

Appendix 1 - EXECUTIVE SUMMARY

Summary of the main findings of the project

At the time the European Union States committed to establishing a Common European Asylum System (CEAS), the adaptation of procedures and practices for unaccompanied children seeking asylum remains an important issue. In fact, this particularly vulnerable population needs standards adapted to its specific situation. Issues such as legal guardianship, support during the procedure or conditions of interview are crucial for an effective protection of these children.

In this context, this study aims to analyze legislation and practices in all the 27 EU countries, in order to identify good practices, gaps and ways to improve the implementation of the right to asylum for unaccompanied children within the European Union.

1. General overview of asylum procedures for unaccompanied children.

At the border, it seems that several countries are implementing returns without a complete assessment of the situation of the child regarding asylum in contradiction with the non-refoulement principle.



In **Austria**, in border procedures at the Vienna airport, the United Nations High Commissioner for Refugees - UNHCR - has the possibility towards rejected asylum applications of unaccompanied children to file a veto and so enable the entry.

Some aspects of the asylum procedure could dissuade minors to ask for asylum. In several countries, **informal practices implemented by authorities** (difficulties to withdraw an application form...) may have an effect of discouraging minors to apply for asylum. The lack of reliability and length of **age assessment** are other points that could prevent people from being considered as unaccompanied children and then to have the benefit of specific procedures. It is a major subject of concern in almost **all EU countries**, where medical examination yet considered as inefficient is the most widespread method.

In almost **all EU countries**, the police is required by law to inform all migrants about their right to ask for asylum especially when they are arrested, but this information is generally the same regardless of age. Thus, in practice, many children do not understand this formal notification because there are no specific provisions for minors.



In **Sweden**, Migration Board provides a special document for children containing different general information about the process of applying for refugee status. In addition, the Swedish Red Cross is giving "asylum information workshops" in the youth centres where unaccompanied minors live. That activity is very popular and usually the young people have many questions about the procedure.

RECOMMENDATION 1 - Access to asylum procedure

- Children should always have access to asylum procedures, regardless of their age.
- Public authorities should take measures to ensure that all unaccompanied children are always informed about their right to seek asylum and the details of such a procedure in a child friendly manner tailored to the needs of children.

2. Statistics and profiles

In some countries, statistics on asylum application are unclear or incomplete. In total, we count 10,295 asylum applications for unaccompanied minors throughout the European Union in 2010. **Sweden** (2 393), **Germany** (1 948) and **the United Kingdom** (1 595) are the countries with the most important number of application. Except in **the Czech Republic**, there is no data available on appeal cases of unaccompanied children.

Afghanistan was the first country of origin in 2010, in 13 of the 21 countries where breakdown by nationality was available. The age of these children applicants seems higher than 15 in almost every case. In 2010, the average in the countries where this statistics are available shows that 82 % of the minor applicants are male.

The majority of the countries do not provide disaggregated data that could show the number of decisions regarding unaccompanied children's asylum applications. We see when these data are available that the rate of positive decision varies from 8% (in **Ireland**) to 61% (in **the United Kingdom**), but the possible outcomes of the procedures are not the same in all countries (a "positive" decision may be issued but with a status less favourable than refugee or subsidiary protection status).

RECOMMENDATION 2 - Statistics

- Each State should collect and provide data on asylum applications and decisions related to unaccompanied minors, with breakdown by sex, nationality and age in order to improve knowledge on this phenomenon and to design adapted policies.

3. Legal guardianship

European States are implementing different models of legal guardianship. Several EU countries implemented a system of legal guardianship specifically earmarked for unaccompanied children seeking asylum (**Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Luxembourg, Poland, Portugal, Romania, Slovenia** and **Sweden**).

In other countries, unaccompanied children are represented during the asylum procedure by legal representative who are not especially appointed for this procedure (**Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, the Netherlands, Slovakia, Spain** and **the United Kingdom**)

The conditions to be appointed as a guardian vary from one country to another. In **Austria, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Romania, Slovakia, Spain** and **the United Kingdom** there is no formal requirement for any knowledge or training in the field of asylum law. A specific expertise is required in few countries as **Cyprus, Denmark, Estonia,** and **the Netherlands**.



