my guardian doesn't seem to be able to do anything about it. This doesn't make her a good guardian."

Although UAMAS can turn to social assistants at reception centres, these personnel change with every move to another facility. Once an asylum application is successful, the guardian remains the only constant presence in the life of fUAMAS. This assessment found that majority of guardians stay in touch with their wards beyond the completion of their assignment. This continuity is particularly appreciated by UAMAS and fUAMAS.

The **Czech Republic** applies several concepts of guardianships, including long-term guardianship (also called "guardian for residence") and temporary guardianship for special purposes (for the asylum procedure, detention, deportation and other special situations). The guardian's actual responsibilities are defined by a court decision; when the guardian is appointed for a special purpose only, the guardian's authority tends to be relatively limited.

The Interior Ministry appoints a temporary "guardian for the asylum procedure" to enable the child to lodge the procedure. Once it is lodged, the court appoints the territorially competent Department for Social and Legal Protection of Children as the "long-term guardian for residence", who replaces parental authority and encompasses all aspects of guardianship. However, in practice, the department usually vests an NGO lawyer with authority to represent the minor at the asylum procedure – often the same one who had served earlier as the guardian when the minor lodged the asylum procedure.

The law requires guardians to contact their wards at least once every three months, which experts find inadequate. One of the guardians employed by the state said: "Every three months I have access to a car and visit my ward in Permon, about 60 km from Prague. I try to visit more often but can't always reserve the one and only car at our disposal."

France has two types of guardianship: special short-term guardians and long-term state guardianship. Special short-term guardians, or *Administrateurs Ad Hoc*, represent UAMs only in judicial and administrative affairs, including lodging an asylum claim. The courts do not appoint *Administrateurs Ad Hoc* systematically; reportedly, the age of the UAM and the availability of the guardian are crucial factors that determine whether or not one is appointed. During the first five months of 2009, 13 per cent of UAMs had no legal representation in the waiting zone, compared with some 30 per cent of UAMs in 2008 (HRW, 2009: 26).

Despite their legal mandate to safeguard the child's best interest, "Ad Hoc Administrators are not given the required powers to do so effectively" (HRW 2009: 27). When a minor has not yet been admitted to the territory and an *Administrateur Ad Hoc* is not appointed (and in some cases even when the person has been appointed), the minor can be returned to the country of transit or origin.

Long-term guardianship (state guardianship) combines the functions of legal representation and caregiver. It takes two to six months to appoint a suitable state guardian, and appointments are not done systematically. Many UAMs and UAMAS, especially those over 17 years of age, are not provided with a state guardian. Reportedly, when a minor is older than 17, social services do not submit an application to the courts at all since a negative decision is expected anyway. Courts have also been known to dismiss applications for state guardianship when original identification documents were lacking.

Hungary introduced significant changes in the guardianship system in May 2011. "Case guardianship" now rests with a designated employee of the territorially competent child protection services who serves as both the child's legal representative and carer.

Case guardianship can also rest with an employee of the child protection residential unit that is centrally responsible for the accommodation and care of UAMAS. Responsibilities of the guardians generally encompass care, education, property administration and legal representation, as set out in the amended 1952 Act on Family, Marriage and Guardianship. Under the new changes, UAMAS and case guardians have been meeting more frequently.

In **Italy**, the “system for the protection of children’s rights is affected by heterogeneous and fragmented procedures for the appointment of guardians for separated children” (Furia and Gallizia, 2011: 19). There are several forms of guardianship, including a “temporary guardian” and a “definitive guardian”, but their application varies a lot from one place to another and pose “a crucial problem” (Furia and Gallizia, 2011: 16).

In the **Netherlands**, UAMs are immediately appointed a temporary guardian – usually the Nidos Foundation, which then appoints a youth protector who is responsible for the minor’s physical and emotional development and well-being. Daily care is commissioned to third parties, such as mentors from the Central Agency for the Reception of Asylum-seekers (COA). Youth protectors serve as minors’ legal representatives and play a supervisory role, taking care of the minors’ interests and preparing them for impending changes when they turn 18 years old and the Nidos guardianship is terminated.

Every UAMAS interviewed for this study had a youth protector who is required to visit them at least once a month. Several young people had a favourable attitude towards their youth protector and cited numerous examples of their going beyond the call of duty. However, certain negative experiences also came to light.

A fUAMAS who arrived in the Netherlands a few months before turning 18 claimed he had never met his youth protector. Both experts and minors said that youth protectors place too much emphasis on the possibility that the UAMAS and fUAMAS might have to leave the country. One fUAMAS felt this was a counter-productive approach, as it kept UAMAS and their care staff from building and nurturing an effective relationship. She added: “I had the feeling that my youth protector wanted me to leave the country even more than the Immigration and Naturalization Service did.” She said her youth protector never explained the various procedures and options open to her nor did she talk about life in the Netherlands. The fUAMAS later found out from Immigration and Naturalization Service that had she submitted a specific document earlier, it would have made a difference in the asylum procedure.

In **Slovakia**, UAMs are provided with a temporary guardian to represent them in special cases involving administrative and legal matters, including submitting applications for asylum or a tolerated stay permit, requesting relevant documents, and following up requirements for family reunification and/or voluntary return. Since UAMs are initially accommodated in a specialized children’s home in Horné Orechové near the town of Trenčín in western Slovakia, the courts appoint the territorially competent Labour Office in Trenčín. The Labour Office serves as temporary guardian from the moment an UAM is identified until the child turns 18.

Upon lodging asylum applications, minor asylum-seekers are relocated to the Reception Centre Humenné in eastern Slovakia, where they are interviewed by migration officers. The temporary guardian sometimes delegates responsibilities to staff of other Labour Offices to minimize the need to travel the long distance to the reception centre.

Although the law provides the option of appointing a long-term guardian immediately after identification of an UAM, this is not done in practice. Experts believe this neglect goes against Slovakia’s legislation and international legal obligations. Long-term guardians are not appointed even when a child is granted asylum, subsidiary protection or a tolerated stay permit.

Interviewed fUAMAS and experts reported that contacts between guardians and their wards are too infrequent, mainly due to the vast geographic distance between them. The rare visits are, however, not considered a problem by government authorities interviewed, some of whom felt that “a guardian’s job description does not include taking care of unaccompanied minors”.

Civil society representatives reported that guardians are not proactive enough. One commented: “Minors are made to feel they are demanding when they ask guardians for help, for example, in legal matters.” Interviewed fUAMAS and some social workers complained about guardians’ lack of interest in the lives of their wards. They also noted that guardians speak only in the Slovak language, which UAMAS hardly understand.

Also in Slovakia, UAMAS interviewed were not sure if they were allowed to contact their guardian and had to ask their social workers to do so on their behalf. Given the limited contact between minors and guardians, information obtained by UAMAS tends to be of a general nature.

In **Slovenia**, the law distinguishes between three types of “care of minors”: fostering, adoption and guardianship. So far, however, with the exception of one case of fostering, only guardianship has been used. The goal of guardianship is to protect and develop the child’s personal integrity (Marriage and Family Relations Act, Art. 178).

UAMs that have entered the territory irregularly can be returned to the country they came from or can be delivered to representatives of the country of which they are nationals. If neither is possible, police temporarily accommodate UAMs at the special department responsible for minors at the Centre for Foreigners in Postojna. The centre informs the territorially competent Centre for Social Work, which appoints a guardian for special cases – usually staff of Slovene Philanthropy, an NGO. The appointment usually takes one to two days, the legal limit being 30 days.

If an UAM wishes to apply for international protection after being identified by the police, the police records the request and refers the UAM to the Asylum Home in Ljubljana. The police also informs the territorially competent Centre for Social Work, which then appoints a legal guardian.

Slovene Philanthropy had always been appointed legal guardian as a matter of routine. In March 2011, however, the NGO decided to temporarily stop implementing legal guardianships for newly arrived UAMAS. The decision was meant to (again) warn the state that the country’s current handling of UAMAS was inappropriate and in dire need of urgent and comprehensive reform. Slovene Philanthropy has been grappling with its inadequate capacity in the wake of an increased influx of UAMAS into Slovenia along with a lack of financial support. Since this decision, legal guardianships for UAMAS have been assumed by the Centre for Social Work in Ljubljana.

Once a minor is granted international protection status, the authorized Centre for Social Work appoints a guardian through a written order stipulating that the state is obliged to provide a child with protection and assistance through a concrete representative who protects the child’s rights and interests. This representative directly carries out substantial parental duties, including protecting the child’s personal integrity, benefits and property, and ensuring that a child receives suitable care and education.

The **United Kingdom** does not appoint independent guardians for unaccompanied children. Instead, the role of ensuring that the best interest of the child are given due attention is filled by social workers from the local authority. Children’s Services either appoint a social worker or support older UAMAS through a duty system – that is, the social worker on duty responds to the child. Whether the system’s constraints affect the ability of social workers to take the child’s best interest into account is debatable. Social services are required to engage the services of a solicitor to provide UAMAS with legal assistance.

The Children Act 1989 vests local authorities with the obligation to “safeguard and promote the welfare of children within their area who are in need; and so far as is consistent with that duty to promote the upbringing of such children by their families”.¹⁶ Authorities are expected to provide a wide range of services on various levels: advice, guidance and counselling; occupational, social, cultural and recreational activities; and even travel assistance to enable children to avail of these services.

Legislation specifies who exactly a child “in need” is. Local authorities are required to provide accommodation, within their area, to children in need who have reached the age of 16 and whose welfare the authorities deem likely to be seriously prejudiced if they are not provided with accommodation. In Scotland, this service is offered to those who have reached the age of 18 (but not 21), if the local authority also considers this as safeguarding or promoting their welfare.

The Government maintains that these arrangements fulfil requirements of Article 19 of the EU Reception Conditions. This assertion has been challenged by many stakeholders, including Save the Children UK, the Refugee Children’s Consortium, the Children’s Commissioner, the Refugee Council and the Anti-Trafficking Monitoring Group, who argue that consideration should be given to developing an independent guardian scheme in the UK. They pointed out that while every UAM can apply for legal aid and receive free legal advice, there is no systematic procedure to ensure this takes place and the standards of legal representation provided vary greatly depending on the quality and commitment of their representative.

United Kingdom: When are children “in need”?

- when they are unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without their being provided with services by a local authority;
- when their health or development is likely to be significantly impaired or further impaired without the provision of such services;
- when they are disabled.

¹⁶ The local authority does not acquire parental responsibility by accommodating a child under these provisions. It is likely, therefore, that in the United Kingdom, no one has parental responsibility for unaccompanied children. The court would have to grant an official care order to the local authority so they can assume parental responsibility. However, it is widely acknowledged that the threshold criteria by which the court would grant such an order – that is, that without an order the child would be at risk of significant harm – is generally not met with regard to separated children.

Local authorities are obliged to provide accommodation to children within their area who are considered in need of accommodation because:

- there is no one who has parental responsibility for them;
- they are lost or have been abandoned;
- the person who has been caring for them has been prevented (whether permanently or not, and for whatever reason) from providing them with suitable accommodation or care.

In practice, the wide-ranging means and methods of implementing guardianship provisions have led to varying levels of quality of services and uneven access to services. This is especially true in countries with higher numbers of UAMAS and decentralized care measures such as in **Austria, France, Italy, the Netherlands** and the **United Kingdom**.

8.3.3 Competencies and training for guardians

Professional qualifications for guardianship usually refer to a formal background in law, social work or education. However, for guardians who are NGO staff or who serve on an honorary basis, competencies are often “linked more to personal attributes and character, with the characteristics of suitable guardians being usually negative defined, that is, in terms of those who cannot qualify as guardians because of a lack of morals, substance abuse and so on” (Alikhan, s.a.: 18).

In EU Member States that assign guardianship to state agencies or NGOs, training is sometimes organized as part of in-house staff development. In some cases, however, acting as guardians and taking care of UAMAS have simply been added to the responsibilities of staff without providing them with any additional training and resources.

In **Hungary**, following the changes introduced in May 2011, all guardians are child protection practitioners. In the **Netherlands**, all youth protectors – care staff employed by the guardianship agency Nidos – are trained in guardianship. The training content and methodology have been in use since the 1990s and are being regularly updated. The training has been held up as an example of good practice. Apart from the Netherlands, only **Belgium** reported that a five-day initial training is systematically organized for private individuals before they assume guardianship. According to guardianship law, additional training sessions are supposed to take place once a year. However, the lack of financial means has not made this possible.

In some Member States, in **Slovenia** for example, training and capacity development is organized by specialized NGOs, such as Slovene Philanthropy. Most of the time, however, it appears that training is offered only on an ad hoc basis depending on the availability of financial resources and relevant expertise, among many factors. In 2009, the Helsinki Committee in **Hungary** offered to train case guardians – lawyers representing UAMAS in the asylum procedure – but had to cancel its plans due to lack of interest.

Several experts in Member States who took part in this study underlined the need for more and better-quality training. Some urged that social workers enhance their knowledge of legal issues and conversely, that legal staff become more familiar with social issues. There were concerns that guardians with a strong background in social work but not in asylum law may not have acted in the best interest of UAMs and UAMAS. Experts called for providing all UAMAS with effective access to qualified legal assistance at the outset.

8.3.4 Supervising and evaluating guardians to ensure quality

The UNHCR says it is rare for guardianships to be subjected to reporting, monitoring and evaluation with a view to ensuring quality (see Alikhan, s.a.: 21 ff). It also notes the “nearly complete absence of the views of children under guardianship” (Alikhan, s.a.: 22) (see section on right to information).

Most EU Member States in this study do require that guardians prepare reports, usually twice a year, but a unified reporting scheme is lacking and it is not clear if any follow-up action is taken at all. Guardians who are employed by a state agency or a specialized agency providing guardianship services are overseen either by their direct supervisor or by the appointing authority, which is usually the court. Supervision by the appointing authority appears to be at a formal level. In some cases, for example in Nidos in the Netherlands, some internal protocols for quality standards are in place.

This study found that none of the 10 countries assessed had set up any formal evaluation mechanisms. Belgium initiated its first evaluation mechanism but it was discontinued following discussions on the objectivity of the evaluation criteria.

10.3.5 Key findings on guardianship

This study confirmed that guardianship practices in EU Member States are not only diverse but also often not in accordance with the concept of guardianship and legal representation put forward by the CRC General Comment No. 6, paras 33–38 (see section on best interest of the child).

The review of national practices has shown that not all unaccompanied children are provided with a guardian and that existing procedures on appointment of guardians are often not implemented effectively. It also confirmed that children are rarely, if ever, consulted about the appointment of their guardian (see Alikhan, s.a.: 18).

In several Member States, notably in **France** and **Italy**, arrangements for the appointment of guardians and legal representatives are either inadequate or are not implemented at all. Administrative delays in appointing guardians pose problems in meeting deadlines and fulfilling requirements set out in regulations concerning asylum claims, for example. As has already been mentioned, it is at this juncture that UAMs often disappear.

Most UAMAS and fUAMAS interviewed said they knew who their guardian was, but some pointed out that their one-on-one meetings with their guardian took place too infrequently to allow a trusting and constructive relationship to develop. In some cases, as in the **Czech Republic, France, Hungary, Italy**, some UAMAS did not know that they had a guardian or could not distinguish this person's role from that of care staff. In part, this can be traced to the inherent complexity of asylum matters and the different people involved. However, as pointed out by several experts, it could also be a direct consequence of not sufficiently drawing the child into the process and not making efforts to offer clear explanations.

In many countries, such as **Austria, the Czech Republic, France, Italy, Hungary** and **Slovakia**, guardianship is performed by state authorities themselves. This study found that some of the state authorities appointed as guardians are ill-prepared to carry out guardianship duties, resulting in ineffective guardianships that are merely pro forma.

Besides, whether they are part of state structures or not, guardians are rarely, if at all, empowered and provided with resources to act in the best interests of the child independently of state authorities.¹⁷

The overwhelming majority of Member States in this study underlined the inadequacy of funding and resources allocated towards the care and protection mechanisms for UAMs and UAMAS, making it difficult for even relatively well-designed systems to function. **Belgium** reported, for example, that its responsible agencies and institutions are simply overwhelmed by the sheer volume of cases and the acute shortage of accommodation facilities. Personnel have had to resort to shortcuts in assessing the identification and vulnerability of newly arrived UAMs.

In many Member States, respondents criticized the frequent change of guardians and care staff and the fact that guardianship responsibilities can be temporarily delegated to another person or authority unfamiliar with the ward. Although these circumstances may reflect the specific guardianship system, they often seem to stem directly from lack of resources.

In most of the 10 Member States, civil society organizations play an active role in the care and legal representation of UAMAS. These organizations are dependent on external funding sources that are not always assured, complicating their efforts to retain qualified and experienced staff and provide wards with quality assistance.

The study found that the level of professionalism of guardianship services is not always predetermined by the guardian's particular set of arrangements. Guardians could be on a regular payroll, receiving remuneration, serving in an honorary capacity, representing state authorities or NGOs, or acting as concerned citizens. An analysis of information from Member States does not clearly indicate the effectiveness of one particular arrangement over another. Moreover, the lack of any comprehensive evaluation of guardianship makes it virtually impossible to determine which types of guardianship are the most efficient and cost-effective.

However, it appears that sometimes the most professional services are those delivered by NGO staff and individuals contracted by NGOs and people who are partly remunerated or simply serving as honorary guardians. In some cases, paid staff of state agencies serve as guardians without having the relevant professional qualifications, authority and resources needed to be effective in their roles.

Some of the interviewed experts found it not quite proper to have guardianship functions performed by representatives of state authorities. They foresaw a potential conflict of interests and were concerned that children may not be able to distinguish between the various roles of persons involved in their situation.

¹⁷ Nidos, the guardianship organization based in the Netherlands, indicated that this conclusion does not apply to the Netherlands.

This study was able to identify only limited and formal systems of monitoring, through reports to the courts, for example. Otherwise, no structured evaluation mechanisms exist focusing especially on guardianship as an institution and on the performance of individual guardians.

This review of practices has not revealed any straightforward answers as to which settings could work best. Some experts have called for a multisectoral approach encompassing a broad range of institutions and individuals with specialized functions. Others, however, have warned that this approach may prove too complex and lead to the fragmentation of guardianship – hardly in the minor’s best interest.

9 Qualified legal assistance

9.1 International standards

When a guardian is not able to adequately represent the child's best interests in all spheres and at all levels of the child's life, international standards for guardianship call for supplementary measures such as the appointment of an adviser or legal representative (CRC, General Comment No. 6, para. 34). If separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should be provided with a legal representative in addition to a guardian (CRC General Comment No. 6, paras 21 and 36).

9.2 Findings

This overview of current practices in the provision of qualified legal assistance shows that in some countries the state does not provide UAMAS with adequate access to qualified legal assistance. Some NGOs do provide legal aid but their funding can be uncertain. At times, the legal aspect of the situation of UAMAS tends to be underestimated by their guardians and other care staff.

In **Austria**, legal representation in the asylum procedure is regulated independently of the guardianship. The Asylum Act stipulates that legal advisers and the Youth Welfare Authority are responsible for the legal representation of minors in case their interests cannot be taken care of by a parent. According to the Asylum Act, legal advisers have to prove that they have a law degree or long-term experience in legal advice on asylum matters. It is, however, not clear whether the advice from the Youth Welfare Authority is provided by qualified lawyers.

In **Belgium**, legal guardians are responsible for acting swiftly to ensure that children are provided with a qualified lawyer to represent them in the various legal procedures. To benefit from the free and professional legal assistance they are entitled to, UAMAS have to be able to show an identity card or a permit of stay, or at least a document proving that they are minors and are foreigners seeking asylum.

Many bar associations – in Brussels, Charleroi and Antwerp, for example – have set up special groups of lawyers who have agreed, on a voluntary basis, to deal with cases of UAMs, whether they are asylum-seekers or not. Within its immigration unit, the Legal Assistance Office in Brussels has established a section specializing in matters concerning UAMs. Similar initiatives have been launched in other cities in Belgium. To enhance their skills and knowledge, lawyers who work in these areas undergo special training.

In the **Czech Republic**, UAMAS have access to qualified legal assistance only if their guardian for the asylum procedure happens to be a lawyer. Currently this is often the case, given the exemplary cooperation between the guardian for residence (Department for Social and Legal protection of Children) and the NGO Organization for Aid to Refugees. The NGO's funding, however, is precarious.

In **France**, everyone who can pay for legal fees can have access to legal assistance (*aide juridictionnelle*).

In **Hungary**, the case guardian who is a lawyer used to represent the child during the asylum procedure. According to experts, this was not ideal as the person did not have expertise in asylum matters and had no motivation in taking part in the procedure. Following status determination, legal assistance was provided by an appointed guardian from the child protection service. Since the changes introduced in May 2011, legal representation has started being provided by the case guardian who should be a specialist in child protection issues, but not necessarily in law.

Upon the arrival of UAMAS in the territory of the **Netherlands**, lawyers are appointed to represent them in the asylum procedure, while legal guardians represent them in other circumstances that require the consent of an adult. Because physical location is not a leading consideration in appointing lawyers, the chosen lawyer and the UAMAS could end up being geographically far apart. A youth protector accompanies the UAMAS on visits to the lawyer. The Central Agency for the Reception of Asylum-seekers and school mentors have no contact with the lawyers.

In **Slovakia**, UAMs currently have limited access to legal aid. In 2009 and early 2010, lawyers from the Human Rights League had provided direct legal counselling and information workshops for UAMs in the children's home in Horné Orechové. In mid-2010, however, authorities stopped the project, claiming that UAMs are sufficiently apprised of their rights by their guardians and the home's social workers and that there is no need for lawyers to provide them with legal information.

Some key government experts agreed, saying that social workers responsible for children have adequate expertise in asylum law and that UAMs do not need a qualified lawyer until such time as they appeal a negative first instance decision.

However, other experts who work with UAMAS, including some from the government, felt it is crucial for UAMAS to have access to legal advice at all stages of the asylum procedure and that social workers are not qualified to handle asylum and international humanitarian law at all.

A civil society representative in Slovakia said: “Legal status is the key issue that concerns UAMs since it determines what will happen to them. But social workers do not find it important at all, or rather, they don’t understand its importance. We once had a problem when it was clear that the Labour Office in Trenčín wasn’t interested in this issue at all.”

Social workers themselves reported that they often feel incapable of providing relevant and reliable legal advice and refer UAMAS instead to legal advisers, who may be available from NGOs. One social worker said in an interview: “It’s better for the minor to have a legal representative because the guardian, not being a lawyer, can’t write an appeal. So ideally, the minor should have a guardian as well as a legal representative.”

Interviews with fUAMAS also revealed that social workers do not feel they should engage in any legal activities and that their focus is on the provision of food, clothing and shelter. One fUAMAS reported: “Every time I asked the guardian what would happen to us, she would say she didn’t know since it was the Migration Office that was taking care of the asylum procedure. When she kept telling me this, I felt that there were a lot of problems and so I thought it was better to keep quiet.”