To become a guardian in **the Netherlands**, a bachelor degree in social work is needed. To support the guardians, workshops and in company courses are organized by NIDOS. When they enter into service a four day introduction course is organized. The guardians at Schiphol Airport receive information on countries of origin from conferences and cultural mediators.

The issue of legal guardianship is handled in many ways within the EU. Some countries understand the role of the legal guardian as someone who takes care of all aspects of the child's life, including asylum procedures. This option seems good if the guardian has sufficient knowledge of asylum right. A specific guardian dedicated to asylum procedure is also an interesting way

but it implies that a good relationship be established between this specific guardian and the general guardian. It implies also that the role of the specific guardian, trained in asylum issues, be extended to all aspects of the procedure including support in the writing of the application and the preparation of the interview.

RECOMMENDATION 3 - Legal guardianship

- A legal guardian should be appointed for all unaccompanied children during all the asylum procedure.
- The guardian should have specific knowledge in the field of law and asylum procedures and he/she should have experience in the field of child rights and child protection. He should be independent from public authorities.
- A monitoring system should be implemented in order to evaluate the work of the legal guardian. In accordance with the age and maturity of the child, he should be given the opportunity to be heard on the appointment and the work of the guardian.

4. Dublin II regulation

According to the Council Regulation of 18 February 2003 usually called "Dublin II regulation", "where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum". It is only possible to take fingerprints of minors over 14 years old. In practice, it means that minors under 14 years old cannot be transferred under Dublin II regulation, except if they have family members in another member State.

Most European countries **allow the transfer of unaccompanied minors under the Dublin II regulation: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden** and **the United Kingdom**. However, most of these countries allowing transfer under the Dublin II regulation though **suspended transfers to Greece**. In some countries, **transfer can**

happen, but it rarely happens in practice. It is the case in **Luxembourg, Romania** and **Slovakia** where transfers under the Dublin II regulation are possible, according to Law, but in practice there is almost no transfer.



In **Italy**, unaccompanied minors are not transferred in another country unless the minor and the family member clearly express their willingness to reunite and the best interest of the child principle is safeguarded.

Implementation of transfers varies from country to country. In some countries, children can be detained pending deportation. Sometimes, they are informed of their coming transfer a few days before and given explanation on what is going to happen. Sometimes, they are transferred with very little information. In some countries, they can be led to the country of transfer and sometimes they have to leave on their own. In some countries, children are accompanied to the country of transfer. One important question is the one of follow-up after returning, which seems to be non-existent.

RECOMMENDATION 4 - Dublin II

- The Dublin II regulation should not be applied to unaccompanied minors, except for the purpose of family reunification if it is in the best interest of the child.

5. Support and accommodation during the procedure

Unaccompanied children who have lodged an asylum application have to wait for many weeks or months before the main interview and then a final decision. During this period, they need basic accommodation but also a specific support as children and asylum seekers covering medical, psychological and legal aspects.

ACCOMODATION

The option of **foster family** for unaccompanied asylum-seeking children is sometimes chosen in certain countries, but never widely. In some countries, it depends of the age of the minor. Unaccompanied minors may be accommodated in **reception centres for children**, which means with nationals or in centres designed for unaccompanied foreign minors. Sometimes, their status of asylum seeker takes precedent on their status

of minor in the choice of the accommodation. Therefore, they may be placed in **reception centres for asylum seekers with adults** as permitted by European law for children above 16. They thus receive a legal follow-up but their specific needs as minors are not always satisfied. Finally, children can be accommodated in **specialized centres for unaccompanied asylum-seeking children**.



In **France**, there is one centre at the national level specifically designed for them, which offers legal and educational support and follow-up. This reception centre for minors seeking asylum (called 'CAOMIDA') is allocated near Paris. A psychologist and a legal expert are working within this centre for supporting children during their asylum application. This centre only has 33 places, which means that many other unaccompanied asylum seeking children are not accommodated there.

LEGAL SUPPORT

In some countries, a **free legal support** (generally provided by a lawyer) is foreseen or/and provided. In other countries, **free legal support is only available for the appeal or under certain circumstances**, as in **Denmark, France, Germany, Greece, Latvia, Malta, Portugal** and **Slovakia**. In countries where free State legal support is not foreseen, or in addition to such support, **NGOs or legal specialists within the reception centres** can offer such aid.