Currently, only one NGO lawyer, who is affiliated with the Slovak Humanitarian Council, provides legal assistance to all asylum-seekers in the region of western Slovakia. In AC Opatovská Nová Ves and RC Humenné legal aid is provided by the Society of Goodwill, a Košice-based NGO. The Legal Aid Centre, which is funded by the state, can represent asylum-seekers in the appeals procedure, but UAMAS are often not aware of this possibility. Besides, the guardian does not initiate an appeal in every denied case. A representative of the Legal Aid Centre said that their lawyers have represented very few UAMAS. Interviews with several fUAMAS said they had never heard of this organization and that most of them had been represented by NGO lawyers. Experts from civil society also doubted that lawyers of the Legal Aid Centre are qualified to handle immigration law.

In **Slovenia**, the Legal Information Centre for NGOs - PIC offers free legal counselling to minors and represents UAMAS together with their guardians in the international protection procedure. It also provides legal support in appealing negative decisions in the international protection procedure.

The **United Kingdom** does not assign unaccompanied children a legal guardian, claiming that they can apply for legal aid and receive free legal advice. However, many experts noted that no standard procedure exists ensuring that unaccompanied children know how to apply for this aid. Furthermore, the quality and level of commitment of legal representation provided to children are of inconsistent standards. Access to legal aid for all asylum-seekers in the UK, including UAMs, has become more problematic since the closure of two major providers of legal aid, Refugee and Migrant Justice in June 2011, and the Immigration Advisory Service in July 2011.

10 Accommodation

10.1 International standards

According to Article 20 of the CRC, children who are temporarily or permanently deprived of their family environment are entitled to special protection and assistance provided by the state. Otherwise, alternative care should be ensured through foster care, adoption or institutions that care for children. The CRC also requires States Parties to pay due regard to continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

The CRC (Art. 22) specifies that children seeking refugee status and child refugees should receive appropriate protection and humanitarian assistance in accessing their due rights. In cases when parents or family members cannot be traced, the child should be accorded the same protection as children who are permanently or temporarily deprived of their family environment for any reason.

General Comment No. 6 (paras 39–49) stresses that Articles 20 and 22 of the CRC are explicitly applicable to UAMs. It further states that when selecting accommodation options, “the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account” (General Comment No. 6, para. 40).

Paragraph 40 of General Comment No. 6 sets out parameters for appropriate accommodation and care arrangements as follows:

- Children should not, as a general rule be deprived of liberty.
- Changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interest of the child.
- Siblings should be kept together.
- A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interest of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel.
- Regardless of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons to ensure the child's physical and psychosocial health.
- States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households.
- Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration. This parameter is stressed again in para. 25 of the General Comment.

In EU law, the Reception Conditions Directive (para. 19) and the Qualifications Directive (para. 30) stipulate that UAMs who apply for asylum should, from the moment they are admitted to the host territory, be placed:

- with adult relatives;
- with a foster-family in accommodation centres with special provisions for minors;
- in other accommodations suitable for minors.

EU Member States may place UAMs aged 16 or above in accommodation centres for adult asylum-seekers. As much as possible, siblings should be kept together, taking into account the best interests of the minors, especially their age and level of maturity. Changes in residence of UAMs should be kept to a minimum. Qualifications Directive (para. 30) further states that the views of the child should be taken into account in decisions on accommodation according to age and level of maturity.

Staff in accommodation centres should be trained and be governed by the confidentiality principle concerning information they are privy to, as set out in the national law (Reception Conditions Directive para. 14(5)).

10.2 Accommodation facilities

Children and experts said that accommodation is a key concern in the situation of UAMAS because it has a bearing on the availability of support from guardians and care staff and its quality, access to education and leisure activities, and the potential for interaction with the host society and other groups. Almost all the young people interviewed found the social impact of accommodation crucial – affecting them positively or negatively.

The 10 EU Member States accommodate UAMAS either in specialized reception facilities for UAMs and UAMAS or in mainstream childcare facilities for those left without parental care. The survey could not identify an option that was used more often than the other (see Kanics and Hernandez, 2010: 10). Views vary on the advantages and disadvantages of these two options.

Overall, being housed in mainstream childcare facilities is perceived as enabling UAMs and UAMAS to integrate more easily into the host society – although it could well be that these facilities are not able to meet the special needs of this particular group. In **Slovakia**, children who did not have sufficient knowledge of the Slovak language were placed in mainstream facilities with care staff that had not been trained to address their needs. Persons entrusted with UAMs receive phone calls from children placed in mainstream homes making known their wish to go back to the specialized facility in Horné Orechové. This scenario is likely to be similar in countries where UAMAS are placed in mainstream childcare facilities.

At the same time, experts and children alike stressed the importance of UAMAS interacting with children and adults from the host society to improve their command of the language and foster integration.

Kanics and Hernandez (2010: 10–11) suggest that “a coherent solution would seem to be a flexible mixed model foreseeing different possible solutions and adapted responses after carrying out a fully individualized assessment of the specific needs of every child”. It is also worth stressing that “the standards of care are one of the determinants whether children will stay in the facilities or not” (Kanics and Hernandez, 2010: 13).

In most cases, state authorities operate institutional accommodation; in other cases, children may be placed, usually for a relatively short period, but sometimes up to several months, in hotels and guest houses run by private companies (Austria, France, United Kingdom). In Austria, Fronek (2010: 124) mentions the lack of care and qualified staff in privately run facilities, including failure to appoint a guardian. He questions whether these companies, being profit-oriented, act in the best interest of the child in terms of providing child-friendly facilities and care for UAMs.

This research confirmed that the standard and quality of accommodation provided to unaccompanied children vary considerably from country to country, authority to authority and placement to placement (See Rice and Poppleton, 2009: 28 for United Kingdom). Similarly, the quality of support from professionals is inconsistent and is often linked to resources available.

10.3 Experiences with accommodation

The experiences of children with accommodation were rather mixed. Overall, among various accommodation options, both experts and children preferred foster families and small accommodation facilities for a maximum of about 20 children rather than centres housing a high number of residents. Experts noted that small facilities are more children-friendly and often offer higher-standard care than large ones. In **France**, the **Netherlands** and the **United Kingdom**, most children reported having had favourable experiences living semi-independently.

The most preferred option seemed to be living with a foster family. Although in most of the 10 Member States UAMs and UAMAS can live with foster families, the practice is followed only by a few. Among children interviewed, only the ones in **France**, the **Netherlands** and the **United Kingdom** had experienced living with one.

Among the countries taking part in this study, the **United Kingdom** places children with foster families most often, followed by the **Netherlands**, where children below 13 years of age as well as children considered vulnerable are placed with foster families, if possible with families from the same cultural background. Some municipalities in **France** and in **Italy** – Venice for example – promote the practice of foster families taking in UAMAS. (Foster families in Italy are remunerated). Municipalities and experts argue that this practice boosts integration, is less costly and is more beneficial for a child than living in general accommodation facilities.

In general, UAMs who arrive in the United Kingdom below the age of 16 are placed with a foster family although they remain the responsibility of the local authority. The age until which they remain with their foster family depends on the local authority concerned, but usually young people would have to move to semi-independent living at some point when they are over 16 years old.

All the young people interviewed spoke about foster families as being a major contributor to their well-being and skills development. Young people who live or used to live with foster families repeatedly recounted how “they do a lot to help me” or how “my foster mum helped me with everything – going to the doctor, the gym, the library, shopping, church”. Most of those who were not accommodated with foster families felt that they would have benefited from having one – particularly those whose ages were being assessed.

A more contentious issue is what happens when minors leave the care of a foster family and start making the transition into independent living. Different local authorities allow UAMs to stay with their foster families for varying periods, and half of the interviewed unaccompanied and former UAMs who had eventually moved into independent living found it a difficult, confusing and unexpected transition.

An Eritrean boy, whose removal from his foster family was completely unexpected, said:

I didn't realize I was going to have to move out when I turned 16, so it came as a complete shock. They moved me far away and I found it really hard.” A 17-year-old told a social worker: “I was told I could choose to leave my foster family at 16 or 18. I wanted to leave at 18 but social services pushed me to move out earlier, and I didn't really have a choice.

Minors are aware of the lack of consistency in the practices of various local authorities. One said: “I was given a foster family as soon as I arrived, but I stayed only two months because then I turned 16 and had to move into a shared house with other boys, although some social services let you stay with your foster family until you're 18. The two months with my foster family were the best I had ever experienced since I arrived.”

In the **Netherlands**, UAMAS who were living with foster families preferred this arrangement over any other. “If I have a problem, I can go to my 'aunt'. If I lived alone, I would just worry too much and would not be able to study,” one child said. Another child said that she liked living with a family more than in the accommodation centre, which “was not a house, just a building with rooms”.

In **France**, two children had contrasting views about living with a foster family. One found it a satisfying experience, while the other one said that, although he liked his family, he felt lonely living in a small village where he could not talk to anyone from his own community.

Although they are allowed under the law, foster family arrangements are not used in the **Czech Republic** and **Slovakia** and only one case was identified in **Slovenia**. At least in the **Czech Republic**, experts said this is likely the result of a combination of factors: The overwhelming majority of UAMs identified in the country are more than 14 years old, and foster families are more interested in hosting younger children. The majority populations are not interested in hosting children with ethnic and cultural backgrounds different from theirs. “If there are people interested in being foster parents at all, it's usually those who come from the same communities as the potential ward,” said an expert.

In **Slovakia**, placing UAMs and UAMAS with foster families is not under consideration at the moment despite the fact that experts from civil society believe it is a “better alternative” and is worth attempting: “The question is whether Slovak society would be open to it.”

Austria, the **Czech Republic**, **Hungary** and **Slovakia** mainly use specialized childcare institutions. From a legal point of view, some other options such as foster families and placements in mainstream childcare institutions are also possible, but they are used sparingly. The experiences of children varied widely.

Czech Republic: Blue School

If young people go to high school or university (or college) in Prague, they can be placed in the Blue School, a boarding school within the Student Department of the Facility for Children of Foreign Nationals in Prague. The daily programme is adjusted to the study schedules of students who are also encouraged to become more independent. One former resident said: “We did everything on our own – cooking, the laundry, shopping. It was cool; now I know I can take care of myself. We got food vouchers.” Young people rated their accommodations positively, including their free access to television, Internet and the phone and their proximity to the Prague centre.

Austria: Reception of unaccompanied refugee minors – Project Welcome

Funded by the Federal Province of Styria and implemented in Graz by the Caritas NGO in cooperation with ZEBRA and OMEGA, also NGOs, Project Welcome provides UAMs with primary care (accommodation, boarding and basic equipment) and individual or group psychosocial support. It also promotes integration through German language courses and leisure activities in a residential home of Caritas. Staff from Caritas, OMEGA and ZEBRA, along with young Austrian men doing their civilian service, a psychotherapist and an educator look after the minors at the residential home. Upon turning the legal age of 18, young people have to leave and are usually placed in private accommodation.

10.4 Identified issues: room for improvement**10.4.1 Inadequate accommodation facilities**

This study identified cases in which UAMs were not provided with accommodation or were placed in unsatisfactory facilities. In **Austria, Belgium** and **France**, UAMs (and sometimes UAMAS) can live in hotels and guesthouses for months without any proper follow-up action being taken. In some cases, guardians are either appointed after a long delay or are not appointed at all, resulting in inadequate care and support for minors. Information from **France** indicates that UAMs may be living out on the streets due to lack of accommodation.

In **Slovenia**, until 2010, some UAMs with international protection were being placed in an educational institution for juveniles with behavioural problems (Group Home Postojna). According to experts, accommodation with juveniles with behavioural problems cannot be considered suitable for the accommodation of separated children. A report in 2010 concluded that Slovenia does not yet offer suitable accommodation for separated children. (Desk research: Practices and Challenges Confronting Separated Children and Professionals in Slovenia (2010)).

10.4.2 Large accommodation facilities

Some experts from the **Netherlands** noted that in some large facilities, caregivers take notice of children's special concerns, especially the need for psychological support, only after they have taken a turn for the worse. Children in these facilities, lacking quiet spaces for study, have been found to perform poorly in school. Lack of privacy was also mentioned by several children in some Member States. Some children in large accommodation in the Netherlands said that care staff do not have time for them and never take their suggestions seriously.

10.4.3 Constant supervision and closed facilities

In countries such as **Slovakia**, some of the facilities are fenced off and guarded by security services. UAMs and UAMAS cannot leave the premises without the management's permission. Although these measures are meant to prevent disappearances and keep children safe and secure, the youngsters often feel like they are in jail. A UAMAS recalled: "When we were in the children's home in Horné Orechové, we weren't allowed to go downtown or meet our friends. It was like being in jail. It got better when we started going to school because we could stay out until 10 p.m."

Several UAMAS reported that either they did not have a choice, or had limited choices, in their placement and with whom to live. In the **United Kingdom**, half of the 26 young people interviewed said that having no say in these matters posed some challenges. Still, about half of them felt well supported by social workers in their efforts to resolve difficulties. The other half felt that they simply had to live with the situation, or that social services were simply unwilling or unable to step in.

This study identified numerous instances when children's opinions were not taken into consideration and complaint mechanisms were virtually non-existent, as in the area of guardianship (see section on right to information).

10.4.4 Location of accommodation facilities

In many EU Member States participating in this study, accommodations are in predominantly rural, often neglected parts of the country. In some cases, children were housed in areas where a minority language is predominant. In several countries, for example

in **Austria**, the **Czech Republic**, **Hungary**, the **Netherlands**, **Slovakia** and **Slovenia**, experts were critical of the impractical location of some of the accommodation and educational facilities, noting that this is not in line with the principle of best interest of the child. They felt that placing UAMAS in secluded and marginalized areas has a detrimental impact on the development of children since they cannot mingle with the local population easily, get in touch with their community or pursue their choice of education.

UAMAS interviewed in the Czech Republic cited the advantages of being at the diagnostic institute in central Prague: “The location is perfect. We go for walks every day and I’m getting to know Prague really well.” However, when transferred to the accommodation facility in Permon, which is in Hříměždice u Příbrami, some 60 km from Prague and right in the middle of a remote forest, one minor said: “I don’t like the surroundings here. It’s definitely not the way to integrate into Czech society and to become familiar with Czech culture.”

The management of the Facility for Children of Foreign Nationals and other experts agree. One expert said:

If we want foreigners to integrate into our society, Permon is not the right place for them. In Prague, they would master the language much more quickly and can learn practical tasks such as grocery shopping. Permon, which offers little by way of transportation, is simply not suitable for young people who need more social contact with their peers. They cannot just depend on their teachers to broaden their world.

Experts agree that facilities in urban areas afford children better opportunities to develop their skills and competencies, foster their integration into the host society and enable them to meet and interact with people with a similar cultural background.

Minors were particularly appreciative of locations that offered good and affordable transportation.

10.4.5 Equipment of accommodation facilities

This study has highlighted that infrastructure and equipment in accommodation facilities, especially in terms of information and communication technology, are significant factors in the children’s overall well-being. Minors consistently referred to computers, Internet and television as important educational and social tools. A respondent in Austria said: “Television helps me to learn German, the Internet helps me with translations and Facebook keeps me connected with my friends.” Leisure and recreational activities in accommodation were also brought up frequently by children in several EU Member States.

10.4.6 Access to qualified care

Although many of the interviewed children commented positively on care staff, there were some who experienced unpleasant situations. Some UAMAS in the **Netherlands** complained that care staff and mentors do not seem to have time for them and that their requests and suggestions are never taken up. Lack of attention of care staff could also result in the neglect of the psychosocial and physical health of UAMAS (see section on health).

In some cases, care staff have not been sufficiently trained to assist and take care of UAMAS. “No, no, absolutely nothing,” said a social worker when asked if she and her colleagues at the children’s home in **Slovakia** were given any guidelines after being officially notified that an UAM would be placed under their care.

In several countries, experts criticized the lack of psychological support. An expert working at the Permon facility in the **Czech Republic** said: “Right now NGOs handle psychological care. Unfortunately, if an NGO does not have a project, there is no funding, which means the children can’t have their psychological needs met.”

10.4.7 Frequent moves

In most assessed countries, interviews, appointments with officials, discussions with lawyers and guardians, procedures in appeals courts, transfers from one facility to another, moving from the centre to independent living in the middle of the school year, the sheer length of the process and the volume of decisions to be taken, exact a heavy psychological toll on asylum-seekers. It is clear that despite good intentions, the best interest of the child is not always the prime consideration.

This study found that in all 10 EU Member States, UAMAS have to be moved to another facility at least once. In some countries, such as in **Belgium** and **Slovakia**, transfers are linked to the asylum procedure despite the fact that Article 19 of the Reception Conditions Directive states that changes in residence should be kept to a minimum.

In other countries, transfers are often linked to the youngsters' age. This study identified only a few cases of children managing to influence their placement. Usually, decisions were taken by authorities with no evidence that due consideration was given to the best interest of the child, the importance of the continuity in the child's upbringing and the child's opinion.

One girl in the **United Kingdom** said: "I've moved several times and lived with different people. I don't like moving so often because it's difficult for me to make friends all over again."

10.4.8 Children and their siblings

Several children referred to situations when authorities failed to respect para. 40 of General Comment No. 6, recommending that siblings stay together. In the **Netherlands**, when a minor who lived with her sister wanted another sister to live with them, she was told by authorities that her request was being denied because it did not concern "her husband or her parents". She had to live where she was assigned, otherwise the Central Agency for the Reception of Asylum-seekers (COA) would not have helped her find a place to stay.

10.4.9 Food in accommodation

In several EU Member States, many interviewed UAMAS found the quality of the food in their accommodation unsatisfactory. Some said there were no facilities where they could cook for themselves. In the **Netherlands**, two minors claimed that their requests were not heeded and that they lost weight as a result (see section on religion and dietary requirements).

Minors were generally appreciative of the possibility to prepare their own food, an option provided at least occasionally in most countries.

10.4.10 Unwanted sexual advances

One female respondent in **Austria** after having described her entire stay at the initial reception centre in Traiskirchen as a negative experience, said: "It was terrible. The boys tried to take advantage of me."

Table 3: Overview of accommodation arrangements

	Initial reception after identification as UAM	Length of initial reception	Second-phase reception for unaccompanied minor asylum-seekers (UAMAS); in some cases, also unaccompanied minors (UAMs)				Who is in charge of second-phase reception?
			Foster families	Small living units, etc.	Large accommodation facilities	Notes	
AT	Reception Centre Traiskirchen	Up to 60 days	Possible	Yes (supervised flats)	Special accommodation groups	Children can be placed in hotels, etc. without proper follow-up.	Territorially competent depts. for childcare and protection
BE	Observation and Orientation Centres (Neder-Over-Hembeek and Seenokkerzeel)	15–30 days	Possible	Yes, local reception facilities	Collective reception centres (capacity: 400 places)	Due to low capacity of specialized system, children may be accommodated in hotels (with no appropriate follow-up) and with asylum centre for adults.	FEDASIL
CZ	Reception centres Zastávka u Brna; transit space of the international airport Prague – Ruzyně; Facility for Children of Foreign Nationals (for needs assessment) 1–2 months Possible by regulation, in practice not used Based on needs assessment, taking into consideration age and education profile: either Facility/Permon (up to 60 places) or Facility/Blue School (10 places)	1–2 months	Possible by regulation, in practice not used	Based on needs assessment, taking into consideration age and education profile: either Facility/Permon (up to 60 places) or Facility/Blue School (10 places)			
FR	Reception depends on where the minor has crossed border; not centralized; some 10% are in specialized reception and orientation centres; others in mainstream facilities and hotels		Possible, rarely used	Semi-independent apartments (sometimes in use)	Mainstream childcare facilities	Due to low capacity of specialized system, children over 16 years old are also systematically accommodated in hotels with no appropriate follow-up.	For specialized centres, NGOs in charge; otherwise childcare services (mainstream)

HU	Shelter for Unaccompanied Minors – Bicske Reception Centre	UAMAS are accommodated both during the initial and second-phase reception within the environment of the same facility, but in accommodation groups.	Possible by regulation, in practice not used		Károlyi István Child Centre is a large institution, but children are accommodated and cared for in accommodation groups of 10–12 persons.		Prior to 1 September NGO (HIA); since then the centrally assigned child protection unit
IT							
NL	POL Process Reception Site	Up to 90 days	<13 years old, preferably in families with similar cultural background	13–15 years old	15–18 years old		Asylum centres and small living units – COA
SI	Detention Centre Postojna (closed facility) for UAMs; when children wish to apply for asylum, they are transferred to the Asylum Home in Ljubljana	In most cases less than a month	Possible by regulation, practically not used (one case only)	Asylum Home (open facility); UAMAS are accommodated in special department, with adult asylum-seekers also having access to this department			Ministry of the Interior
SK	Horne Orechove children's home (guarded, semi-closed facility; children without residence permit can leave facility only under supervision)	Upon application for asylum, UAMAS are moved to Reception Centre Humenné (closed facility) for four-week quarantine	Not used	After initial reception in RC Humenné, UAMAS are moved to Accommodation Centre Opatovská Nová Ves (guarded, semi-closed facility; children can leave with permission of the facility management).		Interviewed children complained about constant supervision in Horne Orechove	RC Humenné and AC Opatovská Nová Ves are run by Migration Office.
UK	UAMAS are transferred to the care of Local Authority for housing as soon as possible after arrival. There are no large-scale initial reception centres.	N/A	Used for UAMAS who arrive under the age of 16	UAMAS who arrive in the UK aged 16 or more are often housed in small groups in Local Authority-run accommodation (generally houses accommodating four to five young people). Support workers and social workers then visit UAMAS in their homes.			Local Authority Children's Services

11 Religion, culture and dietary requirements

11.1 International law

The right to freedom of religion is one of the most firmly established among human rights in the international canon. It is protected, among others, by the Universal Declaration of Human Rights (Art. 18), the International Covenant on Civil and Political Rights (Art. 18), the European Convention on Human Rights (Art. 9) and the Charter of Fundamental Rights of the European Union (Art. 10). The right to freedom of religion includes the rights to hold opinions or beliefs and to manifest them, either individually or in community with others.

The CRC reiterates the right of the child to freedom of religion in Article 14: “States Parties shall respect the right of the child to freedom of thought, conscience and religion. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”

The EU asylum *acquis* recognizes religion as one of the reasons for persecution that qualify for international protection in the Qualifications Directive (Art. 10).

11.2 Practising religion

Asked how they felt about the importance of religion in their lives, UAMAS gave responses ranging from, “religion means everything to me” and “religion is a source of strength” to “I’m not religious at all” and “I don’t find religion important”.

In **Austria**, adolescents and young adults, especially those from Afghanistan, indicated that religion is an issue that gives rise to unpleasant feelings, particularly for some UAMAS and fUAMAS. They feared that acknowledging religiosity would be perceived negatively and interpreted as a sign of “fundamentalism”. The assessment team felt that this sentiment is likely to be echoed in other EU countries as well.

Some UAMAS and fUAMAS said they started practising their religion shortly upon arrival as they felt a strong need for spiritual support in their situation. Others said that engaging themselves in religious activities served as a welcome step towards integration not only within their own communities but also within the host society. They also received other forms of non-religious support within these groups.

For example, in the **Netherlands**, one fUAMAS recounted how, as a member of a dance group in church, she would sometimes be the recipient of proceeds collected at the group’s performances. People in church would also give her food donations and pay for some of her church activities. They also spared her from homelessness when they took care of her rent for one month; she had turned 18 and stopped receiving money from the Nidos guardianship organization. In a separate case, a pastor took a fUAMAS who was living on the streets into his home.

Anecdotal evidence shows that religious groups extend wide-ranging support to unaccompanied children in meeting their cultural and religious needs.

Accommodation centres inform UAMAS about places of worship, according to reports from most Member States, including **Belgium**, the **Czech Republic**, **France**, **Hungary**, **Netherlands** and the **United Kingdom**.

Information from UAMAS in the **United Kingdom**, however, revealed that although care staff are aware of the religious needs of Muslims, they do not make enough efforts to find out about the religious needs of UAMs who are non-Muslim. An Eritrean minor, who is Christian, remarked that religious persecution was the reason he came to the UK, and that one of the most helpful things that his social worker could have done for him was help him find a church where he could worship.

Extra provisions are sometimes made so UAMAS can attend religious gatherings. In **Belgium**, the **Netherlands** and the **United Kingdom**, UAMAS who want to go to the mosque on Fridays may be exempted from classes. Some schools adjust course schedules to enable children to take part in religious services and celebrations. In **Slovakia** and **Slovenia**, some accommodation facilities have worship rooms or allow praying in the rooms. In the **Netherlands**, some schools have quiet prayer corners. Most countries also reported that menus and food service schedules are adjusted during Ramadan.

Available information suggests that UAMAS cannot always practise religion as their wish. In **France**, a youngster reported: “During the celebration of Eid al-Fitr [marking the end of fasting and Ramadan], I asked the accommodation centre authorities if I could go to the mosque to pray. I was told I could not because in France religion is separate from the state.” An expert in the **Netherlands** said that UAMAS are not always exempted from Friday classes when they want to go to the mosque.

Proximity to a place of worship is obviously a factor in the practice of religion. In the **Netherlands**, a young girl said she used to go to church every day near her previous residence but does not go at all now since her religious denomination does not have a church nearby. One UAMAS reported that other churchgoers who drive to services pass by for her every week.

UAMAS are often not provided with transportation to places of worship that are far from accommodation facilities. In the Permon facility in the **Czech Republic**, for example, the Catholic church is accessible only by car or an irregular commuter bus. The nearest mosque is 60 km away, in Prague.

11.3 Religious and dietary requirements

Food is an important manifestation of cultural identity, and national and ethnic differences are particularly pronounced in food culture. Many respondents reported encountering problems with food served in accommodation facilities.

Some facilities in Member States allow minors, to varying extents, to prepare their own food and adjust their diet according to their own cultural preference. All countries reported that pork is not served at accommodation centres. Related to this issue, social workers in **France** said that efforts are being made to serve a selection of suitable food but added that since France is a secular state, dishes could not always comply with religious requirements.

11.4 Cultural needs

Several UAMAS and fUAMAS do not have too many opportunities to fulfil their cultural needs, such as attending gatherings with people from their own region, partaking of national dishes and receiving their traditional health care. Majority said that most of them were in touch with other UAMs from their country or region. This clearly has its advantages and disadvantages: Fellow nationals in accommodation centres can serve as surrogate families. They give each other mutual emotional support and exchange information on various issues including the asylum procedure. Speaking with others in the mother tongue enables young people to be more aware of what is going on and gives them the feeling that they are understood, which helps boost their confidence.

The downside is young people have less incentive and fewer opportunities to learn the host country’s language and society.

The intensity and importance of contacts depends on the time spent in the host country. A social worker in **Austria** explained why the start of schooling is so crucial. “As they find their way around in school and start broadening their circle of friends, these young people gain more self-confidence. Gradually, contacts with people from the same cultural background begin to lose importance. But all this takes time.”

Lack of time and resources keeps UAMAS and fUAMAS from taking part in national cultural events. A young Chinese boy in the **Czech Republic** reported: “I do miss my culture but I can at least listen to our music on the computer. I don’t celebrate national holidays as there’s no one to celebrate with. In the Chinese community here, everyone is hard at work and there’s simply no time to be in close touch with our culture.”

In other cases, however, UAMAS and fUAMAS wished to distance themselves from the culture of their home country: “I don’t like my culture and I don’t want to practise it. I know culture is culture but I no longer have anyone back home. I have a child with a Czech lady and now I would like to immerse myself in Czech culture.”

The level of obligations and commitment of guardians and care staff towards helping UAMAS establish contact with their respective diasporas varies even within the Member State itself.

In the **Netherlands**, for example, asylum authorities are not required to help UAMAS in this area. In contrast, the guardianship organization Nidos makes every effort to place them with families that share their own culture, the rationale being that it can go a long way towards integrating UAMAS within the Netherlands or with reintegrating into the country of origin.

In the **United Kingdom**, contacts with diaspora communities are encouraged through a number of ways: Foster placement of UAMAS in related communities is preferred. Local authorities are obliged to help children keep in touch with their cultural heritage.

Social workers share information about community organizations. Local authorities often proactively recruit personnel for foster care and accommodation facilities from communities that unaccompanied children can relate to. These people can serve in the role of “cultural mediators”, guiding local authorities in addressing the child’s cultural needs.

In many countries such as the **Czech Republic, Hungary, Slovakia, Slovenia** and the **United Kingdom**, caretaker staff encourage UAMAS to celebrate their national holidays according to their own traditions.

In practice, however, official guidelines are not always fully implemented. One 17-year-old said: “Social services never told me there was an Eritrean community here until I happened to meet some Eritreans whom I am now in touch with.”

In **Slovakia**, officials do not encourage UAMS to contact the diaspora community, apprehensive about the possibility that it harbours traffickers.

Diaspora communities can also be a source of misinformation, especially regarding the asylum procedure, as noted in **Belgium, the Czech Republic, and Hungary**. In certain cases, UAMAS and fUAMAS shun all contact with the diaspora community when they do not feel supported in their life choices or are reminded of the traumas suffered in the country of origin.

11.5 Integration and social orientation

The cultural background of UAMAS and fUAMAS is usually quite distinct from the one prevalent in EU Member States. Youngsters interviewed said that they had hardly any information, if at all, about the country prior to their arrival. They said they would have wanted and needed information about asylum procedures, the structures and actors within the asylum system, their responsibilities as asylum-seekers, and cultural matters.

Accommodation staff and guardians are key information sources for UAMAS. In some facilities in **Austria**, special question-and-answer discussions are held regularly with staff. However, despite organized courses and meetings offered by organizations in Member States, informal channels, including peer groups, seem to be the leading source of vital information for UAMAS.

11.5.1 Social orientation: diverse offerings

Most countries offer courses on their sociocultural aspects. Orientation seminars are usually held by NGOs and a range of organizations, including state and local governance structures. Language courses also convey the cultural dimension. NGOs that organize courses and programmes especially tailored for UAMAs are usually dependent on short-term grants from the ERF and European Integration Fund, for example. The overall picture shows a diversity of offerings:

- In **Austria**, the NGO “lobby.16” organizes intercultural events, such as group photography and group cooking sessions aimed at bringing together UAMs with Austrian pupils and students so they can learn from one another. The NGO also holds workshops in which asylum-seekers and Austrians discuss each other’s cultures, codes of conduct, cultural differences and stereotypes.
- In **Belgium**, the Brussels Welcome Office “bon” offers a number of integration programmes for foreigners who are living legally in Brussels. In 2010, bon organized a summer programme for UAMAS with the support of the ERF. An 80-hour social orientation course over several weeks was offered to two groups in their own language or a shared one. Sessions focused on the asylum procedure along with Belgium’s history, laws, codes of conduct, social security system, the city transport system, environmentally sound waste disposal, and educational and job possibilities.
- In the **Netherlands**, a short Dutch language course was organized for UAMAS in August 2010, right before the start of the new school year. The classes were meant as an introduction to the language or as a refresher course. The programme proved highly successful, generating a great deal of enthusiasm among participants. Initial monitoring results show that schools have noticed the marked improvement in the language facility of minors who took part in the programme over those who have not. Reception centres have taken note and have requested that the course be held every summer.

11.6 Leisure time

Recreation and leisure activities go a long way towards a child's development. They are vital to keeping UAMAS from indulging in negative thoughts, giving them a break from brooding over their situation and helping them structure their daily routine. How children spend their free time depends largely on the type and location of the accommodation facility.

With a few exceptions, such as in larger accommodation centres, this study found that overall, UAMs do not have too many opportunities for meaningful leisure and recreation.

In the **Czech Republic**, an expert in the accommodation facility in Permon reported: "Children complain most about how they spend their free time. They are surrounded by woods here and have nowhere to go and nothing to do. If they want to go to the swimming pool, they have to be packed into a car and driven quite a long way. They don't have enough pocket money to be able to go to town."

Similar accounts were given by children living in the more remote facilities in Slovakia. One minor in AC Opatovská Nová Ves said: "All we do is eat, then we talk with people here, use the Internet, then eat again, talk again and the day is gone. And it's the same every day." It should be noted that some leisure activities for UAMAS are organized, however, UAMAS are often frustrated with their overall situation and are not motivated to participate.

Many children who live semi- or completely independently appear to have even more limited access to leisure activities than those in large accommodation facilities. One UAMAS in **France** who had been moved to a flat, reported: "I miss seeing my friends from the accommodation centre where one can go swimming or watch a movie. People who live outside have to pay to take part in activities. I do get EUR 42 a week but much of it is for food expenses."

Transportation costs also discourage young people who live in separate quarters from taking advantage of some of these activities.

In all the countries that took part in this study, sports surfaced as the most popular type of leisure activity. Experts underlined the potential of sports – particularly team sports – to help UAMAS overcome language barriers especially if goodwill exists among team members. This is apparently not always the case. One boy in the **UK** said: "I play football in a youth team near where I live. It's fun but it's hard to make friends because some speak English too fast and I don't understand what they are saying. I don't talk much."

Several young people said that without any money, it is "hard", "difficult" or "impossible" to take part in a wide range of social activities, to be members in sports clubs and to buy sports outfits. In the **UK**, many said they tend to engage in activities that are either paid for or do not need any costly equipment. One boy in **Austria** said: "Football outfits and shoes are expensive, but at school everybody plays without shoes. You don't need a lot to play football, that's why it's so ideal!"

In virtually all the countries in this study, football was the most frequently mentioned leisure and recreational activity. Echoing a popular sentiment, an expert in the **UK** said: "Football is a really important way for boys to break down barriers and allow them to bond and not feel like outsiders."

The interviews revealed that in general, leisure activities are geared towards boys rather than girls, reflecting the fact that boys make up the majority of UAMAS. Still, there is scope for broadening activities for girls. In the **United Kingdom**, two girls felt that sports and football teams were "good for the boys, but we're not interested in football or going to the gym". In response, some community groups, schools and local authorities in the UK are attempting to reach out to girls and young women by initiating some "girl-only" groups.

Asked how they spend their time, girls said that they study the language of the host country, get together with friends, go to the city centre, work at the computer, read books, do their homework, and window-shop. One UAMAS in the **Netherlands** said she spends her time doing her nails and hair and working with a sewing machine, which she learned on campus. While these activities are part of skills development, they do not encourage integration as much as team sports do.

12 Access to health and psychological care

The signatory states of the CRC recognized “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” (CRC, Art. 29), a right subsequently clarified by the Committee on the rights of the child with regard to UAMs (General Comment No. 6, 2005, paras 46–49).

EU Member States are also under obligation to ensure medical or other assistance for asylum applicants with special needs (Reception Conditions Directive, Art. 15) and to provide access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have been affected by armed conflicts (Reception Conditions Directive, Art. 18).

Access to health care of separated or unaccompanied children has been the subject of earlier research (FRA, 2010; France Terre d’Asile, 2010; EMN Synthesis Report, 2009). The present assessment examines certain aspects of this issue, focusing on psychological care.

A number of academic researchers (see Watters and Ingelby, 2004; Wiese and Burhorst, 2007) have acknowledged that adequate psychological care is in the best interest of the child. It plays a vital role in enabling UAMAS to develop their skills and competencies especially because they are likely to be prone to post-traumatic stress disorders, depression and other psychological problems stemming from their experiences in their country of origin and during their journey. In addition, they face daunting challenges in adapting to the new situation in the receiving country and feel burdened by the insecurity of their residence status (see FRA, 2010: 47).

Most countries identified a glaring absence of interpretation during medical consultations and of culturally appropriate medical health care. Experts also underlined the lack of cultural sensitivity on the part of some health-care providers.

12.1 Access to health care

Research undertaken by the EMN reveals that UAMs receive, at the very least, basic health care according to their needs (see EMN Synthesis Report, 2009: 93). However, Member States sometimes make a distinction between minors with an international protection status, who enjoy easier access to health care, and others who can only access emergency medical care (see France Terre d’Asile, 2010: 128).

Most children interviewed said they are able to access health-care services when needed and had no complaints about their treatment or about the manner in which medical staff conduct themselves. At least in some countries, female UAMAS are treated by female physicians. Constant efforts to engage the services of female interpreters are not always successful. The results of the present study thus largely confirm the research findings of the FRA (2010: 46–49).

A minor in **Belgium** said there was room for improvement: “I’m glad that I have a place to stay and that I get food. But it’s difficult to get medicine when I have health problems. I was sick over two days but nobody took care for me. When somebody is in pain, it isn’t taken seriously by social assistants. There was no interpreter to help explain what I was going through.”

In **Hungary**, access to dental care and dental surgery was reported to be a problem; children have access mainly to emergency services, usually limited to tooth extraction.

In the **Netherlands**, several UAMAS reported instances when their complaints and symptoms had not been taken seriously. One child in severe pain went to see the doctor several times before he finally had to be taken to the hospital and undergo surgery.

In **Slovakia**, the Migration Office covers the health-care costs of persons with subsidiary protection and asylum seekers, but many health-care providers seem reluctant to accept these patients because it involves extra administration or because they are not familiar with this arrangement.

12.2 Access to psychological health care

Access to professional psychological help differs considerably in the various countries. This branch of medicine is generally less accessible than other health care.

In most Member States, it is care staff who usually refer children to psychological professionals. Several experts in the **Netherlands** noted that care staff are not always qualified to determine if and when psychological interventions are needed and that in some cases, they take action only when a patient's physical and psychological condition has made a turn for the worse.

Another major dilemma is that although therapy should be conducted in the language of the patient to be truly effective, not many psychotherapists speak the language of many UAMs and countries are not ready to shoulder the cost of interpretation associated with this care.

In **Belgium**, reception centres offer the possibility for consultations between UAMAS and psychologists. In some centres, psychologists are available around the clock. In others, they come and see the UAMAS upon the request of care workers. Psychologists who are on constant duty in the centres are highly appreciated by the centre staff and by the children themselves, who feel more comfortable with someone who has a constant presence in their immediate surroundings.

In **France**, access to health care depends to a large extent on whether or not the child is cared for by social services. Experts interviewed said that the specialized reception centre for minors seeking asylum (CAOMIDA) provides unique psychological support: the psychologist acts as an educator and lives among the youngsters. This arrangement is not always seen as an advantage, however. One expert remarked: "Talking about one's past as a victim within an accommodation centre is not always reassuring for a youngster despite a confidentiality clause." Accommodation centres in France sometimes enter into partnerships with NGOs that specialize in the psychological care of asylum-seekers or in ethno care. Experts said that many youngsters have seen a psychologist since they arrived in France.

In the **Czech Republic**, psychological care relies on NGO support since it is not covered by public health insurance. Commenting on the fact that a psychologist from Prague visits the detached accommodation centre of Permon once a month, experts found the arrangement unsatisfactory. One of them said: "That means psychological care is dependent on the funding of NGOs. If the NGOs don't have a project, then children don't get their psychological care."

In **Italy**, the level of response to the complex psychological needs of UAMAS is inconsistent across the regions. Efforts to introduce improvements have been confined to certain areas and more needs to be done. Since treatments are available only at certain accommodation centres, there is no assurance that the special care can continue when a UAMAS has to change accommodation.

In **Slovakia**, state institutions generally consider mental and emotional health care as having lesser priority. As one government official put it: "If it is a normal crisis situation, there is no need for a psychologist." When asked what a "normal crisis situation" is, the official replied: "When they come hungry, dirty and stressed."

The assessment found that in some Member States UAMAS are taken to mental health professionals only in extreme cases – such as when they refuse to eat or attempt suicide – and usually for one or two sessions only. A UAMAS who tried to commit suicide was given professional help but it was clear from the interview that he did not consider the treatment satisfactory.

There is also a pronounced need to provide adequate psychological care that is sensitive to clients' cultural backgrounds. Some interviewed children stated: "I do not need a psychologist, I do not have mental problems, I am not 'mental'." An expert explained: "In their culture, seeing a psychologist means they are mad."

Failure to provide adequate psychosocial support can have far-reaching negative consequences on UAMAS, which is why experts interviewed found it particularly unfortunate that lack of allocated resources has led to the neglect of this area of health care. As reported in **France**, UAMAS who suffer from serious psychopathological issues may not be in a position to deliver a coherent account of their past actions and persecution, leading to a possible dismissal of their asylum claim.

13 Skills and competencies development, education and training

13.1 Access to education in international law

International law puts clear duties and obligations on states to “recognize the right of everyone to education”, in particular to ensure that primary education is free and available to all, that secondary education, including technical and vocational education, is “made generally available and accessible to all by every appropriate means”, and that “higher education is equally accessible to all, on the basis of capacity” (ICESCR, Art. 13). The CRC reinforces these obligations in Articles 28 and 29 and also contains an obligation for states to direct education towards “the development of the child’s personality, talents and mental and physical abilities to their fullest potential”.

Within the realm of European Union law, Article 10 of the Reception Conditions Directive focuses on the education of UAMs. Member states shall grant “access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced”. Education can take place in accommodation centres. According to the Directive, education of minors shall start no later than three months from the date the application for asylum is lodged; however, this period may be extended to one year when a minor is provided with specific education to facilitate access to the education system.

The Qualifications Directive (Art. 27) is concerned with the education of children that have been granted refugee status or international protection. Access to the educational system shall be granted under the same conditions as nationals.

Interestingly, the Action Plan on Unaccompanied Minors mentions education only in terms of the country of origin, for example, to ease the minor’s reintegration.

The statement of good practices within the Separated Children in Europe Programme recommends that:

Separated children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. In order to preserve their cultural identity separated children should have access to mother tongue teaching. Vocational and professional training should be available to older separated children. It is likely to enhance their life chances if they return to their home country.

(SCEP, 2009: 22)

13.2 Importance of education

For the purpose of this study, the assessment team understood skills and competencies development to encompass processes that equip UAMAS with the skills, knowledge and abilities crucial to their potential achievement and performance, enhance their self-motivation and self-confidence, and enable them to gain a robust and realistic perspective of life, whether it is in the host country or elsewhere.

The research builds on the premise that development of skills and competencies is inherent to the overriding principle of best interest of the child (SCEP, 2009: 15; CoE Recommendation 2007/9) in view of the fact that skills and competencies facilitate successful durable solutions regardless of the outcome of the asylum procedure. In the final analysis, UAMAS and fUAMAS with well-developed skills and competencies stand a better chance of engaging in viable livelihoods, integrating into the host country and reintegrating into their countries of origin.

Several experts noted that the skills and knowledge these young people acquire could prove useful anywhere.

People interviewed in this study recognized that a good command of the host country’s language is a prerequisite to minors’ progress in education. Many stressed the importance of learning the language quickly. One fUAMAS in the **Netherlands** said: “If you do not know the language, you are deaf and blind.”

Many children considered education an important aspect in their lives. Comments on their schools ranged from “nice” to “very, very, very good for me”. One UAMAS in the **Netherlands** said: “I am so happy to have this opportunity to learn and build my future.”

Another UAMAS in **Austria** said: “It’s so special that I get up early and go to school. I take the train with other young people. I have a mission every day. I feel that I am somebody. I feel a certain peace and I feel I am with kind, good people.”

13.3 Access to education

In **Austria**, it is compulsory for every child between 6 and 15 years old to go to school. Since most of the UAMs are older than 15 when they arrive, compulsory education does not apply to them. In practice, access of UAMAS and fUAMAS to secondary schools is often restricted.

Children asylum-seekers usually start attending school six months after residing in Austria (EMN Synthesis, 2010: 97). “Access to basic education and literacy courses up to *Hauptschulabschlusskurse*¹³ is easy if there are spaces available, but access to everything else is difficult and not tailored to the needs of this target group,” said a civil society expert.

More often, former UAMs attend a special type of “second-chance education” (Zweiter Bildungsweg), usually the *Hauptschulabschlusskurse*. At the time of the interviews, most of them had taken part in a preparatory course for the *Hauptschule* or *Hauptschulabschlusskurs*. Only two female respondents reported that they had gone to secondary schools. Notably, some young people said that they were not attending school at all.

Several experts agreed that access of UAMAS and fUAMAS to the Austrian regular school system leaves much to be desired. There are no structures that can devote attention to this group’s specific circumstances. As a consequence, most UAMAS and fUAMAS take part in basic educational programmes that do not go far enough to fulfil their expressed wish to gain the skills they need to live as independent and self-sufficient adults. In addition, their efforts to interact with young people from the host country are constrained by the fact that they usually share classes with other asylum-seekers and migrants, since young people who were born and raised in Austria are more likely to attend institutes of higher education.

Interviewed experts were critical of the minors’ limited opportunities to continue studying and to enrol in secondary schools after completing basic education in Austria. A social worker from an institute that offers basic educational programmes to this target group said that evening schools are the only way for UAMAS and fUAMAS to continue their education. These, however, have large classes that are not ideal for them since they are likely to need individual help in understanding the lectures in German.

Within **Belgium**, educational systems could differ since education lies within the competence of the Communities in Belgium (Flanders and Wallonia). As a rule, however, mandatory education starts two months after UAMs have registered with the Foreigners Office, usually upon being identified as being in Belgium’s territory.

Initially, for about a year, UAMAS attend transitional classes known as “Welcome Classes” which emphasize language skills to enable the newcomers to integrate into mainstream schools. Starting at any time of the year, they usually attend several of these classes until they have acquired sufficient proficiency in the language. Indeed, these specific classes are considered an efficient means of integrating UAMAS into the mainstream educational system.