In **Belgium**, the French speaking Bar of Brussels has a legal aid office with a pool specialized in unaccompanied minors. This pool is composed of 15 lawyers who train themselves and who exchange on all procedures concerning unaccompanied minors.

Sometimes, children can benefit from a **free interpreter to help them preparing the application**. In practice, even when interpreters are not foreseen to help the minor preparing the application, **NGOs or volunteers can sometimes offer such support**.

MEDICAL AND PSYCHOLOGICAL SUPPORT

In some countries, unaccompanied children receive the same medical and psychological support as resident children in public care. In other countries, unaccompanied asylum seeking minors have access to the medical

care as asylum seekers. Finally, unaccompanied minors can have access to medical care, as children AND as asylum-seekers (double status). In addition, unaccompanied asylum-seeking children can benefit, most of the time, of the support from NGOs. Concerning the psychological aspect, it seems that support is not provided in all countries.



In **Finland**, the Immigration Service developed the asylum process for unaccompanied minors in a project led by an NGO *Yhteiset Lapsemme* (All Our Children). The idea of the project was to develop tools to promote the assessment of the best interests of the child in the Finnish asylum procedure, as well as to improve the assessment of the psychosocial situation and wellbeing of unaccompanied minor asylum seekers during the asylum procedure.

DETENTION

A first list of countries, prohibiting detention of all unaccompanied children on the territory can be drawn up: **Belgium, Cyprus, Denmark, France, Hungary, Ireland, Italy, Lithuania, Portugal, Romania, Slovakia, Spain, Sweden** and **the United Kingdom**. A second list of countries, prohibiting detention of unaccompanied asylum-seeking children is composed of **Bulgaria** and **Poland**. In **Austria, the Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Malta, the Netherlands** and **Slovenia**, unaccompanied children can be detained, whether they are asylum seekers or not.



In **Portugal**, minors cannot be detained for an irregular entry or stay in the country. In this context, the law provides for a special regime which allows the regularization of the situation of such minors in the country

In some countries allowing detention of unaccompanied minors, conditions of detention are quite bad. However, when unaccompanied minors are detained, in general they are **separated from adults**.

Thus, the detention of unaccompanied children seeking asylum is not prohibited in all the 27 EU countries. The Jurisprudence of the European Court of Human Rights has yet emphasized the extreme vulnerability of these children in the context of detention. We hope

that these positive developments will lead to the end of such practices in the coming years.

RECOMMENDATION 5 - Support and accommodation

- Unaccompanied minors should benefit from free legal support at all stages of the procedure. to prepare the application
- Irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care, medical and psychological.
- Unaccompanied asylum seeking children should be placed in accommodation centres for children. Staff working with these children should receive appropriate training concerning their specific needs as asylum seekers and children.
- Unaccompanied minors should never be detained, whether they are asylum seekers or not.

6. Main interview

The main interview is generally the main step of asylum procedure. It is a key moment where the applicant can explain his/her situation with details. For asylum officers, this step is a good way to see the credibility of the story by asking precise questions about elements contained in the written application.

TRAINING OF ASYLUM OFFICERS

Asylum officers usually receive training on different issues related to asylum such as content of eligibility criteria, legal and country conditions research, or cross-cultural communication during the interview. However, processing an application from an unaccompanied minor requires training on specific issues related to this vulnerable population. Despite this numerous norms and recommendations, training and knowledge of asylum officers dealing with unaccompanied children is not generalized in EU countries.



In **Ireland**, UNHCR provides trainings with key principles on interviewing children, and covering the whole protection assessment process (credibility assessment, burden of the proof, child-specific forms of persecution...). The training includes case studies and the contribution of a child psychologist on interviewing techniques. To date, according to asylum office, all caseworkers received training on this issue.

CONDITIONS OF THE INTERVIEW

Unaccompanied children are not able to express their situation in the same way as adults. Due to their particular vulnerability, they need specific conditions of interview. It may be material arrangement such as specific rooms but the most important is to provide specific procedures and techniques of interview in accordance with the age and maturity of the child. Specific conditions of interview for minors are not implemented in all EU countries. Law and practices differ from country to country.