The transfer to the mainstream system takes place after about a year and cannot be postponed. Minors who did not receive adequate schooling in their country of origin, or were illiterate when they started welcome classes, experience difficulties with the transition. For practical reasons, children often go to schools that have existing relations with reception centres and not necessarily to a school of their choice. Pragmatic considerations seem to outweigh the principle of best interest of the child.

Because most UAMAS are about 17 years old, they often choose a system within “centres for learning and working” that combines theory and learning a skill. This enables them the chance to learn a profession even when they have a limited command of the host country language. In the French-speaking part of Belgium, there are also opportunities for those who already speak French to enrol in full-time secondary classes, progressing towards high school or learning a profession on a full-time school schedule. Once UAMAS turn 18, they can also learn a profession by taking part in training programmes offered at job centres.

In the **Czech Republic**, UAMAS are integrated into the educational system shortly after their arrival. Following an assessment of the child at the diagnostic institute in Prague, educational possibilities are examined. Experts had high praise for the system. One remarked: “The Czech Republic’s educational system for UAMAS is well established. As soon as the children arrive, they learn the Czech language every day. The school, integrated within the Facility for Children of Foreign Nationals, replaces primary school and children can continue studying if they wish.”

Initially, UAMAS and fUAMAS are taught separately from Czech children at schools operating within the Facility for Children of Foreign Nationals. The educational institution in Permon includes a two-year vocational school with a curriculum that is adjusted to the needs of foreigners who want to improve their Czech language skills. Their progress in Czech improves their chances of studying in the country’s schools. Once they have attained proficiency in the language and fulfilled other conditions, they can enrol in schools outside the Facility.

¹³ The lower secondary school (*Hauptschule*) provides pupils with a basic general education within a four-year period after finishing elementary school. It is designed to prepare them for working life and to enable them to transfer to upper-secondary schools. Young people who do not complete schooling within the framework of compulsory education can go to a *Hauptschulabschlusskurs*, which confers an educational degree on them within one year instead of the regular four years. This is theoretically comparable to the educational level attained in the *Hauptschule*. As an option, the student can also take preparatory courses for the *Hauptschulabschlusskurs* (*Vorbereitungskurs für Hauptschulabschlusskurs*), which usually takes an additional year.

Children hold close consultations with their tutors and school directors in deciding what further education to pursue. A fUAMAS said: "I told my teachers I wanted to go on to high school and they were very helpful. I could express my views, and the student counsellor at the Permon accommodation facility told me what he thought would be good for me." An NGO social worker who visits the Facility regularly also provides advice on this matter. The director takes the final decision regarding the children's further studies, taking costs into account, such as boarding school expenses.

Education in **France** is mandatory until 16 years of age. Although legislation provides French nationals and foreigners with equal access to education, UAMs have to confront a number of challenges.

As far as learning French is concerned, accommodation centres for recently arrived minors often organize in-house classes led by volunteers and professional teachers. Some minors pointed to the lack of professional teachers and the infrequent lessons. A minor in Lyon said: "My daily classes last about an hour or more but they are held in different schools. The conditions are bad and volunteers have their individual ways of teaching, but it's better than nothing. We've been told that in Lyon there are no funds to enable French to be taught properly."

Insufficient knowledge of the language is bound to have a negative impact on the child's educational opportunities. One UAMAS reported: "I started a three-year vocational training course but had to stop because I could not fully understand the lectures. I wanted to change to a course in plumbing but I was told there is no place and I have to wait until next year. Right now I just stay in my room doing nothing."

Unaccompanied minors along with children who are "recently arrived in France", may be enrolled in "initiation classes", "reception classes" or classes especially for those who have never gone to school. Minors below 16 have to pass a test at the Centre Académique pour la Scolarisation des Nouveaux Arrivants et des enfants du Voyage (Centre for the Education of New Immigrants and Travelling Children) which determines in which class they should enrol.

Unaccompanied minors above 16 are often directed towards vocational training as a means of preparing for their future and to ease their access to a residence permit upon turning 18. An expert in France reported: "The County Council prefers that these unaccompanied minors enrol in short-term courses leading to a diploma, which in turn makes it easier for them to obtain residence permits from the prefecture. That means they do not always pursue the studies they are interested in. As school is no longer compulsory for them when they are older than 16, and as there is little available space in vocational high schools, youngsters are often enrolled in courses not of their own choosing."

This also means that they sometimes cannot get the professional training or university education in their chosen field. An Afghan, a fUAMAS in France, remarked: "In Afghanistan I wanted to study but I couldn't. Now that I'm here, I'd like to become a doctor but a social worker told me that it could prove complicated and that there are other interesting courses. Now I'm not sure what I'll do."

Interviewed experts warned about the gap between the expectations of youngsters and their prospects of landing an apprenticeship. Before entering into an apprenticeship contract, the minor has to obtain a grant from the prefecture. The requirements of the Conseil Général (County Council) and the Inspection Académique (Schools Inspectorate) can prove cumbersome. Experts commented that even when minors have a good academic record, enrolling in a general field of study could still prove difficult. One expert said: "The County Council would prefer that the youngsters register in short-term training, which makes it more likely for them to be granted residence permits by the prefecture office. So, they end up not enrolling in courses they are really interested in."

Indeed, vocational training lasting more than six months is mandatory for those who have turned 18, precisely with the view to obtaining a residence permit. The immigration bill foresees the possibility of the exceptional regularization of the resident status of minors who have been supported by child welfare services after the age of 16, if there is evidence of their "being registered for at least six months in a training course allowing them to obtain a professional qualification".

In **Hungary**, education is mandatory for all children under the age of 18. However, UAMAS find accessing education a real challenge. When they arrive in the country, they are usually between 14 and 18 years old – an age when they would normally be in high school. The problem is that most have not completed primary school in their country of origin and their level of knowledge is difficult to assess. To enrol in high school, a school leaving certificate attesting completion of primary education is required.

In practice, UAMAS and fUAMAS are enrolled in a local primary school (Kossuth Zsuzsa Gyermekotthon és Általános Iskola) where they attend classes separately from Hungarian children. With a school leaving certificate, children have a better choice of further

education, including vocational training. Former UAMAS who have reached adulthood and are benefiting from aftercare support services until the age of 24 have the possibility to finish secondary education.

The educational system for UAMAS seems to be well organized in the **Netherlands**. Upon the arrival of children in the asylum centre, they are registered at the regional First Reception School where they start attending classes within one month of arrival.

Children older than 12 years old attend secondary education. There are about 60 schools that offer first-reception education (sometimes called “Language School” or “International Switch Class”), which is geared towards newcomers. The focus is on teaching them the Dutch language, introducing them to Dutch society and preparing them for the regular school system.

The comings and goings of pupils in these schools is constant. On average, children spend two years in first-reception education, although those who are illiterate stay longer. Repeated relocations of minors can result in their being out of school for months (Goeman and Van Os, 2010: 67). When UAMAS turn 18, they are supposed to be allowed to finish the education they have started (Goeman and Van Os, 2010: 67). However, practices in various schools differ and evidence indicates that students who have turned 18 and lack residence status are not always allowed to complete their education.

This study identified some gaps in the system. Experts reported that appointments related to the asylum procedure and psychological issues led children to miss some of their classes. Some commented that since UAMAS are not issued work permits, their opportunities for internships or on-the-job training are limited, which means they cannot fulfil an essential requirement towards the completion of their education. This dilemma reveals a clear violation of children’s right to education and the policy of obligatory school attendance.

First Reception Schools, especially those located near large accommodations, find themselves having to take in large numbers of pupils sporadically. Since pupils can come and go without any warning, these schools have to cope with the financial and personnel consequences of fluctuating enrolment.

Nearly all UAMAS interviewed said that education plays an important role in their lives. Comments on schools ranged from “nice” to “very, very good for me”. One UAMAS said: “If only there were school on Saturday, I would be there instead of at home.” Another one said: “I’m happy to have the opportunity to learn and to build my future.” However, some respondents who were about to turn 18 were uncertain about how their education would bring about changes and what opportunities were in store for them.

Several fUAMAS recalled encountering obstacles to continuing their education after turning 18. One recalled being informed on his 18th birthday that he could no longer attend school. He said his guardian had a talk with him about his future and he was made aware of many things for the first time.

Another fUAMAS said he was able to continue his schooling after his VV-document (a temporary residence card for asylum-seekers) was no longer valid; however, two weeks before his exams, he was told that he would not get a diploma because he did not have a residence permit. It had to take the Dutch Refugee Council, the Nidos Foundation and his lawyer to convince the school to allow him to take the exams and award him a diploma.

In the Netherlands, enrolment of UAMAS in schools lies within the competence of the municipalities. Since their policies vary, UAMAS end up receiving unequal treatment. The problems become particularly acute when UAMAS relocate and have to attend a new school, and even more so when they turn 18. Despite the fact that the law allows fUAMAS to complete their education, schools may refuse to accept them since education is no longer compulsory at this age. The Nidos Foundation and the Dutch Refugee Council do exert influence and pressure on schools to accept fUAMAS.

Overall, experts had a positive assessment of the Netherlands’ educational system and its acceptance of children, regardless of their residence status, into their schools. They usually do not have to wait long before they can start school and they are educated full time. They are not discriminated against just because they are newcomers at the First Reception Schools, since their procedure plays no role in the type of education that they receive. They noted that a specific organization, LOWAN, serves as coordinator. They also stressed that the early learning of Dutch is crucial to helping UAMAS look to their future optimistically and enable them to start developing skills in a field of interest early on. Whatever the future holds, the minors can only benefit from this approach.

In **Slovenia**, UAMAS, refugees and persons with subsidiary protection are entitled to education at all levels on an equal footing with citizens. In practice, however, only a few applicants for international protection attend school since many UAMAS leave the country and disappear soon after arriving in the Asylum Home.

The overwhelming majority of UAMAS are older than 15 and do not attend regular elementary school with younger pupils. Instead, they study the Slovene language in the Asylum Home and attend the Centre for Continuing Education (Cene Štupar), an elementary school for adults and youth. The Cene Štupar offers basic courses in Slovene as a foreign language, which most UAMAS attend. After finishing this programme, children continue their education in mainstream secondary vocational schools. UAMAS and adults with recognized international protection status are entitled to attend up to 300 hours' worth of classes in Slovene, with the possibility of adding another 100 hours. The Interior Ministry pays for the courses.

Experts confirmed that Slovenia currently lacks a systematic approach towards education for UAMAS and that formal and informal training partly fills the gaps. Slovene Philanthropy has been calling for the introduction of preparatory courses for young people who would like to enrol in regular schools but the NGO is held back because of the newcomers' poor proficiency in the Slovene language.

In **Slovakia**, the law provides UAMs and UAMAS with the same access to education as it extends to its citizens. Education is mandatory for all children in the country regardless of nationality, citizenship or legal status. Compulsory education, lasting 10 years, starts the school year following the day the child turns 6, until the school year in which the child turns 16.

According to the Schooling Act, asylum seeking children (whether accompanied or not) below 16 years of age should be enrolled in school immediately after their previously attained education and their level of Slovak language proficiency have been assessed, but no later than three months after their asylum application has been lodged. However, legislation does not set out any guidelines in assessing previous education, so it is up to schools to handle assessment and placement. In practice, UAMAS below 16 years of age are placed in schools in the vicinity of the facility they are placed in. Frequent changes of minors' placement, which depend on the stage of their asylum procedure, keep them from establishing stable social contact and safe learning environment.

UAMAS above the age of 16 are difficult to be placed in a school due to lack of language skills and missing documents proving their previously attained education. One expert commented: "The truth is that not all schools are open to the idea of accepting foreigners yet." Former UAMAS over 16 years of age, who comprise the bulk of unaccompanied minors, generally perceived their stay in the asylum facilities as a waste of time. Since they were not enrolled in school, they found language classes in the facilities too infrequent. They also felt that teaching quality was poor. Many lost motivation and stopped going to class. In asylum facilities, basic courses in the Slovak language, financed by the Interior Ministry, are taught by primary school teachers a few hours a week.

One former UAMAS explained his dilemma: "Economics as a subject is not difficult for me, but I have to be able to understand Slovak. If it were in English it wouldn't be a problem at all."

Experts agreed that language classes, usually held in June, July and August, are inadequate and that there is no methodology behind the teaching. They rated the curriculum too general and textbooks too complicated.

A social worker at the Horné Orechové children's home proposed a more practical approach: "UAMAS should attend an intensive course of at least six months either in the Academy of Education [a private language school where some of the language lessons for UAMs in Trenčín take place] or here in this [Secondary Vocational School in Trenčín] school. Otherwise, their lack of any solid educational foundation poses problems." In fact, this vocational school, which is near the Horné Orechové children's home where internationally protected UAMs and minors are accommodated, is the only school that accepts UAMs and fUAMAS above 16 years of age. Here they are integrated in classes with young people from Slovakia and are able to build social networks.

Every child residing in the **United Kingdom** has the right to enjoy and pursue an education. In England, children asylum-seekers and refugees have access to the same schooling that is available to other children. Furthermore, Section 14 of Education Act 1996 states that all children of compulsory school age – up to age 16 in the UK – who are residing in accommodations run by local authorities should receive suitable full-time education.

All unaccompanied young people under the age of 18 are entitled to take English for Speakers of Other Languages (ESOL), a free course designed for those who have moved to the UK. All but two of the UAMs interviewed were studying ESOL at different levels at Further Education (FE) colleges.

All fUAMAS interviewed had moved on from studying English and were now taking a broad range of subjects including information and communications technology, business, accounting and health and social care.

Most of the professionals interviewed agreed that UAMs should give learning the language utmost priority upon arrival in the UK; otherwise, it would likely lead to lower educational attainment and failure to gain placement in future courses.

More than half of the young respondents said that their arrival in the UK afforded them the first opportunity to develop their skills through formal education. The rest had either attended a form of religious education or had completed a few years of primary education.

Most young people in the UK study in secondary schools until they are 16 years old and take their General Certificate of Secondary Education (GCSE) in a wide range of subjects before leaving. After the age of 16, many continue their education for two years in sixth-form colleges, which are often attached to schools and offer a variety of Advanced Level (A-Level) courses, which serve as preparation for university or employment.

Other young people continue to study in a Further Education (FE) college upon turning 16. These institutions also prepare young people for work or further study, but tend to be larger and offer a broader range of courses including vocational options. The majority of UAMs who arrive in the UK aged 16 or above are placed in courses for the 16–19 age group in FE colleges. Many of these colleges offer full- or part-time English language classes.

Education legislation stipulates that local authorities have a duty to provide pre-school education to children below 5 years old and to provide full-time education to all school-age children between 5 and 16 years old who live in their area. Unaccompanied children should be placed in full-time education in a local mainstream school within 20 working days of their arrival. Among 26 young people interviewed, only one was able to access education upon arrival in the country. All the others had to wait one to four months. Many found the average waiting time of three months difficult.

All asylum-seeking children aged 18 and below – usually 16 or 17 – are eligible for Learning and Skills Council (LSC) funding to study in FE colleges as home students as soon as they arrive in the UK. However, if they are awaiting a decision or have a temporary status such as Discretionary Leave to Remain, as is the case with the majority of unaccompanied children in the UK, they are not eligible for Educational Maintenance Allowance (EMA), which is a means-tested form of financial support paid to young people from low-income families attending FE colleges.

The Government is currently completing plans to withdraw EMA from educational provisions. Although this is bound to affect every EMA recipient, it will have a disproportionate impact on unaccompanied children who do not have parents or care persons to help support their studies. Asylum-seekers aged 19 and above are required to wait six months before being eligible for a home student place in FE colleges. They are not eligible for Learner Support Funds for students, nor are they entitled to fee remission if they enroll in an LSC-funded course.

Unaccompanied young people aged 16 to 17 in the care of local authorities in the UK should each have a “pathway plan” that takes into account every possible outcome of the asylum request. The plans are prepared by social workers in consultation with the child and other relevant professionals. In considering course options, young people would have to bear in mind that local authorities may not consider it reasonable to provide financial support towards an educational programme that could last beyond their permitted period of stay in the UK (Rice and Poppleton, 2009: 29).

The situation regarding higher education is more complicated. In the United Kingdom¹⁹ unaccompanied young people and those with Discretionary Leave to Remain are charged international student fees, which are considerably higher than those charged to home students. A small number of universities have decided to waive fees for young asylum-seekers, but even the fortunate few who manage to obtain one of these highly coveted places can find enrolment difficult because their original documentation would have been sent to the UK Border Agency as part of their application to extend their Discretionary Leave to Remain.

Even those with Refugee Status or Indefinite Leave to Remain find their situation fraught with difficulties. The lower home student fees for which they are eligible are set to increase to anywhere between GBP 6,000 and GBP 9,000 a year starting in September 2012. Some are concerned that those with Refugee Status, which is generally valid for five years, may not be granted the much larger loans needed to cover these student fees.

Moreover, if refugee applicants are denied their request halfway through their courses, they will not be able to progress onto the next course level and will be considered as having dropped out of school. Consequently, universities are reluctant to take in young asylum-seekers as students. The few universities that do accept home students do so at their own discretion.

¹⁹ However, in Scotland, legislation has stipulated that any child who has been in full-time education for three years, regardless of immigration status, should not be charged international fees to study in Scottish universities.

Interviewed youngsters complained about not having been advised on navigating the complex admission and student loan system. One minor said: “Last year, I applied to get a place at university and thought everything was all right because I already had A-levels from my own country. But it turns out these are considered GCSE equivalents here, so I wasn’t accepted. No one seemed to have been aware of this.”

This sense of confusion was echoed by another former UAM who said: “If someone had only clearly explained the whole situation to me at the start, instead of simply encouraging me to apply, I wouldn’t be in this situation right now and maybe things would have been different.” One expert said: “Access to higher education is a huge problem – the policies aren’t clear to most people who work with young refugees and asylum-seekers who need all the professional advice and guidance they can get.” Another expert added: “What we really need is policy change. Student asylum-seekers shouldn’t be charged international student fees. The recent changes that will place these young people at a disadvantage should be reversed.”

13.4 Specialized versus mainstream schools

Experts are still debating whether it is better for UAMAS to be integrated into regular, mainstream schools or to attend specialized education facilities. Just as with accommodation facilities, both approaches have advantages and disadvantages. Specialized education is better placed to address this group’s special needs but curtails opportunities for growth and development such as exposure to the host country language.

A minor in **Hungary** commented: “I started school in September and I find it very good. I study all the other subjects besides Hungarian. I’m not studying in the same class as Hungarians, but I sometimes think it’s better, because if I don’t understand something I can ask the teacher who then tries to answer in different ways until I do.” A minor interviewed in the **Czech Republic** said: “I would like to have more contact with Czechs. Since moving to Permon, where I go to school for foreigners, I have not made a single Czech friend.”

At the same time, this assessment found that mainstream educational facilities are often not allocated the human and financial resources necessary to effectively integrate UAMAS into their programmes (National Coalition Austria, 2004: 27). Specialized teacher training, for example, is often lacking. This explains why schools cannot be as open and forthcoming as they would like to be in this matter. Instead, they often resort to using existing rules and regulations to justify why enrolment is not possible. There also seems to be ample room for schools to decide whether to accept a child or not.

UAMAS and fUAMAS who manage to be accepted in mainstream schools benefit considerably from the experience. An Afghan respondent in **Austria** was pleased about having gone to a “mixed school”, saying: “It was good to be in a class with many Austrians. The biggest advantage was that I was able to pick up [the] German [language] easily. If I had gone to school only with Afghans, I would have spoken only in Dari.”

Similarly, as revealed in the interviews in the **Czech Republic**, UAMAS and fUAMAS who attended mainstream schools interacted more closely with Czech society than did their counterparts in specialized schools. One student said: “Some of my school friends are Czech. During a two-hour break after the morning lecture, we go to the library, chat and get ready for the next class. We are in touch all the time.”

Still, just because UAMAS and fUAMAS attend the same school does not always automatically bring about integration. Some UAMAS in the **Netherlands** said that even when they were in mixed classes, they had almost no contact with their Dutch classmates and some felt a sense of exclusion. “We just wave to each other,” one said.

From the perspective of the country’s children, experts pointed out that it could also prove frustrating for them when the pace of lessons has to be slowed down in consideration of the needs of newcomers.

13.5 Motivation to learn versus need to work

Several experts commented on the children’s motivation – or lack thereof – to pursue an education. One expert said: “Not all children come to the Czech Republic intending to enrol in school. We try to convince those who came mainly to work that although it’s good to be able to buy things, studying opens more opportunities to fulfil their dreams.”

They also noted that children who apply for asylum are often under pressure to earn a living. “The basic problem is that they have to pay off debts they incurred from their journey to the Czech Republic. Some of them study just to get the residence permit, and once they have it, they go off to look for work.”

Several experts also felt that the uncertainty surrounding UAMAS makes it difficult for them to concentrate on their education. Some noted that after being highly motivated initially, many young people become discouraged, lose interest and motivation and stop going to school. Experts in the **Netherlands** observed that in the past, the motivation of UAMAS to attend and excel in school used to be much higher than it is now, possibly because the chances of building a bright future in the country have become more modest.

Some experts in **France** reported, however, that UAMAS are strongly motivated and are highly aware of the fact that they have to perform well if they wish to stay in the country.

This assessment revealed that access to education is particularly difficult for UAMAS and fUAMAS who happen to be parents. Their parental obligations and the lack of day-care arrangements for their children seem to be the major constraints. So far, Belgium’s Kirikou childcare centre seems to be one of the few promising practices in this area.

13.6 Absence of systematic approach and implementation protocols

The preceding examples illustrate that in many EU Member states serious efforts are under way to integrate UAMAS into the educational system. However, practical results often fall short of international standards.

This assessment noted the lack of a systematic nationwide approach towards the education of UAMs in several countries. In practice, only certain schools are willing to enrol UAMAS. Legal provisions guaranteeing UAMAS enrolment beyond obligatory schooling seem to offer ample room for interpretation and for de facto denial of access. This results in unequal treatment of UAMAS and in limited choices of education and professional training.

Interviewed experts also pointed to the many different administrative obstacles that inhibit UAMAS and fUAMAS from continuing their education. Some countries, for example, insist on seeing proof of previous education which UAMAS often cannot obtain – sometimes because any official contacts with their home country could also interfere with a potential asylum claim.

Practicality often wins over all other considerations, including the child’s best interest, with youngsters being directed towards short-term vocational training rather than longer-term education or university studies. The location of the accommodation facilities also plays a factor in the search for suitable education for UAMAS and fUAMAS.

Lack of funds also acts as a barrier to following the educational path of choice. In fact, this study identified numerous cases of UAMAS not having sufficient funds for books, educational materials and extracurricular activities such as school excursions. An anxious young adult in **Austria** who had just been admitted to a private secondary school specializing in tourism said: “The accommodation facilities where I’m staying cannot cover the costs of my studies so the management is trying to help me look for funding. Otherwise, I cannot take care of the expenses costs myself.”

Experts were unanimous in asserting that knowledge of the host country language holds the key to opportunities for further education and integration. However, several countries identified serious gaps in the provision of language courses for UAMAS such as lack of resources for teachers and underdeveloped methodologies and education materials including textbooks geared towards UAMAS.

Experts also noted that UAMAS, especially in closed facilities, have limited opportunities to meet and interact with people from the host country and to practise their language. With every relocation, they have to build social contacts all over again. They end up socializing mostly with other asylum-seekers, especially from the same ethnic group.

Young respondents in several countries reported that because of their poor command of the host country language, they had to struggle in school and could not pursue their preferred choice of education. This assessment identified a tendency to steer UAMs with poor language skills towards vocational training. One fUAMAS in **Slovakia** commented: “In the children’s home in Horné Orechové, I was not asked what I wanted to study. It was decided for me. It makes me sad that they sent me to learn how to paint walls even though I didn’t want to. Later, after six months when they saw that I could do it and that I was smart, I was pressured to change my main course of study.”

One of the key reasons why many UAMs do not manage to attend regular secondary schools is that their age, educational background and their low level of proficiency in the host country language often do not match the requirements set out by the educational curriculum.

In many countries, schools usually accept UAMAS and fUAMAS provided they are not more than two years or so older than the class average. One adolescent in **Austria** related the uncertainty of her being accepted to Gymnasium (college): "I have passed the entrance examination but I will soon turn 18 and I don't think I will be accepted in the end because I'll be found too old."

Many experts felt it more advantageous for UAMAS to enrol in vocational training, which could potentially prove more useful in case they had to return to their country of origin. However, putting this into practice is not as easy as it sounds because of the near impossibility of obtaining a work permit enabling youngsters to undergo on-the-job training – an integral part of vocational training. In addition, as mentioned earlier, vocational training may not be in accordance with the wishes of the child.

14 Employment

The CRC stipulates in Article 32 that States Parties shall protect children from any economic exploitation and hard work that would interfere with their education or would be harmful to their psychosocial, moral and physical development.

According to the Reception Conditions Directive (Art. 11), Member States shall determine a period of time, starting from the date the asylum application was lodged, during which an applicant shall not have access to the labour market. If no decision on the asylum application has been taken within 12 months, access to the labour market shall be granted (Art. 12).

This access, however, can be subject to limitations and conditions, such as quota requirements. Moreover, Member States can decide to give EU citizens priority access to the labour market. According to Article 12 of the Reception Conditions Directive, Member States may allow asylum-seekers access to vocational training whether or not they have access to the labour market.

Access to the labour market is regulated differently across countries in this sample. Generally, national laws prohibit employing children below 15 to 16 years of age. In some countries, such as the **United Kingdom**, exceptions are made for so-called “Saturday jobs”, such as helping in a shop or delivering newspapers.

Generally, UAMAS who have passed the age threshold can work under the same conditions as adult asylum-seekers. This means that in most countries, they can access the labour market, but only after a certain waiting period. Even then, access to the labour market could be conditional on obtaining a work permit. The work permit could, in turn, be subject to quota restrictions or other limitations – such as a maximum number of weeks a year or the nature of the employment.

In **Austria**, UAMAS are allowed to start working three months after lodging an asylum application. However, they can have access to the labour market only if they hold a work permit, which is subject to quota restrictions and is difficult to obtain. Although fUAMAS and fUAMAS who have been granted subsidiary protection or refugee status have free access to the labour market, they face a whole range of practical difficulties.

In **Belgium**, UAMAS can work if they are enrolled full time in an educational curriculum or have finished their studies. They have to be duly registered at the Foreign Office and hold a student contract. Just like any other Belgian student, they cannot work during school hours; they are allowed to work only on school holidays and need special authorization to work during the year. UAMAS can work only up to 20 hours a week, ensuring that there is no conflict between their work and school schedules.

In the **Czech Republic**, asylum-seekers including UAMAS can start working one year after lodging an asylum application.

France allows UAMAS access to the labour market only through a work permit which is granted by prefectures. This study found that departments (administrative divisions) follow different practices in granting permits. UAMAS often have to present an employment contract as a precondition for obtaining a work permit. It seems to be a vicious cycle.

In **Hungary**, only minors with an international protection status can enter the labour market. Most work regularly, mainly in the afternoons after school hours. Experts observed that fUAMAS spend part of their earnings on food, clothing and leisure activities, at the same time helping their families financially in the country of origin. One expert said: “This dual role is a real burden for them: as adolescents, they are trying to complete their education. But supporting their families means they have also taken on the role of adults.”

Young people 16 years and above and legally remaining in the **Netherlands** (including those with a pending procedure) are allowed to work in the formal labour market a maximum of 24 weeks a year. The number of hours worked in a week – whether it is one hour or several hours – does not matter. This condition is extremely limiting, usually leaving UAMAS no other choice but to take on unskilled seasonal work in the agricultural and horticultural sectors. Part of the earned income of UAMAS goes to the Central Agency for the Reception of Asylum-seekers (COA) as their contribution to living expenses (Klaver and Tromp, 2003: 60). Once UAMAS have been granted asylum, they are permitted to work without the earlier restrictions.

In **Slovakia**, UAMAS below 16 years old are not allowed to work. Minors over 16 are allowed to work once they have received a final positive decision on their asylum application or if the decision on their asylum application takes longer than 12 months after the lodging of the asylum claim. If UAMAS are granted subsidiary protection, they can look for a job provided they have a work permit, which, however, is valid only for full-time employment and not for seasonal work. During the course of this research, there were no UAMAS working in Slovakia.

UAMAS in **Slovenia** can start working nine months after lodging an asylum application if at this point the relevant authority has not yet taken a decision on the case and the delay cannot be attributed to the applicant. In such a case, UAMAS must obtain a work permit, which is valid for three months with a possibility of its extension or cessation once the international protection procedure is concluded. Former UAMAS who have been granted refugee status are issued a work permit that is valid indefinitely. Those with subsidiary protection receive a work permit valid for the duration of that protection.

In the **United Kingdom**, UAMAS and fUAMAS with Refugee Status or Discretionary Leave to Remain have the right to work. Those still waiting for an initial decision after 12 months can, like all asylum-seekers in this position, apply for a work permit if they can prove that the delay in decision-making lies in the competent authorities. Even then, a work permit is granted rarely, and there are no appeal mechanisms in place.

This study found that some children are keen to gain speedy access to the labour market and earn a living. Their motivations vary. Some simply want to have the money to spend as they wish, for example on sport club memberships and other leisure activities. In **Austria, Hungary, Italy** and the **Czech Republic**, some said that they had to repay debts they incurred for the journey to the Member State or that they wanted to support their families back home.

Accounts from **Belgium** and **France** suggest that children frequently opt for short apprenticeships and training so they can earn some money as soon as possible and because authorities are more likely to support their enrolment in short vocational programmes. This also improves their chances of having a stable job eventually since they are able to refer to actual working experience. They could even be hired at their place of apprenticeship.

In interviews, children and their caretakers bewailed the generally limited opportunities of fUAMAS to be employed in regular jobs. Bureaucratic obstacles and lack of written documentation on their previous education and vocational training were just some of the many frequently cited practical difficulties in finding employment. Respondents noted that having a job empowers adolescents, improves their psychological health and well-being, and boosts their self-confidence. Many fUAMAS said having a job is an important means of coming into contact with other people.

Interviews in this study revealed that children often feel uncomfortable living at the expense of the host society. One UAMAS in **Austria** said: "Since I live in Vienna, I need to do something for this city." A young person in **Slovakia** said: "Everybody wants to live their own life. I'm ashamed about the fact that I have to be given EUR 120 a month." Still another, in the **United Kingdom**, said: "I want to be able to work so people don't have any reason to say I am just taking in benefits."

These sentiments might well be related to different cultural perceptions of pride and honour and concepts of childhood. Children often start contributing to the family income in the country of origin at an early age. They find it difficult to understand why they should not be able to take up the livelihood they had back home. A minor in **Austria** said: "As a child in Afghanistan, I was a tailor. That's what I could do here as well."

Related to this, accounts from **Italy** and **Slovakia** suggest that young people are often unrealistic in evaluating their own abilities and the job market in the host country. One Italian expert reported: "Many of the children have worked in their country of origin for many years and they can have excessive self-confidence in their work capabilities. When they are offered an apprenticeship contract, they often refuse because they feel the pay is too low and the type of work is not in line with their aspirations."

However they envisage their future, UAMAS soon become aware that foreigners face problems accessing the labour market all across the EU Member States. Among these problems are:

- Their often imperfect command of the state language places fUAMAS at a severe disadvantage.
- In certain countries, such as Austria, employers that offer vocational training are interested in younger apprentices, usually in the 14–15 age range.
- Former UAMAS have less education than the country's nationals so they cannot compete on the job market.
- Many UAMAS and fUAMAS also reported feeling discriminated against on the labour market.

The following comments from UAMAS and fUAMAS provide an overview of the real obstacles they face:

"I do not have the same chances on the labour market as a local person." (**Austria**)

"My chances of finding a job are minimal. A friend of mine who finished university has been looking for a job for two years. He never

even managed to get a student's job. He was always told off for having insufficient Czech – but speaking perfect Czech is a big problem for someone who wasn't born here." (**Czech Republic**)

"I've been looking for work for six months now and I still haven't found anything. There were available positions, though. I felt like they didn't want to employ me because I'm black." (**Czech Republic**)

"People hesitate to hire you, and they won't give you a permanent contract. Then they give the job to someone else as soon as they can." (**United Kingdom**)

At the same time, this assessment also came across situations, as in **France**, when employers were keen to provide employment opportunities to fUAMAS, considering them motivated and committed to succeeding on the job

Given the complex legal framework governing access to the labour market, employers are not always familiar with the rules and regulations behind the hiring of people with a certain legal status such as those with subsidiary protection. It often falls on the UAMAS to prove to a prospective employer that they have a right to work.

Unfortunately, the many legal and practical roadblocks to entering the formal labour force encountered by many UAMAS and fUAMAS leave them no recourse but to join the informal labour market, which is characterized by non-compliance with labour standards and safety regulations (see Andrees et al., 2008).

Interviewed children and young persons are often well aware of the less than ideal situation in which they find themselves. "You get abused in informal jobs. I got paid GBP 30 for 12 hours' work. When they know you have no papers, they treat you like an animal, saying, 'You are a problem because I will be fined for hiring you.' But they employ us anyway because they know they can pay us less," said a fUAMAS in the **UK**.

In the **Czech Republic**, one fUAMAS reported on inadequate protection measures at a construction site where he was working as a minor 11 hours a day: "My co-workers who were hired legally wore all kinds of body protection. All I had were gloves; no one gave me a helmet. Construction workers should wear ear and eye protection gear when they drill, but I had nothing."

Reflecting on his chances on the labour market, a youngster said: "I work 11 hours a day even though I know that it should just be eight hours according to Czech law. The wage is not the best either. But my chances on the market are terribly poor."

15 Former UAMAS: What has changed?

UAMAS are considered “former UAMAS” (fUAMAS) when they have reached the age of majority²⁰ (18 years of age) and they are no longer minors, or when they are no longer asylum-seekers because the asylum-seeking procedure has been terminated or concluded. The loss of UAMAS status affects the lives of young people in a number of significant ways. Information from most Member States suggests that this transition is associated with drastic changes and major disruptions, often for the worse.²¹

The paramount issues are: Can fUAMAS regularize their stay in the Member State or can they still do so? How secure is their residence status, if they have it at all?

There are a number of ways of regularizing their stay, and residence status carries with it varying degrees of security. Young people can end up:

- with a regular and secure residence status (for example, recognized refugees);
- with a regular status that is less secure (subsidiary protection holders);
- with no regular residence status at all and being simply “tolerated” because they cannot be forcibly removed;
- being liable for deportation.

The assessment team took pains to distinguish between the various categories of fUAMAS but found it was not always possible to do so because rights and entitlements often intersect in complex ways with the residence status and age.

15.1 Turning 18

For most persons seeking asylum, turning 18 implies far-reaching changes: they normally lose the protection and standards of care that they once enjoyed – or were at least entitled to – as minors.

In some countries, there is a sharp contrast in pre- and post-18 support, even for those who do manage to regularize their stay.

Finding themselves with reduced formal support, fUAMAS now have to rely more heavily on their personal networks. They are often helped by people who were already in the picture when they were UAMAS, such as guardians, care workers, teachers, church officials and volunteers.

The consequences of turning 18 sparked a great deal of negative commentary among professionals who took part in this study. They bewailed the fact that from one day to the next, adolescents and young adults are confronted with the loss of support systems that had sustained them in the past.

Criticism was most harsh concerning care and accommodation, where changes are most felt. In numerous Member States interviewed, UAMAS and fUAMAS were concerned that their reaching the age of majority had now lessened their chances of regularizing their residence status. Young adults whose asylum procedure has had a negative outcome are undoubtedly among the worst affected by the changes: they can now be removed from the territory of the Member State.

Several countries urged that more robust assistance be provided to UAMAS and fUAMAS especially upon their reaching the age of majority when they lose the protection and assistance they once had as children and their residence status changes. Often, the limited support that fUAMAS have access to is hardly sufficient for their basic expenses, which sometimes leads to their becoming homeless.

15.1.1 How UAMAS are prepared for impending changes

In several countries, UAMs do not seem to be adequately prepared for life outside accommodation facilities. While some are aware of impending changes to a certain extent, many felt they are not given sufficient warning and preparation.

In most of the countries in this study, care staff did discuss the changes related to the minors’ turning 18, but young people still did not seem to be fully aware of the workings behind the asylum procedure, guardianship, family tracing and reunification.

²⁰ A person can also be conferred age of majority status by the court or upon marriage.

²¹ The scope of the study did not encompass some aspects of the lives of fUAMAS, including their access to health.

Interviews with experts revealed that children often have unrealistic expectations about salaries and the cost of living in the “real world”. An expert from **Slovakia** commented: “The boys thought that even without an education, they could find a job in Bratislava that would pay thousands of euros. It came as a huge disappointment when they realized this was not to be.”

Former UAMAS reported that they wished they had been informed much earlier about what to expect so they could have prepared themselves better for the changes. Interviewed experts called for a more consistent and systematic approach to filling this information vacuum.

15.1.2 Changes in accommodation and its consequences

Upon turning 18, most young people without a final decision on their asylum procedure have to leave their accommodation and move to facilities for adult asylum-seekers. In some countries, for example in **Austria**, there are specialized accommodation centres for young asylum-seekers who arrived in the country as minors.

Interviewed professionals were especially critical of the practice to abruptly transfer young people to accommodation facilities for adult asylum-seekers where the care is less intensive and the specific needs of fUAMAS cannot be addressed. They found it unfortunate that more appropriate structures for fostering the independence of young adults are not available, such as supervised shared flats that care workers could visit once a week. The relocation also leads to a loss of established social networks and special assistance for children.

In rare cases, young adults, upon turning 18, are allowed to stay in the accommodation for UAMs for an extended period – provided that the young adult is undergoing some kind of education, enough rooms are available, and the facility can recoup the limited funds allocated for the accommodation and care of adult asylum-seekers.

One fUAMAS in **Austria** who had to move to large accommodation facilities for adult asylum-seekers said his living conditions had worsened: “I live in a small room with someone my age and I am allowed to do the laundry only twice a month for two hours. Before this, I lived in a supervised setting which I liked very much. We were 13 boys and our care worker was really nice to us. He organized football matches and we had a lot of fun.”

However, other youngsters said that moving into specialized accommodation facilities for young adults changed their living situation for the better: “I feel good. There are no rules about when I have to clean, for example. I feel free.” Young adults with subsidiary protection or refugee status can also live on their own in rented flats, but these are usually unaffordable. Experts reported that due to the high cost of living, UAMAS and fUAMAS often live in unsatisfactory conditions.

In **Belgium**, refugees and persons with subsidiary protection, including minors, have to leave the reception centre within two months following the granting of protection status. The announcement of the final decision on the asylum application triggers a series of fast-paced developments, often unexpected. Young people often have to interrupt their studies. Refugees and persons with subsidiary protection who are minors have to look for accommodation on the housing market; they and their guardians are under great pressure to come up with a suitable solution, which is not easy.

Experts reported that people with international protection status are viewed with mistrust and are confronted with “hidden racism” – such as being quoted high prices for accommodation and being turned down since they cannot present any evidence of regular income.

One fUAMAS found himself out on the streets on his 18th birthday. He recounted: “I would have liked to know what to do once I got my papers. I could no longer stay in the reception centre but at the same time I could not find housing, so they put me out on the street! There I was, two bags and no place to go to, no work and I couldn’t speak Dutch very well. I was miserable. The reception centre said I should go to the OCMW (the Public Centre for Social Action) where I was given a room. One month later, I finally found a studio apartment and it was only then that I could ask for financial help and other support from the Belgian public administration.”

Once minors with international protection move out of the reception centre, they can request financial and administrative assistance at the Public Centre for Social Action. They still have the support of their guardian, who at this point is the only person remaining from their previous arrangement.

A guardian can turn to youth services for additional help for the UAMAS through the system of accompanied autonomous living, for example. Within this scheme, social assistants visit fUAMAS regularly and check to see if they are able to prepare their food,

read their mail, pay their bills and carry out other aspects of daily living. When they have learned to manage their lives on their own, the assistance comes to an end. There is a waiting list of one year or more, however. Those with protection status who do manage to join the system can benefit from it, sometimes until they turn 18.

Minors with international protection can sometimes stay on in the neighbourhood of the reception centre and continue going to the same school. In these situations, teachers in the school can serve as an important source of support for the minor.

Through subsidies from the Federal State, some NGOs and associations focus on assisting fUAMAS with refugee status, a group that has been identified as having specific needs.

In the **Czech Republic**, most fUAMAS legalize their stay in the country one way or another. If they are over 18 years of age and have been systematically preparing for their future by attending high school or university, they may stay in the Facility for Children of Foreign Nationals until the age of 26.

Former UAMAS who decide to leave the Facility upon turning 18 usually rely on the support of NGOs that they have come to know because of their plight. NGOs play a crucial role in the integration of young adults into the country by helping them in their search for housing and employment, handling social benefits and contacting authorities. An NGO lawyer is usually available to answer questions regarding residence issues and documents and may also look into the legitimacy of rental and employment contracts. However, the level of services depends on available funding, which is often uncertain.

Those who choose to rent reasonably priced housing tend to share it with a few other people, often coming from their own community. Another alternative are shelters for young refugees where two fUAMAS interviewed were housed. Some who chose to look for their own housing after leaving the Facility for Children of Foreign Nationals did not mention any problems.

Former UAMAS in the Czech Republic can turn to the social curator for adult foreigners in their residence. Social curators provide basic counselling to persons who have experienced social expulsion, such as those who have been turned away from an institutional education. However, young people often do not know how to go about seeking their help and may not have full trust in them.

In **France**, UAMAS who are cared for by the child welfare services may benefit from the “*contrat jeune majeur*” [young adult contract]. “*Contrat jeune majeur*” is a key measure which supports minors turning 18 (French or foreign, UAM, UAMAS, and so on) and who are cared for by the child welfare service. In order to benefit from a “*contrat jeune majeur*”, the young adult has to present his/her plans for the future. If the child welfare services accept to sign the contract, fUAMAS are provided with accommodation and financial support until they turn 21. While the “*contrat jeune majeur*” is aimed at facilitating the integration of fUAMAS in France it may be very difficult for fUAMAS to benefit from it. One reason for this is that these contracts are signed primarily with fUAMAS who have been cared for by child welfare services before they turned 16. However, most UAMs arriving in France are between 16 and 17 years old..

In **Hungary**, UAMAS who reach adulthood in the course of the asylum procedure are transferred to an adult refugee reception facility. Minors with an international protection status are taken under permanent care and continue to reside in the same facility as UAMAS. They have the possibility to be accommodated in aftercare homes (although places are limited) and to obtain financial help from child protection services for their living expenses until the age of 21 if they are working, until the age of 24 if they are attending high school, and until 25 if they are in university.

To a lesser extent, fUAMAS with international protection status are also eligible to apply for different forms of financial support stipulated in the Asylum Act.

In **Italy**, minors can stay in the accommodation centre for about six months after reaching the age of majority. Through the “*Bridging Project*”, young adults can be placed in semi-autonomous flats before they turn 18 years old and later in SPRAR Centres (Protection System for Asylum-seekers and Refugees) for adults. Some municipalities, for example Rome and Pordenone, run their own projects providing fUAMAS with housing, mostly in shared flats.

In the **Netherlands**, all UAMs are entitled to accommodation, assistance and a guardian until the age of 18. Once they turn 18 and have received a final negative decision on their asylum application, this assistance stops.

Many fUAMAS with positive decisions on their asylum application recalled that their transition did not go smoothly in terms of accommodation. Most had to leave their place of residence and take care of their own arrangements. Turning 18 meant endless worrying about where to live next. Sometimes the Dutch Council for Refugees (DCR) or the NGO World House helped them in

their search, with the DCR taking care of their living expenses. Sometimes they were taken in privately by concerned citizens, including priests and teachers. In the Netherlands, a fUAMAS and her two children who were transferred to an asylum centre had to share a tiny room with someone else.

In **Slovakia**, UAMAS in ordinary children's homes are generally required to leave after turning 18, although discussions are ongoing about whether this is the only permissible interpretation of the law. In 2010 a court decided against extending the stay of a fUAMAS in the children's home. UAMAS who are in asylum facilities when they turn 18 and whose asylum procedures are still in progress are allowed to stay in the asylum centre for adults until their procedure has legally ended.

There are no special provisions for fUAMAS. The degree of state support depends on the type of residence status. Recognized refugees – those who have been granted asylum – receive the most help. Those with regularized residence status have the same access to social benefits, material and financial support, educational opportunities and social assistance as do other foreigners with the same legal status.

Adults who are recognized refugees, including fUAMAS, have the right to a six-month stay in an integration centre in the town of Zvolen with the possibility of extending it to one year. A social worker in the centre assists them in the initial phase of the integration process. They are offered a Slovak language course and material support.

Once fUAMAS with granted asylum leave the integration centre, they have to be relatively self-sufficient. Although they are entitled to some social benefits, these are not sufficient to cover their housing, food, health care and other basic needs, according to interviewed assistance providers. To supplement this public assistance, they can also apply for financial and material support from NGOs that are implementing ERF projects for the integration of refugees and subsidiary protection holders. However, this support is limited and temporary and dependent on project-based funding. NGOs are able to help, but usually only towards covering rental expenses. In addition, a few low-cost flats at the disposal of the Migration Office can be offered to recognized refugees after they leave the integration centre.

Former UAMAS with subsidiary protection are not entitled to this type of state assistance – they have to rely on their personal skills and abilities, social networks and NGO assistance. In addition, they need a work permit to enter the labour market, whereas recognized refugees can work without a work permit.

An NGO expert said: "We managed to obtain monthly child benefits of EUR 21.99 for UAMAS but otherwise they don't get anything from the state. Since the Slovak Humanitarian Council pays for their rent, which counts as their income, they are not eligible for any social welfare benefits."