In **Belgium**, the asylum officer should ensure at the beginning of the interview that the minor understands the interpreter. Unaccompanied minors are interviewed in special rooms. The Commission on asylum adopted a specific technique called “dialogical communication method”. This technique is designed to be specifically tailored to children’s memory. Another specificity of the interview technique is to let the first child to talk freely about his/her experiences on a given subject, before asking specific questions.

RECOMMENDATION 6 - Main interview

- No negative decision should be issued without an interview, except when the claimant is in an absolute incapacity duly assessed by an independent authority.
- Interview should be conducted in child-friendly conditions, by specially qualified and trained officials with appropriate knowledge of the psychological, emotional, physical development and behaviour of children. Moreover, EU and national institutions should provide information on the situation of children in the country of origin for asylum officers.

7. Decision and its consequences

The specific situation of unaccompanied children seeking asylum requires that the decision process takes into account the minority and vulnerability of the applicant.

CHILD-SPECIFIC ASPECTS OF THE DECISIONS

To determine whether unaccompanied children are treated specifically, it is interesting to compare recognition rate between adults and unaccompanied children. Figures available in **Belgium, France, Hungary, Lithuania, Portugal, Slovenia** and **Ireland** suggest

that children applications are examined more favourably. The protection rate for children seems quite similar to those for adults in **Greece, Latvia, Malta, and Slovakia**.

Some persecutions are suffered specifically by children and can be linked to the legal standards for granting refugee status or subsidiary protection. However, in some countries as **Bulgaria, Cyprus, Greece, Portugal**, child-specific forms of persecution are not quoted in national law or guidelines and, in practice, no cases where children have been granted protection because of these forms of persecution are known.

COMMUNICATION OF DECISIONS

The decision is mainly delivered to the legal guardian in some countries. In other countries, the decision is communicated to both child and legal guardian. Finally, the decision could be communicated to various people depending on the situation. In most countries, there is no child-specific language or other tools used to communicate the decision.



In the **Czech Republic**, the child and his/her guardian are both informed about the date of delivery of the asylum decision and the MOI official comes to the centre to deliver the decision at the announced day. The guardian must come too, in order to accompany the child.

APPEAL AND POSSIBLE OUTCOMES OF THE PROCEDURE

In some countries as **Austria, Belgium, France, Hungary** and **Italy** the guardian must introduce the appeal or at least give his/her approval. In many other countries, there can be a difference between the first instance procedure and the appeal, but without any specificity for children. In some countries, the right to appeal seems to be threatened.

The consequences of the asylum process can vary significantly from one country to another. In some countries as **Belgium, Bulgaria, the Czech Republic, France, Ireland, Portugal, Romania, Slovenia** and **Spain**, the possible outcomes of this procedure are quite simple and consistent with the international and European legal framework on asylum: **rejection; refugee status; subsidiary protection**. In other countries as **Austria, Cyprus, Denmark, Finland, Germany,**

Greece, Hungary, Italy, Malta, the Netherlands, Poland, Slovakia, Sweden and the United Kingdom, the asylum procedure is the main and sometimes the only way to obtain a right to stay in the country. It means that **this procedure can lead to refugee status or subsidiary protection but also to other kind of residence permit**.

In some countries, when the final decision is delivered, the failed unaccompanied asylum-seeking minor has to leave the country, and a removal order may therefore be issued. It is the case in **Bulgaria, Cyprus, Estonia, Finland, Germany, Luxembourg, the Netherlands, Poland, Slovenia, Spain and Sweden**. In other countries, unaccompanied minors have the right to stay in the country till they turn 18. In **Belgium, the Czech Republic, Italy and Portugal**, a residence permit can be delivered under certain circumstances.

FAMILY REUNIFICATION

The issue of family reunification is linked to the right of every child to live with his/her parent provided in the Convention on the rights of the child (art. 22).