The support systems for subsidiary protection holders are negligible. The state does not consider the integration of this particular group a priority as they are expected to return to their countries of origin once the reason for granting them this protection ceases to exist. Subsidiary protection holders rely on NGOs, especially the Human Rights League and Slovak Humanitarian Council, for support in accommodation, food vouchers and pocket money.

In **Slovenia**, UAMAS are informed in good time by their legal guardian and the psychosocial service of the Asylum Home that they will be moved to the department for single men or single women in the Asylum Home. Both experts and fUAMAS say the move is not a major change since all departments are within the same institution. Besides, according to the head of the Asylum Home, the treatment and psychosocial assistance provided to international protection applicants is tailored according to the level of their vulnerability – regardless of whether the applicant is a minor or an adult.

Though now officially considered adult migrants, in practice fUAMAS still enjoy access to higher standards of care and protection than other adults. One expert said: "Authorities are well aware that the change of age is merely formalistic; it does not change their situation."

Minors with international protection are moved to the Integration House in Ljubljana, which has three apartments. A major shortcoming of this arrangement is that there are no professional personnel to provide continuous psychosocial care. Residents are visited by the integration counsellor and guardians only occasionally. Former UAMAS can reside at the Integration House for one year regardless of age, with the possibility of another six-month extension if they are still deemed seriously vulnerable.

Minors who prefer to stay in a rented apartment rather than at the Integration House must have their decision supported by their guardian and integration counsellor, who continue to guide them. They receive financial support of up to a maximum of EUR 230 from the Interior Ministry to help pay the rent.

In the **United Kingdom**, fUAMAS except those who have exhausted their appeal rights are entitled to the same treatment as British nationals over the age of 18. The Children (Leaving Care) Act 2000 Act spells out additional functions of local authorities regarding young people who have recently left the care of local authorities, or about to do so. The Act asserts that young people, until they reach their 21st birthday, should be helped to prepare the way for their leaving officially provided care. Taking them through the planning and design process of an individual “pathway plan” is a crucial part of this preparation.

The pathway plan maps out various stages and provisions enabling the young person to make a smooth transition from local authority care to independent living. The Act also obligates local authorities to appoint a personal adviser for every individual who is entitled to a pathway plan. The responsible local authority shall safeguard and promote the welfare of these young people and, if necessary, support them by ensuring that they have suitable housing, for example. Because the onus is on local authorities to perform “corporate parenting”, these young people do not have to resort to applying for benefits.

The majority of fUAMAS are provided with Leaving Care Personal Advisers who support them through the care-leaving process. One 18-year old girl with Indefinite Leave to Remain said of her Adviser: “He was simply the best; he helped me with everything that I didn’t understand regarding benefits.” Another one reported: “It’s good having more independence – it’s also helped my confidence grow. My Personal Adviser helped me find housing after I had failed to find anything on my own for a month.”

15.1.3 Changes in access to education

Former UAMs often have to relocate, but even when they stay in the same location, their changed circumstances and living conditions often lead them to drop out of school altogether.

Administrative obstacles are evident in the **Netherlands** and the **United Kingdom**. In the **Netherlands**, schools turn away fUAMAS when they cannot produce certain documents. It emerged from most interviews that the acceptance or rejection of fUAMAS is at the school’s discretion. Schools cannot be forced to accept fUAMAS since they are older than 18 and are not required to attend school. This attitude clearly goes against the spirit of the law, which stipulates that fUAMAS have the right to finish the education that they started before they were 18 years old.

Without exception, young people regretted having had to discontinue their education and spoke about its devastating impact on their future. Figuring out how to return to school was uppermost in their minds and was the source of much distress.

In countries where post-primary education is not free, fUAMAS often find it difficult to find financial help. In the **United Kingdom**, one fUAMAS confirmed that after completing the first year of an engineering course, he could not continue the following year. “I had turned 19 and didn’t have status¹⁷ and I was being charged international student fees,” he said.

Young people interviewed invariably felt that leaving college or university could only be a step back in progress. One former student said: “When you have to leave college, you have nothing to do.” Another one added: “College is a nice place for learning, and when you get kicked out, you resort to smoking, weed and drugs.”

Those whose asylum applications are turned down while still considered minors and who start applying for an extension of their Discretionary Leave to Remain also find themselves neglecting their studies. One UAM in this situation said: “It’s hard to concentrate on school if you’re anxious.”

Facilities for adult asylum-seekers hardly offer any private, quiet spaces to enable concentrated study. Computers and Internet access are often not available. School assignments are seldom supervised and special assistance is not available (see Fronek, 2010: 82–184 for a discussion of the situation in Austria). As summed up by a social worker in **Austria**, worsened school performance often comes with young people’s transition to the age of majority.

15.1.4 Changes in guardianship and access to support, care arrangements and legal aid

This assessment found that that, in most countries, fUAMAS who have reached 18 years of age seem to be in particularly dire straits since they are left with limited support, if at all. Having to fend for themselves, they can no longer devote all their energies into getting an education and are forced to take low-skilled, poorly paid jobs. This can affect their integration negatively.

One professional interviewed in the **United Kingdom** felt that the acute contrast between pre- and post-18 support made the transition even more difficult, even for those with protected status. She said:

Sometimes I feel that giving young people intensive, amazing support, and then taking it away at 18 does them a great disservice. They end up not being able to tell the difference between rights, entitlements and privileges. Some are left unable to cope with their new-found independence, and some think there is a conspiracy against them. Young people linked with volunteer organizations who continue supporting them until they are 21 seem to fare much better.

A fUAMAS in the **United Kingdom** added: "People lose interest in you as soon as you are over 18, especially if you are still waiting for a decision on your status."

Turning 18 also dramatically curtails young people's opportunities to engage in paid-for social activities in many countries. One fUAMAS in the **UK** said: "I used to have a 'lifestyle card' for sports, but I can no longer use it now that I'm 18." Another young person added: "It's really hard to adjust to the fact that leisure activities organized by the college and social services stop when you turn 18." A third was concerned about how this affects young people's psychosocial well-being, saying: "It's not healthy when you're constantly worrying about what will happen to you in the future. And it's even worse when you can no longer go to the gym or go on the organized excursions and you just sit home, feeling scared, or end up doing bad things."

Guardianship provisions become null and void when the ward reaches the age of majority. In some Member States, as in **Belgium**, however, they may be extended exceptionally, for example in case of a specific vulnerability. Often, when guardians are from NGOs or individuals, they continue supporting their former wards even without any formal arrangement in place.

In **Austria**, many of the respondents who had already turned 18 said that losing their guardian was not a problem. One said: "My guardian was a nice and helpful guy. But I didn't find it difficult when the guardianship ended." Some felt differently, finding it hard to manage daily life without the support systems they used to have. One young adult said: "It's too bad I don't have my guardian anymore. I'm all on my own. I sometimes see him and he still helps me out."

In **Slovenia**, fUAMAS still receive considerable support from some of the care staff of the Asylum Home and from their former guardians from the NGO Slovene Philanthropy. As one person explained: "Just because they turned 18 years old does not mean that their situation has changed a lot."

Turning 18 can also mean loss of legal advice and representation. In **Austria**, several professionals expressed concern that fUAMAS could now only be represented by a refugee adviser, and only upon request. A coordinator from an NGO said: "This just adds another setback to a life already full of setbacks." In contrast, in **Belgium** UAMAS are still able to receive free legal assistance from lawyers since legal advice is available for all asylum-seekers.

15.2 Former UAMAS without legal residence status

In all countries participating in this study, once the asylum claim is rejected, fUAMAS receive a warrant to leave the territory, as in the case of adult asylum-seekers. If they do not comply on their own, they are deported once apprehended by authorities. Former UAMAS who have not managed to legalize their residence, have not opted for a return, and have not been forcibly removed, are staying in the EU Member State without a regular residence status. This means that their access to any kind of formal assistance is usually difficult, if not outright impossible.

Information obtained by this study on fUAMAS in this situation was rather limited. Their fate is largely unknown as they shun contact with researchers, concerned about forcible removal in case they are apprehended by state authorities. Some join family or friends in another EU country. No matter where they choose to settle, they often socialize almost exclusively with people from their own communities, who help them find a place to stay and a job, frequently under exploitative conditions. Chances for their integration are poor as they are not entitled to work or study legally and avoid interacting beyond their extended families and circle of friends.

Several respondents expressed dissatisfaction with the living circumstances of undocumented fUAMAS. Some, as in the **Netherlands** and **France**, had either gone through a period of homelessness themselves or had friends in this situation. They mentioned the inconvenience of having to depend on the hospitality of friends, and having to travel all over the country to go for their asylum procedure interviews. A fUAMAS without a residence permit had to sleep on the streets for two weeks after he was asked to leave an asylum centre in the **Netherlands**.

Former UAMAS can turn to several other organizations for assistance but still need the help of the Dutch Refugee Council (DRC) in contacting them. In their interviews, young people were generous in their praise for the financial and moral support provided by the DRC, which plays the most prominent role in the country's efforts to improve the lot of fUAMAS.

Some interviewed professionals were keen to know how they could continue to be of help in the lead-up to removal and post-removal, in light of the fact that most assisted voluntary return programmes are “adult-focused”.

15.3 Promising practices in the integration of former UAMAS

15.3.1 Austria’s “lobby.16”

In cooperation with companies in **Austria**, the NGO lobby.16 helps fUAMAS with subsidiary protection or refugee status to undergo vocational training or find employment. Founded in 2008, the NGO also taps into a network of volunteers as another major source of “job-shadowing” for former unaccompanied asylum-seeking minors whose access to the labour market is limited because of the negative outcome of their asylum application.

For more information, see: <http://www.lobby16.org/>.

15.3.2 Austria’s “production schools”

Run by the Austrian Labour Market Service, production schools (*Produktionsschulen*) offer young people within the 15–25 age range vocational training in such areas as wood and metal production, graphics and textiles and computer programming. Opportunities to gain first-hand working experience are open to UAMAS and fUAMAS with subsidiary protection status.

15.3.3 Belgium’s “Mentor Escale”

An NGO funded by the Federal Agency for the Reception of Asylum-seekers (Fedasil) seeks to guide fUAMAS, who now have refugee status, on their road to independence and autonomy after leaving federal reception centres on the basis of their new status. The Mentor Escale association works with beneficiaries through one-on-one and group activities. The overriding objective is to ease their integration by providing them with relevant tools in their new lives and to help them create a personal network that they can tap into for support. The association employs a staff of 12 social assistants and educators, and seven volunteers working on specific projects. Areas of emphasis include coaching students with their assignments to keep them from dropping out of school and guiding them towards autonomy while they live in semi-independent housing. Potential beneficiaries have to contact Mentor Escale before turning 18. Most are about 17 and a half years old when they first arrive. Upon registering, they start benefiting from individual mentoring until they turn 20, and group mentoring, if needed, until they are 26.

For more information, see: <http://www.mentorescale.be/>.

15.3.4 France’s “Accelair”

The Lyon-based Forum Réfugiés, an NGO, launched a special monitoring programme in 2002 for the integration of statutory (recognized) refugees. Called Accelair, the programme seeks to improve the conditions and promote the professional integration of refugees through a coordinated response focusing on access to employment, training and housing. Accelair is supported by the Prefect of the Rhone-Alpes region and the president of the Rhône County Council. Since 2008, it has expanded to several other departments (territorial and administrative divisions) in France. Since its founding, the programme has housed thousands of people in the department of Rhone.

For more information, see: <http://www.forumrefugies.org/fr/Integration-des-refugies/Le-programme-Accelair>.

16 Family tracing and reunification

16.1 International law

The right to family reunification is a well-established principle in international law (ECHR, Art. 8; CRC, Arts. 10 and 22). European Union legislation has devoted a separate directive to this issue (Family Reunification Directive). In addition, based on Family Reunification Directive, Art. 5(5), EU Member States are obliged to pay due regard to the best interests of minor children when examining an application for family reunification.

Regarding family reunification within the EU, the Dublin II Regulation (Art. 2(i)) defines "family member" as:

- spouse of the asylum-seeker or his or her unmarried partner in a stable relationship;
- minor children of the asylum-seeker;
- the father, mother or guardian when the applicant or refugee is a minor and unmarried.

According to Article 7 of the Dublin II Regulation, family reunification is foreseen when the asylum-seeker has a family member who has been allowed to reside as a refugee in a Member State; that Member State shall consequently be responsible for examining the application for asylum.

For reunification with family members residing outside the EU, third-country nationals who hold a residence permit valid for at least one year in one of the Member States and who have the genuine option of long-term residence can apply for family reunification. The directive, however, does not apply to a third-country national whose asylum application has not yet been finally decided upon or who is under a temporary form of protection (Family Reunification Directive, Art. 3).

For UAMs who are recognized refugees, Member States may authorize the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced (Family Reunification Directive, Art. 10).

The standards set out in the Family Reunification Directive apply to all Member States in this current study, except for the UK.²³

Regarding the right to family tracing of children who are separated from their parents, CRC Art. 22(2) specifies that states must cooperate with the United Nations and NGOs in family-tracing measures in relation to asylum-seeking or refugee children. The Reception Conditions Directive (Art. 19) further puts the onus on Member States to trace family members of UAMs as soon as possible.

16.2 Family tracing and reunification practices

Most interviewed UAMAS were informed about the possibility of family tracing by their guardians or care staff, as in **Belgium, Czech Republic, France, Slovakia** and **United Kingdom**. In **Austria** and **France**, some respondents appeared not to be aware of tracing services.

Practices initiating family tracing cover a wide range. In most cases, as in **Belgium, Czech Republic, Slovakia** and the **United Kingdom** it would be the guardians responsible for the tracing; in others, such as **Slovenia**, family tracing falls within the remit of the Interior Ministry and is undertaken by the Red Cross. In **Hungary**, tracing is initiated by the Office of Immigration and Nationality, an authority acting under the direction of the Ministry of Justice, but undertaken by the International Committee of the Red Cross. Family tracing can be ordered by the court as is the case in **France**.

Systems dealing with family tracing and reunification take on different forms. In countries like **Belgium**, family tracing is a standard part of the guardian's duties and compulsory training. However, the **Czech Republic** and several other countries reported that there is no institution dealing systematically with tracing UAMAS family members in their country of origin, or with contacting and following up through the International Committee of the Red Cross, as in **France**.

Some countries such as **Slovakia** said that family tracing rarely takes place mainly because the children rarely request it. In the **Netherlands**, the guardianship organization Nidos informs children about the possibility of tracing their families. Some experts, however, asserted that the guardian's role in family tracing is currently too limited and urged that attempts to establish contacts with family members in countries of origin, which minors consider important, should be intensified.

²³ Due to a general opt-out clause, the United Kingdom does not take part in legislation adopted in the area of freedom, security and justice, which includes asylum matters. The UK can, however, opt in on these issues on a case-by-case basis. UK family reunion provisions make no reference to the needs of unaccompanied children in particular. Only pre-existing families are eligible for a family reunion, namely, spouse, civil partner, unmarried/same-sex partner and children who formed part of the family unit at the time the sponsor fled his or her country of origin to seek asylum. There are a few exceptional circumstances in which other family members may be considered for a family reunion, but normally an unaccompanied child who has been granted asylum or humanitarian protection would not have an opportunity to sponsor an application by another member of his or her immediate family, including parents or brothers and sisters, to join him or her in the United Kingdom (Rice and Poppleton, 2009: 32).

In most countries in this study, the rate of successful family tracing and reunification is fairly low. This is partly because UAMAS often do not or cannot provide sufficient information to the tracing services, and partly due to incomplete or non-existent citizens' registries in countries of origin. However, as reported from **Hungary**, many children do manage to establish contact with their family in a relatively short time via phone or Internet..

This research revealed diverse practices regarding the child's consent to family tracing. Most national reports stressed that as a rule, the child's consent is sought. However, some experts, as in **France**, reported that family tracing is encouraged even when minors have no contact with their families and find family tracing painful and difficult, as it can be helpful in securing missing documents needed for the asylum procedure.

Some children were anxious to learn about family members they had been separated from and wanted the family tracing to proceed swiftly, possibly leading to reunification. However, this was not always the case. As the experience of the British Red Cross and the Refugee Council shows, many unaccompanied children fear that identifying the location of family members means that they will be removed from the host country and sent to a family member's place of residence, regardless of whether or not this is in their best interest. The British Refugee Council also reported that children are concerned about not placing their family at risk once authorities in the country of origin are alerted to the fact that they had crossed an international frontier without authorization.

Similarly, according to the Austrian Red Cross, minors have sometimes been reluctant to ask for family tracing because of statements made in asylum interviews indicating that their family members are deceased. They are keen to avoid having to change their statements because this would mean that they have lied, potentially leading to problems in the asylum procedure.

The information gathered in this study shows that in some countries such as **Slovenia**, there are no standard procedures for family reunification in the country of origin and that there were instances of children being returned to their countries and handed over to the respective welfare institutions. It is not clear, in reunification cases, to what extent returns to the country of origin are voluntary.

17 Deportation and return

17.1 International law

General Comment No. 6 of the CRC specifies that states shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child. The assessment of risk of such serious violations should be conducted in an age- and gender-sensitive manner and should take into account particularly serious consequences for children of insufficient provision of food or health services (CRC General Comment No. 6, para. 27).

In applicable EU legislation, the Stockholm Programme (2009: 31) expressly asks the European Commission to “examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection”.

The Return Directive (Directive 2008/115/EC) aims to set out an effective removal and repatriation policy based on common standards. The Directive does not apply to asylum-seekers as long as they have not received a final decision on their case. Voluntary return is preferred to forced return, and a reasonable period within which to arrange voluntary return (up to 30 days) should be allowed. In certain circumstances, Member States may refrain from granting a period of voluntary departure.

Article 10 of the Directive relates specifically to UAMs and requests Member States that:

- before deciding to issue a return decision in respect of an UAM, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child;
- before removing an UAM from the territory of a Member State, the authorities of that Member State 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.

The Directive does not specify when a reception facility in the State of return is “adequate”.

The Dublin II Regulation states that if the asylum-seeker is an UAM who has a relative or relatives in another Member State who can take care of him or her, Member States shall, if possible, unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor (Art. 15(3) Humanitarian Clause).

The European Commission’s Action Plan on Unaccompanied Minors (2010–2014) (2010:25) complements the Return Directive with “several binding legal safeguards relating to minors [...] bringing significant improvements in several Member States”.

The Action Plan (2010: 12), however, identifies certain protection gaps. Member States can, for example, exclude third-country nationals (including children), who are apprehended in connection with the irregular crossing of their external border within the scope of the Return Directive. Considering that in some countries a considerable number of UAMs and UAMAS have crossed borders irregularly, this limitation on the level of safeguards is significant.

17.2 Findings

Information from Member States participating in this study revealed that in most cases, when families cannot be traced, unidentified minors and unsuccessful minor asylum-seekers are allowed to stay on the territory of the Member State until they turn 18 years old.

Some Member States are increasingly considering the option of removal of UAMAS to collective reception facilities in the state of return. There are, for example, reception centres for fUAMAS in the Democratic Republic of the Congo and in Angola funded by the Government of the Netherlands, where fUAMAS can stay at least until they reach 18 (EMN Synthesis, 2010: 119).

The UK Border Agency is considering implementing, on a case-by-case basis, the removal of unaccompanied children upon their refusal of the offer of voluntary return where adequate reception arrangements are available.

Rumours of a plan to return Afghan minors to a reception centre in Kabul have heightened anxiety among them. Although the tender for the reception centre has been withdrawn, the anxiety raised by the rumours still persists. As one social worker explained at that time, before the withdrawal: “Young people have heard about it and are scared; it’s affecting their well-being.”

18 Lodging asylum claims and asylum procedure

Overall, the assessment found that in most countries, children and experts from NGOs reported negatively on the asylum interview. A number of professionals have cast doubts on the transparency, equitability and fairness of the asylum procedure.

18.1 Who is allowed to file for asylum?

In some of the assessed countries, as in the **Czech Republic, France, Slovakia** and **Slovenia**, UAMs do not have the legal capacity to lodge an asylum claim. To be able to do so, they have to be represented by a guardian.

In **Austria**, UAMs can file an asylum application regardless of their age. Children younger than 14 years of age have to be assigned a legal adviser who submits the asylum claim. Those older than 14 can submit their own application in person; they are subsequently assigned a legal adviser.

Under the law in **Belgium**, UAMs can claim asylum on their own and a legal guardian can also claim asylum on behalf of the minor. There are no age restrictions placed on applicants; however, when minors are considered too young or not able to express themselves due to a mental or physical handicap, for example, the guardian becomes responsible for providing information on the minor's situation.

In **Hungary**, UAMs can lodge asylum applications without a guardian. The asylum authority, the Office of Immigration and Nationality, registers the claim and requests the competent guardianship office to appoint a case guardian without delay, which usually takes one to two weeks. Applications from UAMAS are given priority over those from adults.

18.2 Asylum interview

The procedural aspects of the asylum interview attracted much commentary. Questions were raised about the conditions under which these interviews take place: Is the atmosphere child-friendly? Are the asylum officers trained in child-friendly interviewing techniques? Was the child informed and educated about the process in advance? Does the child understand the implications of his being interviewed?

In **Austria**, concerns were raised about the first interrogation especially its content and how it is later used. One expert said: "Not enough importance is paid to the reasons behind the child's flight from the country of origin. Yet this first interrogation plays a decisive role in determining the credibility of the asylum applicant in the next procedure. In addition, interviewers often do not take age into account when they are trying to assess the minor's credibility."

In **Belgium**, national laws and procedural guidelines require that asylum interviews be adapted to the level of capability and maturity of the UAMAS. The interview process should be guided by the principle of "letting the child talk", with officials slightly guiding the discussions and asking only the most necessary questions to gather important information. Interviews take place in a child-friendly room with drawings on the wall, toys, windows and cheerful decor.

Several relevant persons attend these interviews: an official from the Commissioner General's Office for Refugees and Stateless Persons (CGRA), the legal guardian, lawyers, interpreters if needed and a person of trust, if requested by the UAMAS. Young people receive a "Kizito" comic book, which describes the asylum process step by step in either French, Dutch or English.

The CGRA, Belgium's asylum authority, is responsible for informing children about procedural delays, the possibility of appeal, the meaning of a positive or negative outcome, and the significance of subsidiary protection. Not all minors can be interviewed by the few CGRA staff trained in child-friendly interview techniques. Guardians reported that the younger a minor is, the higher the probability that the staff assigned is trained in a child-friendly approach. Some guardians were concerned, however, that minors who are not quite 18 years of age receive their interview invitation only upon turning 18, when they are no longer entitled to the presence of a guardian.

Some children complained about the tense atmosphere surrounding their substantive asylum interviews. In the **Czech Republic**, several UAMAS reported that the interview was unpleasant and that they felt shy and terrified. One youngster said: "I was asked a lot of questions that I couldn't answer. I was scared. I had never gone through such an interview in my life." One respondent, also

in the Czech Republic said: “There was a lady from the Interior Ministry in the interview who was really nice. She realized the interpreter was bad so she cooperated with us. Another woman, her colleague, was awful, I refused to speak to her most of the time.”

In **France**, the asylum procedure for minors differs little from that of adults. Some experts noted that asylum interview questions seem poorly adapted to the particular situation of the child. An expert commented: “Protection officers are not sufficiently trained to gather information from minors and find it difficult to understand that they don’t always have the answers. It is incredible to see how some protection officers will put an entire statement in doubt if the minor is unable to make certain ‘logical’ connections. Aren’t they aware of traumatic blackouts?”

The UAMAS in France who took part in this study reported that they were not briefed before their interviews at the French Office for the Protection of Refugees and Stateless Persons (OFPRA) or the National Court of Asylum Right (CNDA). Meanwhile, evidence shows that proper preparation, even for adults, contributes directly towards the success of the procedure. Furthermore, UAMAS based in the provinces may often have to travel alone for their asylum interview with OFPRA or CNDA in Paris. Sometimes *Administrateurs Ad Hoc* (guardians for special cases) do not accompany the minor at the OFPRA due to a shortage of travel funds.

The prospect of travelling alone and being interviewed without a trusted person and a guardian add to the youngsters’ anxiety. An expert in France said: “These young people are not used to telling their story to someone who they don’t think empathize with them. Many feel like they are taking a test, and the simple act of responding to them can be reassuring. Others are overwhelmed at the thought that they are being treated as mere statistics.” Another expert mentioned the case of a young female asylum-seeker who did not want to tell her story to the male protection officer who was doing the interviewing.

Some young people felt that the conditions surrounding their interview with OFPRA and CNDA were such that it was difficult to defend their interests. Some described feeling humiliated by the OFPRA officer.

These accounts were corroborated by some interviewed experts, who pointed to a widespread culture of mistrust in UAMAS, for example with respect to their age, reasons why they came to France and the threats they faced in their home countries.

Human Rights Watch identified a number of shortcomings in interviews²⁴ conducted in the airport waiting areas, aimed at determining if the child should be admitted to France. Concluded Human Rights Watch: “Asylum-seeking children lack trust, reflection time, legal aid, and the necessary preparation in such an environment.” (HRW, 2009: 41)

Slovakia and **Slovenia**, just like **France**, do not always seem to make a distinction between interviews with UAMAS and interviews with adult asylum-seekers. Sometimes the only procedural difference is that in a minor’s interview, the guardian is present. In Slovakia, however, it is sometimes the guardian’s first time to meet the child and is not familiar with the case.

In **Hungary**, most of the asylum procedures are completed within two and a half to three months. The opinions of experts on the quality of the hearings and the preparedness of administrators vary from their perspective – as government representatives or NGO staff, for example.

An expert from an NGO said: “Children find the official information they receive from the Office of Immigration and Nationality on the refugee status determination procedure too complicated to understand. Even for adults, the information seems less than ideal.” Another one added: “Some of the administrators are trained, but some don’t seem to be able to conduct UAMAS interviews in a child-friendly manner.”

A government representative reported: “The length and the tone of the asylum interviews should be adapted to the needs and abilities of the UAMAS. However, in my experience, most of the youngsters we meet are mature and responsible. The fact that they have travelled vast distances to a completely different country shows incredible mental and physical strength. For some years now, the same group of administrators has been responsible for the hearings of UAMAS. They have accumulated a great deal of experience and there is no real need for further training.”

Most of the interviewed UAMAS were reluctant to speak about the asylum hearings. They were clearly anxious about the outcome of their procedures and were afraid to comment on the details. At the same time, UAMAS generally had positive memories of their hearings, having already received some form of protection as a result of the procedure.

²⁴ During the interview, OFPRA protection officers examine whether or not the asylum claim is manifestly founded. Protection officers provide the Interior Ministry, which is responsible for asylum issues, with their opinion regarding the case. Based on the interview, the ministry decides if the asylum-seeker is authorized to enter France. If asylum-seekers are authorized to enter, they get a laissez-passer and have to lodge an asylum claim within eight days. If entry is denied, the asylum-seeker may appeal this decision to the administrative court within 48 hours. The final decision is made within 72 hours.

However some of the interviewed UAMAS and fUAMAS recalled not having received appropriate information on the status determination procedure and on the role of the case guardian at the hearing. “I had two interviews and there were four of us – the administrator, the interpreter, an old lady who I was told was my representative, and myself. I didn’t receive any written information and just like when I had just arrived, I am not sure what my fate will be.”

A fUAMAS recalled: “I had a difficult interview; they couldn’t find an interpreter and the interview had to be postponed a few times. I was asked about how I got here, why I came and what I want to do. But they knew that I am in school. I didn’t receive any information during the interview and my representative was not present either. Later, someone told me that I would be granted status in two months.”

Information from the **United Kingdom** reveals an inconsistent approach to dealing with UAMs, and highlights the importance of the behaviour of the person conducting the interview. One third of the young people in the UK who took part in this study reported that they were treated well during the interview and that explanations were clear.

The rest experienced some difficulties, however. Some said: “The interviews were really tough. I was asked the same question in many different ways, which is confusing when you are 15 and everything is totally new to you.” UAMAS also expressed distress at having to talk about what happened to them back home. One young person said he was unable to concentrate because “I could see an Iranian airplane and thought they were sending me back right then and there. I was so scared.”

Just over half felt that they were “treated with suspicion. One young person said: “The interviewer looked at me like I was an enemy. Everything I said was considered a lie.” Another one said: “I was told I said contradictory things in two different interviews, and so I must be lying, but things were complicated and I was confused.”

Overall, several UAMs were appreciative of the key supportive role of legal representatives, interpreters and persons of trust in helping them understand the asylum application process. Conversely, UAMAS expressed distress when recalling their experience with solicitors and care staff who did not meet their expectations.

One expert said:

These minors need to be properly informed about the procedure and to be accompanied by someone they trust especially because they are vulnerable. The more trust they have in someone, the more freely they can speak about their experiences. This provides specialists with the elements necessary to accurately diagnose their case.

Although most countries have at least some officers who have been trained in interviewing children and some efforts are made to conduct interviews in a child-friendly manner, this assessment identified numerous instances where this was not the case.

Because social workers are often not fully aware of the asylum procedure, they are not in a position to provide their wards with advice on the legal aspects of the asylum procedure. When UAMAS do not have access to legal representation, the guardian’s lack of knowledge of the procedure can have potentially far-reaching and negative consequences. For example, as reported by **France** and **Slovakia**, guardians do not make sufficient use of the right to appeal in case of a negative first instance decision on the asylum application.

18.3 Duration of asylum procedure

Notice about the decision on the application shall be given “in reasonable time” (Asylum Procedures Directive, Art. 10) and the information shall include information on how to challenge a negative decision (Asylum Procedures Directive, Art. 10). If the applicant is granted international protection, Qualification Directive (Art. 22) specifies that he or she shall be provided “with access to information, in a language likely to be understood by them, on the rights and obligations relating to that status.”

The EU Action Plan on Unaccompanied Minors (2010–2014) calls for decisions on the asylum procedure to be taken “within the shortest possible period (if possible, within a maximum of six months) taking into account the obligation to try to trace the family, explore other possibilities for reintegration in their home society and assess which solution is in the best interests of the child”.

The duration of the application procedure in the assessed EU Member States varies from a few months to several years, sometimes lasting five years or more.

Several respondents pointed out that, sometimes, substantive interviews take place over a longer period with a gap of several months. Former UAMAS interviewed in the **Czech Republic** felt that the long time lapse between two interviews risks information being different from one interview to the next, which reduces their credibility and their chances of obtaining asylum.

In some of the 10 countries assessed, decisions on asylum applications of UAMAS are taken relatively swiftly, with the final decision expected within a few months. In **Hungary**, for example, most of the asylum procedures are completed within two and a half to three months. However, there is a wide margin of appreciation; there are various grounds for extending the period.

In some countries, for example in the **Czech Republic**, the 90-day period for making the decision on the asylum claim is almost always extended, mostly with regard to the “case complexity”. The average length of the procedure is more than one year and the procedure is often concluded when the asylum-seekers have reached 18 years of age. This has been criticized by both experts and UAMAS and fUAMAS. One expert commented: “I think that the procedure is unreasonably long. It should be much shorter, so children know what to do next. The decision should not wait until they have reached 18.”

Many also felt that the protracted asylum procedures had a negative impact on the well-being of young people. A fUAMAS in the **Czech Republic** said: “The procedure should be accelerated. It’s terrible, one cannot work normally. The long waiting time was excruciating.” Experts across the board agreed that the uncertainty of the outcome of the asylum application grossly complicates children’s progress and development as they are unable to focus on shaping their future.

Experts in the **Netherlands** commented that the lengthy asylum procedure confines UAMAS too long within the foreign community and holds back their potential to integrate within society at large. Some experts in the **Czech Republic** believe that UAMAS who have lived and studied in the EU Member State for some time should not be sent back to their countries of origin because they have already been partly integrated. In addition, the EU Member State would have already invested quite considerably into their development and welfare.

Experts could not quite agree on whether shorter asylum procedures would prove to be an improvement. In the **United Kingdom**, some respondents said the new policy calling for relatively quick asylum decisions does not allow enough time to help the child develop and “take away something with them”, whether they end up staying or going back to their country of origin.

19 Age assessments

Providing children with the protection they are entitled to under international, EU and national law is contingent upon their being identified as children. Given the higher degree of protection that is accorded to children within international and national laws, it is easy to understand why EU Member States would want to ascertain that those who claim to be children are speaking the truth. At the same time, wrongly assessing ages poses a risk to the welfare of a group that Member States are precisely committed to protecting.

General Comment No. 6 of the CRC stipulates that age assessment should take into account not only the physical appearance of children but also their psychological maturity. Moreover, the assessment must be conducted in a manner that is scientific, safe, fair, child- and gender-sensitive and pays due respect to human dignity. In cases where uncertainty remains, the individual shall be given the benefit of doubt and be considered a child (CRC General Comment No. 6, para. 31 (i)).

This review of national practices in the 10 EU Member States has revealed that in doubtful cases, young people have to undergo an age assessment. To ascertain chronological age in disputed cases, EU Member States employ various techniques such as examining dental and wrist-bone X-rays and assessing physical appearance and psychological maturity. The wrist-bone X-ray (based on Greulich and Pyle) continues to be the most widespread age assessment method.

Age assessments continue to be seriously contentious, not least because currently available methods, which have a two-to-three-year margin of error, are ill-suited for settling many age disputes. "It is naive to argue that they [X-rays] can determine the child's chronological age," says an expert (Crawley, 2007, Foreword). In the **United Kingdom**, for example, results of visual age assessments were found to be wrong half of the time (Guardian, 1 June 2009).

A growing body of research documents the negative impact of age disputes on the lives of UAMAS (Mougne and Gray, 2010; Kvittingen, 2010).

According to Crawley (2007, Executive Summary):

...[a]n age-disputed child does not benefit from any of the procedures ... in place to ensure that children's experiences and vulnerability are taken into account during the asylum determination process. The application may be refused and the child detained and removed without ever having his or her age formally assessed. There is evidence that age-disputed applicants are likely to be considered less credible and refused asylum as a result.

Information from several countries that took part in this report suggests that the unreliability and costs associated with age assessment have led to its being used sparingly by countries such as the **Czech Republic**. **Slovakia** does not use age assessments at all not only because of their unreliability but also because of the currently low numbers of UAMs entering its borders. Experts in Slovakia also revealed in interviews that they were not certain as to who should be requesting the age examination, although legislation spells this out clearly.

In contrast to these countries, **Hungary** seems to carry out age assessments frequently. In 2010, 47 per cent of UAMAS (83 cases) were transferred from the shelter for minors to an adult reception facility following an age assessment procedure that indicated they were over 18 years of age.

Practices in age assessment appear to be inconsistent. Some assessments are carried out by a contracted physician of the asylum authority based solely on a physical examination; sometimes the authority relies on a private medical institution for X-ray examinations. In certain cases, both examinations are carried out. The efficiency of these procedures is questionable. One expert recalled the case of a young person who was considered an adult following the age assessment procedure and transferred to the adult reception facility. After several months, he obtained a document proving that he was still a minor, at which point he was returned to the shelter for UAMs.

An Afghan boy interviewed in Hungary, despairing about his future following the outcome of a second age assessment that had considered him an adult, said:

God knows what will happen to me. Following my initial interview, I went through a medical examination and the doctor assessed me as being below 18 years of age. A few days later, I was sent to Budapest and was examined again, and this time I was found to be 18 years old. I was not asked any questions; I was just examined. Now I have been told that I have to go to a different reception centre. I am actually 16, but I said that I am 14 because I wanted to study.

Some minors interviewed in Austria found it frustrating to have authorities cast doubt on the information they provide. One respondent said: "I did not bring myself into this world. My mother did. This is what my parents told me. I say my name. They believe me. I say I am Somali. They believe me. Why don't they believe me when I tell them how old I am?" Another UAMAS in Austria said he found the age assessment procedure particularly frustrating because it produced inconsistent results. "I'm 14, but the authorities registered me as a 17-year-old because I'm tall," he said.

In **Italy**, age assessments are conducted as a matter of priority and dealt with by the pediatric departments of Health Services. Each region adopts different methods to evaluate the age of minors despite the fact that an interdepartmental working group was set up in 2008 to come up with a uniform procedure. To date, the diverse methods include wrist-bone and dental X-rays, anthropometric measurements and medical examinations.

An interviewed expert reported that the medical exams "include a genital inspection, which is generally disturbing to the young people who are requested to undress in front of strangers, sometimes of a different gender, without being made aware of its purpose. If X-rays are invasive from a medical point of view, this practice is also psychologically invasive." The examinations can also lead to a feeling of re-victimization. UAMAS in Italy said such examinations reminded them of the physical abuse they endured earlier. The assessments in most parts of Italy are merely from a physical perspective; no psychological assessment is conducted, a fact criticized by interviewed experts.

In the **United Kingdom** age assessments are carried out frequently. Some 30 per cent of total asylum-seekers who claim to be separated children are estimated to be "age-disputed". About one third of the UAMs who were interviewed found it disturbing to be treated as older (or in one case, younger) than they claimed to be. Anecdotal evidence in the United Kingdom reveals how an ongoing age assessment can have negative legal repercussions on minors, for example delaying their immigration interviews and keeping them from accessing social workers. One UAM said that complications in an age assessment led to an eight-month wait for a substantive asylum interview.

Even when overturned, incorrect age assessments can leave lasting practical consequences. One boy reported that after a year, his correct year of birth – 1990 and not 1989 – was finally recognized. However, he has been unable to have this change reflected on documents issued in the course of the year. This has led to difficulties in his obtaining a provisional driver's licence and undergoing a Criminal Records Bureau check, a requirement for working with children as part of his college programme.

An Afghan boy said: "I didn't get a foster family because my age was assessed at 16, even though I was just 15. I was young and really wished I had one, but it never happened. My social worker was really nice and I have been supported well, but having a family makes a difference."

Some respondents in the UK also questioned the integrity and independence of age assessments from external interests, and urged that they be "carried out by an organization outside social services or the Home Office, by a party whose work is not affected by the decision".

In age-disputed cases, children are often treated as adults until proven otherwise. This study identified cases of UAMAS being accommodated with adults before their ages had been properly assessed. One UAMAS in the UK had this to say: "When young people arrive, authorities should believe their stated ages and they should not be put up with adults. This is what happened to me until social services changed their assessment to reflect my real age. The experience was not a good one."

20 Detention

Paragraph 61 of the General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin stresses that they should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Exceptionally, when detention is justified for other reasons, it shall be used as a measure of last resort and limited to the shortest time possible.

Whenever an UAM is placed by “competent authorities [...] for the purposes of care, protection or treatment of his or her physical or mental health”, the state has the duty to periodically review such placement, the treatment of the child and “all other circumstances relevant to his or her placement” (CRC Art. 25). Paragraph 22 of the General Comment No. 6 (2005) explains that this periodic review is required to fully respect the child’s best interest.

The EU Action Plan on Unaccompanied Minors (2010–2014) (2010: 9) states that when detention is exceptionally justified, it should only be a measure of last resort, limited to the shortest appropriate period and take the best interests of the child as a primary consideration.

20.1 Detention practices: assessment findings

Detention of UAMs on immigration grounds is prohibited in **Hungary** (EMN Hungary, 2009: 11) and **Italy** (EMN Italy, 2009: 12).

In practice, however, UAMs in **Hungary** are brought in to the police for identification and once minority is established - this process should not take longer than 12 hours - they are transferred to the designated child protection residential unit. The detention of adults lasts up to 12 months or until their asylum claim is processed. The Hungarian Helsinki Committee’s report produced in 2010 and published in April 2011, *Stuck in Jail: Immigration Detention in Hungary* (2010), documents at least one case of a detained UAM.

In **Slovenia**, UAMs with irregular status are systematically detained in the Postojna detention centre for foreigners until they are deported to their country of origin or reunified with their parents in another country, or until they apply for international protection.

Slovakia allows detention of children only when they are accompanied by their parents or legal representative; legal representative meaning a relative. Thus, unaccompanied minors must not be detained under any circumstances.

Detention pending deportation can be imposed upon minors in **Austria** as a means of last resort and only if the child is older than 14; in the **Czech Republic**, for a maximum of 90 days and only if the child is older than 15 (EMN Czech Republic, 2009: 16); and in the **Netherlands**, as a measure of last resort and for the shortest possible period (EMN Netherlands, 2009: 42). Children below the age of 12 must not be detained in the Netherlands (FRA, 2010b: 92).

In **Belgium**, when the age of UAMs who have arrived at the border is doubtful, they can be held for three working days (exceptionally, this can be extended by three working days) in a detention centre, and be tested for age determination (EMN Belgium, 2009: 41). In **France**, children can be detained in so-called waiting areas, transit zones considered extraterritorial areas (EMN France, 2009: 8f) (see HRV, 2009, for more on this issue). In France, however, UAMs cannot be detained pending deportation (FRA, 2010b: 90). In **Slovenia**, children can be detained a maximum of 48 hours upon entry upon being apprehended by the border police (EMN Slovenia, 2009: 16).

United Kingdom policy allows UAMs to be detained under the following limited circumstances: very exceptionally, overnight, while alternative arrangements are being made for their care and safety; on the day of a planned removal, to facilitate their safe escort between their residence and the port of removal; and in criminal cases, in exceptional circumstances, where it can be shown that the individual poses a serious risk to the public and a decision to deport or remove the individual has been taken (EMN United Kingdom, 2009: 4).

In May 2010, the new government committed to ending the detention of children for immigration purposes. However, despite this commitment, children can still be detained for up to a week. In September 2011, the government opened a new family detention facility where families can be held prior to removal. Although some progress has been made, many UK NGOs remain disappointed at the failure to translate the commitment to end child detention into concrete action.

Though involving relatively low numbers, the detention of UAMAS in the **Czech Republic** is a key concern among national experts. Only UAMAS younger than 15 are never detained; they are placed directly in the Facility for Children of Foreign Nationals instead.

In accordance with section 178 of the Residence of Aliens Act, foreigners older than 15, who are capable of expressing their will and acting independently, are deemed legally competent persons. The Act therefore does not differentiate between the detention of adult non-nationals and of UAMs older than 15; both may be detained under the same conditions. The only difference is that in accordance with section 125, Article I of the Residence of Aliens Act, the detention period for a non-national younger than 18 years old must not exceed 90 days (versus 180 days for adults).

Experts maintain that putting UAMAS in detention is unacceptable. An expert said that the decision on detaining a child should be taken by the court and not solely by the Foreign Police. He said: "Detention doesn't make sense. There is enough space to accommodate these children and keep them away from the streets. The courts should decide on this matter just as with children's education or their separation from the family."

Most of the UAMAS and fUAMAS interviewed in the Czech Republic have crossed the Czech border illegally with the help of intermediaries. Several were detained upon arrival and transported to the Facility for Children of Foreign Nationals. Two were detained for six months in 2004, when the maximum detention period was still the same for adults and minors. One recalled: "It felt like hell. It's definitely not necessary for minors. I was 16 at the time and there was no doubt about my documents being in order but we were detained anyway. You're still a child and all of a sudden, you find yourself in a place with adult strangers. You don't know what to expect. It's quite shocking."

21 Missing children

Disappearances of UAMs and UAMAS continue to be a major concern for many of the EU Member States, as reflected in their Action Plan on Unaccompanied Minors (2010–2014) (2010: 9). The extent of the problem is largely unknown as data on minors missing from care institutions is often either not available or is incomplete. Even when available, data are often not comparable and if taken out of context, risks being open to misinterpretation.

Information from Member States suggests that children and young persons are more likely to disappear shortly after being identified by authorities or right before their removal. In some countries that took part in this study, most children disappeared soon after identification. Disappearances seem to be more pronounced in new EU Member States which many UAMs regard as transit countries on their way to their final destination – usually older Member States such as Austria, France, Germany, Italy, the United Kingdom and Scandinavian countries.

In the past few years, however, the number of UAMAS who are under the care of new Member States has been on the rise. Some of these UAMAS had, in fact, disappeared earlier while under the care of one of the new Member States, and then had been returned to the country by another EU Member State in accordance with Dublin II regulations.

In **Belgium**, most disappearances take place within the first few days of arrival at one of two open observation and orientation centres, even before the appointment of a guardian. Between 2006 and 2008, about half of UAMs disappeared (EMN, May 2010: 51).

Before the **Czech Republic** acceded to the Schengen area in 2008, more than half of the children accommodated in the country's facilities would run away. Owing to the absence of checks at border crossings, minors are no longer intercepted and are therefore seldom registered. National experts estimate that currently, some 20 per cent of children in facilities disappear, a drop of 70 per cent from about a decade ago.

In **France**, the number of unaccompanied foreign minors who goes missing is significant across the existing receiving structures. A report by the NGO Terre des Hommes on the disappearances of foreign UAMs (2009: 32) says the disappearance rate is above 60 per cent in some centres. In the Pas de Calais department, a point of passage for migrants heading to the United Kingdom, the runaway rate is 99 per cent. Out of 2,219 temporary placement orders issued in 2009, only 21 youths were taken into long-term care by the children's social welfare (France Terre d'Asile, April, 2010: 5). The ratio is similar in Paris. The disappearances can be interpreted in a number of ways. In certain departments, such as Pas de Calais, the minors' intent is to continue onwards with their migration journey. Terre des Hommes (2009: 51) believes that some of the youths are most likely victims of exploitation networks.

In **Hungary**, the rate of disappearances among UAMAS is rather high. It is believed that children disappear mainly to continue their journey; to a lesser extent, they fear a negative decision on their asylum application. In 2010, 51 disappearance cases were registered by the shelter for UAMAS, representing 29 per cent of all accommodated children. Five were later returned to Hungary through the Dublin procedure. Child protection protocols require all disappearance cases to be reported to the police, after which an investigation is launched.

Accounts from **Italy** suggest that children often disappear because they are not well informed about the asylum procedure and their rights deriving from the status received. Due to the scarce information from authorities, they gather patchy and often false information mostly through the grapevine. Misinformation and its related insecurity often lead to not always legitimate fears, and young people conclude that it would be better to run away and hide from authorities. In the meantime, they try to raise funds for their onward journey to northern countries, where they believe that better assistance and living conditions and a more promising future await them.

In the **Netherlands**, between January and October 2006, 20 Nigerian girls and 33 Indian boys disappeared (2008 figures: 1 Nigerian girl and 11 Indian boys). Concerned that this spate of disappearances was linked to trafficking, the Aliens Police, guardians, reception centres, the Royal Constabulary and others joined forces to combat trafficking of UAMs. Disappearances declined following the introduction of Nidos at reception centres in early 2008, which made it possible for the NGO to initiate immediate placement of vulnerable minors in protected reception centres (EMN, May 2010: 74). Available 2009 figures show that the disappearance rate among UAMAS in reception institutions in the Netherlands was about 11 per cent.

In **Slovakia**, one interviewed expert indicated that the vast majority of children disappear from the specialized children's home in Horné Orechové immediately after leaving the quarantine part of the facility. According to the EMN Slovakia study (2009: 23), UAMs have no interest in staying in a country which "dictates their daily routine" and continue travelling towards their original destination to realize their dream of making money.

In the **United Kingdom**, precise figures of disappearances among UAMs under the care of authorities is not known but is believed to be quite high. In November 2009, the Guardian newspaper (The Guardian, 2009) reported that 145 asylum-seeking minors, 90 per cent of them unaccompanied, had disappeared from child protection services over a one-year period. This picture emerged from a survey of 200 municipalities covering September 2008 to September 2009. It is quite possible that the actual numbers are even higher since several municipalities did not respond to the survey, including Kent, the receiving point for UAMs in the UK. The BBC (2010) reported in January 2010 that 330 asylum-seeking minors disappeared between April 2008 and August 2009.

Since the UK is a popular final destination for many children, interviewed experts said that disappearances cannot be interpreted the same way as in other European countries, where runaways head towards another destination (Terre d'Asile, 2010: 116). Rather, disappearances reflect the minors' need to start earning money as soon as possible to support their families, as well as their fear of possible removal. Research carried out by ECPAT UK (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) shows that previously exploited children were particularly likely to "disappear" from care centres operated by local authorities (ECPAT UK, August 2009: 16).

Most countries have procedures in place to report missing children to relevant authorities. However, available information from **France**, the **Czech Republic** and the **Netherlands** suggests that missing children are not always reported to relevant authorities. Interviews with staff of the Central Agency for the Reception of Asylum-seekers (COA) in the Netherlands reveal that the responsible persons do not always report a missing child "because often, you do know that children live with family or that they are headed to another country". The non-reporting of missing children indicates a gap in protection measures.

21.1 Why do children disappear?

Professionals interviewed by Terre des Hommes were unanimous in their view that children who disappear from care become vulnerable to a wide range of risks related to health, severe forms of exploitation, delinquency and trafficking in human beings (Terre des Hommes, 2009: 43–48). The same study (2009: 38–40) identified a number of reasons why children leave the host country's reception facilities:

- The care provided does not take into consideration the minor's profile, including cultural background and special needs.
- The minor considers the centre merely as a transfer point en route to an intended country of destination.
- A negative asylum decision (or the fear of one) discourages minors who then leave to seek protection and attempt to settle elsewhere.
- Some minors are believed to rejoin a network that they belong to outside the facility. It is hard to tell whether or not they are safe, since these networks can be a source of support while exposing them to risk.

In countries that repatriate minors, some children sometimes run away to avoid being forced to return to their country of origin.

Fear of detention is another reason why children leave the centres, according to experts who took part in this assessment. It could also well be that some leave after being repeatedly contacted by traffickers and are eventually exploited in various industries.

Based on his experience, one professional in the UK said: "Most of the current unaccompanied minors approaching the age of 18 will go underground within the UK rather than go back." Another expert confirms: "Many former unaccompanied minors go underground when their asylum requests are denied. They take on work that is paid in cash and pay rent informally." Some 7 out of 12 professionals interviewed in the UK expressed concern that young people whose requests for asylum are denied while they are 17 years old could lead to more disappearances since upon turning 18 they become liable for removal.

22 Other gaps in protection and care

22.1 Incomplete, contradictory and unclear legislation and competencies

This assessment identified instances of incomplete, contradictory or unclear legislation in most countries. Typically, there were contradictions between childcare legislation and migration and asylum legislation, not least with respect to the concept of best interest of the child.

One gap that was brought up frequently was the absence of standardized protocols for the minors' reception and care. In some countries, experts reported that key decision makers on UAMAS-related matters have too wide a margin of discretion when applying the law, which results in unequal and unfair treatment of some minors. Where provision of care for UAMAS and fUAMAS is not centralized, respondents often found variations in the level and quality of care received in different locations. In addition, the assessment noted a pronounced lack of data that can be used for monitoring and evaluation, thus hindering the production and management of knowledge.

22.2 Lack of coordination and cooperation between stakeholders

Experts repeatedly drew attention to the insufficient coordination and cooperation between the various actors responsible for UAMAS-related matters. This is in part related to the incomplete, contradictory and unclear legislation and competencies identified earlier.

However, shortcomings in the regulatory and institutional framework alone do not explain or cause the lack of coordination and cooperation that was reported in all assessed Member States. It seems the poor interaction also reflects competing and contradicting agendas, work ethics and frames of reference of the various actors that deal with the issue of UAMAS – with law enforcement agencies treating UAMAS as “foreigners only” and the childcare sector treating them as “children only”.

Linked to the issue of unclear competencies and insufficient coordination and cooperation is the failure to initiate changes in the legal framework when shortcomings are identified. A government official in **Slovakia** said:

Whether the legislation is good or not, the bottom line is that the asylum procedure is within the competence of the Migration Office and the Interior Ministry while the children's homes are within the competence of the Labour Ministry. This explains why the situation is the way it is. Changing it would require a change in the Asylum Act, which is the Interior Ministry's responsibility.

22.3 Insufficient resources allocated and inefficient use of allocated resources

The interviewed experts in all assessed Member States were in agreement that the inadequate resources currently allocated especially for the care and support of UAMAS and fUAMAS cannot ensure delivery that is up to standard. Some experts pointed out that available resources are not used efficiently. In particular, an expert from **France** criticized the fact that child protection authorities continue to spend for UAMs' hotel accommodation rather than invest in new accommodation centres, which is more cost-effective in the long run.

22.4 Under-trained and overburdened staff

In all the assessed countries, interviews revealed that care staff are often not provided with enough resources to be able to deliver adequate standards of care. Staff are sometimes simply over-burdened by the sheer number of children that are expected to be under their responsibility. Sometimes they are unable to carry out their jobs properly because of lack of training and know-how. Officials who come into contact with UAMAS usually do not have the expertise to deal with them and do not know where to refer them to. Experts also suggested that next to guardians and care staff, judges and police also need to undergo special training.

22.5 Return and reintegration

Several experts consulted in this assessment reported that EU Member States do not pay due attention to the return and reintegration of fUAMAS in their countries of origin. They expressed concern about the inadequacy of return arrangements and warned that fUAMAS might return to the same unsatisfactory situation they were in when they left – clearly not in the best interest of the child.

22.6 Legal age for migrants set lower than for nationals

This assessment also identified several specific instances of conflicting provisions in the national legislation, some of which are in fact discriminatory towards children seeking asylum.

- In the **Czech Republic**, the age of majority is 18. However, according to the Residence of Aliens Act, children who have reached 15 years of age have full legal capacity (Section 178 Act n. 326/1999 Sb. on the Residence of Aliens in the Territory of the Czech Republic). The provision is, in fact, discriminatory as it strips the minor of safeguards put in place by the CRC as well as other Czech national legislation. Interestingly, despite the fact that this contradiction was identified in 2004, if not earlier, Czech authorities have not taken any appropriate remedial steps.
- Similarly, in **Austria**, the provisions of the Aliens' Police Act (Art. 12), consider children above the age of 16 years as capable of representing themselves during aliens' police procedures (including detention, and expulsion). However, according to the Austrian Civil Code (Art. 21), any person under the age of 18 years is a minor.

22.7 Different standards of care for nationals and non-nationals

Experts in some countries, such as in **Austria**, referred to the difference in treatment between children who are nationals and minor asylum-seekers. One of the Austrian experts pointed out that that the majority of accommodation facilities available for UAMs do not meet the overall standards of the Youth Welfare Authority mainly because the allocated financial resources are inadequate. The often-lower standards risk resulting in discrimination.

Conclusions

This assessment identified numerous instances of underlying tension between immigration and asylum policies, on the one hand, and child protection policies, on the other. These, coupled with insufficient resources dedicated to protecting and assisting UAMAS and the weak coordination between the various actors involved, have created systemic gaps in varying degrees of severity.

Between the 10 EU Member States and within each one, differences in the setting and situation concerning the phenomenon of UAMs are stark. These differences are reflected in the widely divergent views and perceptions shared by the young people, caregivers, specialists and authorities interviewed by the assessment team.

The team identified conflicting trends in the delivery of care and protection over time. Several experts called attention to some partial improvements in certain areas but were largely critical of the failure of EU Member States to address some of the key systemic gaps that had been previously identified.

Efforts to identify good practices were constrained by a substantial dearth of hard facts and comprehensive research and non-existence of independent evaluation of various practices.

Based on the assessment results, several key considerations can be drawn:

- The EU Member States should put in place robust procedures for the determination of the best interest of the child (BIC), which remains one of the most unclear and contentious areas identified in the assessment. Currently practitioners use a high level of discretion in interpreting BIC, and such procedures would go a long way towards creating professional and unified standards.
- EU Member States should strengthen the guardianship system and its various statutory equivalents in such a way that the best interest of the child can be ensured. Each and every unaccompanied, separated child or young adult should be provided with an independent guardianship in which qualified individuals hold a clear, uncompromised mandate to represent the best interest of their ward.
- Care and protection schemes should have enough room for flexibility to allow for tailored and individualized responses. As much as possible, the provision of care and protection services should take a tailor-made approach, taking into consideration the young person's sociocultural background and personal circumstances.
- Children should be informed and consulted and given ample opportunity to carefully consider their options preparatory to taking decisions that are bound to make a significant impact on their lives.
- Children should be provided with effective access to quality legal aid.
- Children should enjoy easy access to education, vocational training and employment. Leisure and recreational activities also have an intrinsic educational, developmental and therapeutic value and can greatly facilitate children's integration into broader society and widen their life perspective.
- EU Member States should pay close attention to the special needs of young people who are approaching the age of majority.
- EU Member States should consider initiating further research in this area, which would give a voice to vulnerable children and truly address their plight.

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Annex: Promising practices

Promising practice I

PROMISING PRACTICE I: 400 points, 79 per cent of all possible points

Foster families, United Kingdom

Brief description: UAMAS who arrive in the United Kingdom below the age of 16 are placed in foster families and stay with them until the age of 16 or 18

Who implements it and are they remunerated or not? The local authority (the local council's Children and Families Department) is responsible for looking for a foster family to care for children below the age of 16. The family does not replace a social worker, who visits the child. Foster families are remunerated.

Since when? For the past several decades

Who are the target groups/beneficiaries? UAMAS under the age of 16

How is it funded? Funding, which comes from the state, is stable as there is a statutory obligation to provide this care to all children under the age of 16, not just to UAMAS.

Why is this practice considered promising?

Replicability:

It can be replicated in any environment with a state-run system in which children who cannot live with their parents for any reason are accommodated with other families. Most EU Member States have smaller numbers of UAMAS than the UK, so expanding their system to include this group should be feasible.

The practice of foster care has been operational in the UK for decades now and no robust or contextually appropriate comparisons are available.

Sustainability:

Already institutionalized

Cost-effectiveness:

Figures for 2011 show that carers are paid between GBP 111 and GBP 191 a week. Although some may consider this costly, the positive impact on children is significant and it is actually reasonable relative to the cost of other temporary accommodation and care.

Ownership:

The practice links the government (local authority) and the community (foster parents). In theory, young people are supposed to be asked if they prefer to be matched with a foster family from their own culture, but this is not always so in practice.

Contribution to desired results:

In this current IOM assessment, UAMs identified the foster family practice as the single most important factor that has enhanced their well-being and developed their competencies. They cited it as one of the best features in the UK system. All but one of those who did not benefit from the system indicated they would have wanted to live with a foster family.

The practice could be improved by letting all UAMAS in foster families remain with them until they turn 18, unless the young person wishes otherwise, and by giving those who arrive at 16 or 17 years of age the option of being placed in a foster family.

Promising practice 2

PROMISING PRACTICE 2: 387 points, 77 per cent of all possible points

Connecting people, Austria

Brief description: Connecting people – *Patenschaften für unbegleitete Minderjährige und junge Erwachsene Flüchtlinge* – aims at providing UAMs and young adult refugees with a long-term and stable relationship with a *Pate* or a *Patin* (“godfather/godmother”) who supports them in their daily lives by guiding them and giving them a sense of security. *PatInnen* provide support in a broad range of areas such as private tutoring, learning German, going through the asylum procedure and other administrative matters, looking for a job and understanding the culture of the host country.

These relationships go beyond traditional mentoring or “buddy” projects; the two sides form a personal bond, often integrating the relationship into the daily family life of the godparent, including celebrating festivities together. The minor gets to visit a real home and interact with an extended family. This gives young people the feeling that there is someone they can rely on.

The project accompanies these relationships as long as necessary through regular meetings, networking, practical information and supervision.

Who implements it and are they remunerated or not? The initiative is run by a Vienna-based Austrian NGO, *asylkoordination österreich*. The budget covers salaries of the project implementors and supervisors and miscellaneous administrative costs. Volunteers are not remunerated.

Since when? The project was initiated in 2001.

Who are the target groups/beneficiaries? Connecting people identifies adult Austrians interested in becoming a *Pate/Patin*, prepares them for their role and matches them with UAMs and young adult refugees looking for personal support in Austria.

How is it funded? One third of the project is funded by *Fonds Soziales Wien* (Social Vienna), the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMAK), the Federal Ministry of Economy, Family and Youth (BMWFJ), with the financial support of the Austrian Red Cross. The rest of the budget is supported by donations.

Why is this practice considered promising? Several minors said the arrangement was of immense help to them. In a quantitative and qualitative evaluation conducted by the Faculty of Psychology of the University of Vienna in 2010, 100 *PatInnen* and 12 UAMs interviewed rated the project highly. The fact that connecting people has been running for more than a decade despite its vulnerable funding speaks for the project’s success.

Replicability:

Replicability is considered high. In fact, the project is being implemented not only in Vienna but also in Graz. Apart from the human and financial resources needed to oversee the project, the key is bringing people together. In addition, the right kind of experts must accompany the entire process of relationship-building including preparing volunteers and supervising the “godparenthood”. Connecting people identifies project participants in close cooperation with accommodation facilities, so setting up a similar scheme elsewhere would also have to take into account the structure of national care provision for UAMs.

Verifiability/Comparability:

The many years of engagement of the NGO *asylkoordination österreich* in the plight of UAMs in a new country have confirmed that they are in dire need of social contacts and emotional support in their day-to-day lives. The project helps young people to gain a solid footing in Austria through a home and family. Adolescents and young adults who have taken part in the project have demonstrated a remarkably high capability to integrate and live self-sufficiently.

Sustainability:

Despite a steady interest in connecting people, its funding is uncertain. The precise amount of financial support from public institutions has to be negotiated every year. The regular flow of donations is not guaranteed. The practice can be maintained as long as there is an implementing organization, financial support, adult Austrian volunteers, and UAMs and interested young adult refugees.

Specific human resources are required for successful implementation. The project needs to sustain its strong volunteer element, since *PatInnen* are supervised by volunteer professionals who also need to be given proper preparation by qualified staff.

Cost-effectiveness:

Interest in and appreciation of the project is high, both among beneficiaries and Austrian volunteers. Neither side incurs any financial obligations. The budget covers the salaries of the project implementors and supervisors and miscellaneous administrative costs. The envisaged duration of the arrangements is a minimum of two years, which is achieved by 80 per cent of the *PatInnen*. The University of Vienna's evaluation revealed that most of the relationships between *PatInnen* and UAMs take on a long-term perspective, usually lasting several years.

Ownership:

By funding the project, the two Austrian ministries, partners and donors demonstrate their belief in the rewards of a mutually enriching cultural learning process, which ultimately places young people firmly on the path to better integration. According to the evaluation study of the University of Vienna (2010: 28), young participants manage to integrate well into Austria's socio-economic life despite their difficult legal situation. The study (2010: 27) revealed that *PatInnen* also benefit by broadening their horizons, learning more about other countries and cultures, and putting their own problems into perspective.

Contribution to desired results:

Connecting people fosters a stable, long-term relationship between an adolescent and a *Pate/Patin*, ultimately leading to a better informed UAM who is better integrated into society.

Promising practice 3**PROMISING PRACTICE 3: 351 points, 70 per cent of all possible points****Solentra, Belgium**

Brief description: The association Solentra gathers psychologists specializing in ethnopsychiatry, child psychiatry and child trauma related to conflict and the migration process. The focus is on children affected by trauma, including those with a migration background and UAMAS. Follow-up treatment is also available to fUAMAS who were still minors when they started therapy.

Solentra provides direct assistance to UAMAS using specific culturally sensitive methods that pay attention to the language barrier and ensure the presence of an interpreter. It provides training in ethnopsychiatry for legal guardians, care workers, teachers, lawyers and other professionals working with foreign children. Direct assistance includes visiting these professionals in reception centres and schools to help them address difficulties faced by UAMAS. Together with UAMAS and the different professionals around them, Solentra guides the joint process of defining the problem and designing a solution supported by all. Solentra's assistance tools are knowledge of the culture, the migration process and general ethnopsychiatric problems. The focus is not just on problems, but also on resilience and how it can be strengthened by professionals.

The final aim of the methodology is to ensure equal access to child psychiatry. There are a number of explanations behind why a classical approach is not effective and why locally based interventions by a children's psychiatric unit are needed. These include:

- Firstly, the needs of UAMAS are often diffuse, comprising psychological, material and legal aspects. Secondly, since UAMAS are usually not familiar with psychotherapy and tend to stigmatize it, the need for therapy is often initiated by a concerned professional and not by UAMAS themselves. Thirdly, having migrated, UAMAS have lost their sense of belonging within a society – a basic precondition of mental health – and lack the literally and culturally spoken language that would enable them to understand their new environment.
- Helping create a network by mobilizing professionals and non-professionals is considered therapeutic. Locally based interventions are crucial for ensuring the success of psychotherapy. They create a purely explorative therapeutic space for all the stakeholders and contribute to cross-cultural therapy, helping individuals integrate into society. Solentra has created a help desk that provides advice on cases calling for mental health care. Solentra also provides training as well as intervision and supervision – techniques of discussing treatment and care work as a team.²⁶

Who implements it and are they remunerated or not? Solentra has two main sources of funding: the University Hospital Brussels, the seat of the association, and the Flemish government. The association employs three psychologists, two consultants specializing in ethnopsychiatry and one administrative coordinator. Some of these specialists also come from a migration background

²⁴⁶For further details on these techniques see

<http://www.unodc.org/documents/balticstates/Library/PharmacologicalTreatment/IntervisionGuidelines/IntervisionGuidelines.pdf>

and they facilitate contacts with children from their community. The team works closely with other child psychiatrists in the ward. Solentra carries out an ERF project with UAMAS as the target group

Since when? Solentra was initiated in 2001 and became fully operational in 2006.

Who are the target groups and beneficiaries? Migrant children with psychological or psychiatric problems are the main target group. The ERF project focuses on UAMAS with psychological and psychiatric problems, including follow-up care for UAMAS and fUAMAS.

How is it funded? Solentra has two main sources of structural funding: the Brussels University Hospital, the seat of the association, and the Flemish government. Funding is also available through the ERF project.

Why is this practice considered promising?

Replicability:

A similar methodology could be made available in other psychiatric hospitals for children in Belgium. National coverage could be expanded by recruiting more mobile staff. The PACCT methodology – Psychiatry Assisting Cultural diverse Community in Creating healing Ties – is the focus of a published article and is being updated. Solentra is regularly invited by other provincial state bodies to explain its methodology and to examine its replicability outside Brussels.

Verifiability/Comparability:

Solentra's mobile approach – visiting reception centres and other relevant facilities – has given rise to increased demand. Before this proactive approach, UAMAS were not aware of the practice and the possibility of support, nor were staff working with them on a daily basis. The approach – the result of several years' experience offering psychiatric help to UAMAS – was initiated in an effort to find out how to make this kind of help more widely available and more effective. The methodology has taken inspiration from the community-based approach used in developing countries in a series of integration projects, such as those aimed at reintegrating child soldiers. Qualitative research on the group therapy offered to UAMAS is under way.

Sustainability:

The practice can be integrated into national policies, albeit at a higher cost because of the need for interpreters and the longer time devoted to each case. The Solentra team hopes to be able to set up an independent and national centre/clinic providing this kind of support throughout the country.

Cost-effectiveness:

The practice can be maintained as long as there is financial support. Discussions are ongoing about the cost-effectiveness of the practice. PACCT is an innovative approach straddling between psychiatric and psychosocial interventions and preventive and curative measures. Compared with classical methods used in psychiatry, the approach is more expensive; however, its effectiveness would appear to justify the higher costs. Without this initiative, it would be difficult to find adequate psychological or psychiatric help for UAMAS because of the language barrier, extra costs for interpreters, frequent moving from one reception centre to another according to their legal status, diffuse demand for help, and additional administrative work involved.

Ownership:

The Flemish government and community support the practice. For instance, group therapy for Afghan UAMAS has recently been developed, which is particularly relevant because they are a large group and share similar experiences and the same level of trauma. The methodology is intrinsically culturally sensitive since all stakeholders are all equals as they attempt to define the problem and identify the solution. Solentra takes care that they treat each other with the greatest respect. The direct support is in the mother tongue of UAMAS through the help of interpreters and carried out by qualified ethnotherapists and personnel trained in culturally sensitive therapy.

Contribution to desired results:

The desired result is the improved psychological health of UAMAS following symptoms of psychological and psychiatric problems. New methodologies are applied focusing on equal access to child psychiatry. Solentra does this by using a two-track approach:

- by mobilizing professional and non-professional resources to help UAMAS and fUAMAS to integrate and pave the way for therapeutic help;
- by enabling UAMAS and fUAMAS to overcome their trauma with the help of specialized psychologists and trained interpreters who accompany them in the sharing of their traumatic experiences in their country of origin or during their journey to the EU Member State.