The definition of family regarding family reunification varies from country to country. In most countries as in **Austria, Belgium, Cyprus, France, Greece, Ireland, Italy, Lithuania, Slovakia, Spain and Sweden**, family is defined as **the parents of the unaccompanied refugee minor**. This strict **definition can be extended to the legal representative** as in **the Czech Republic, Finland, Hungary, Latvia and Slovenia**. In some other countries, it **could be either the parents, or the guardian or another adult from his/her family**, as in **Bulgaria, Estonia and Portugal**. In some countries, unaccompanied refugee minors can be joined by their parents and **also their siblings**, as in **Denmark, Germany, Luxembourg, Netherlands and Poland**. In **the United Kingdom**, family reunion for refugees only applies to dependent children and spouses of refugees, not to their parents.

In order to implement family reunification, it is necessary to know where the family of the child is. Family tracing is thus foreseen by the international instruments. In **Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia and Sweden**, family tracing is also provided by national law. Different organizations or institutions may be in charge of this family tracing. Sometimes, it can be **immigration services**, as in **Denmark, Finland, Lithuania,**

Poland, Portugal and Sweden. In many countries, the **Red Cross** is responsible for this research or at least is one of the services that can help tracing family. Many questions may arise from this, in particular **question of confidentiality, linked to their status as an asylum seeker or refugee**.

In some countries, the family reunification procedure only applies to refugees, not to subsidiary protection beneficiaries. Otherwise, **the procedure may be difficult or very long** in some countries.

RECOMMENDATION 7 – Decision and its consequences

- Considering vulnerability and special needs of unaccompanied minors, it is essential that every effort be made to reach a decision on asylum promptly and fairly.
- A liberal application of the principle of the benefit of the doubt should be applied to decisions regarding application of unaccompanied children. Child-specific forms of persecution should be taken into account in the decision process.
- Unaccompanied minors should never be prevented from appealing a negative decision.
- The family of unaccompanied children who were granted international protection should be granted a residence permit. Family reunification should apply to families of minors who were granted international protection, in a reunification procedure eased and accelerated.

8. Specific aspects of asylum at the border

The “non-refoulement” principle prohibits the return of refugees and requires States to consider asylum applications before deporting a person. At the border, it means that States have to provide the possibility to access asylum procedure.

In **Austria, Bulgaria, Denmark, Estonia, Finland, Italy, Latvia, Lithuania, Poland, Portugal, Slovenia, Sweden and the United Kingdom no guardian is directly appointed at the border** when unaccompanied minors are identified there. In **the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands and Slovakia a guardian is appointed for minors arriving at the border**.

As unaccompanied asylum-seeking children have specific needs, **immigration agents should be sensitive to issues regarding children's rights and the right to asylum for unaccompanied minors**. Many countries recognize that in theory agents should be trained to such issues but also note that in practice there are failures to respect children's rights. In most countries, asylum seeking minors are interviewed about the substantive matters of their claim at the border. Indeed, **unaccompanied asylum-seeking children are asked the reasons why they left their country and why they are asking asylum**, and this information might be used afterwards during the examination of their application.

In **Austria, the Czech Republic, Finland, France, Germany, Greece, Latvia and Malta**, unaccompanied minors may be detained at the border. In other countries, detention is allowed and implemented but only a few hours and under certain circumstances, as in **Denmark, Estonia, Hungary, Latvia** or **the United Kingdom**. In some countries, detention is allowed, but in practice it is rarely implemented as in **the Czech Republic** and **Portugal**. In **Belgium, Cyprus, Ireland, Lithuania, Romania, Slovakia**, unaccompanied minors cannot be detained at the border.



In **Ireland**, all unaccompanied minors, once identified by Immigration services, are referred to the HSE, which means that they are directed straight away to the single institution that will care for them and represent them.

RECOMMENDATION 8 - Asylum at the border

- Unaccompanied children arriving at the border should be admitted to the territory in order to assess their situation regarding asylum and provide them appropriate accommodation and care. They should never be detained at the border.

Conclusion

The analysis of various issues related to unaccompanied minors seeking asylum highlights many concerns. One of the main findings from this report is the heterogeneity of law and practices in this area, despite the intention to harmonize the implementation of asylum right within the European Union. Overall, the consideration of minority in the application of the fundamental right to seek asylum remains poorly developed within the European Union with regards to the requirements of European and international standards on human rights, especially the Convention on the rights of the child. Statistics are often incomplete, the scope and content of legal representation varies considerably from one country to another, the Dublin II regulation is not always applied in the best interest of the child, support and accommodation during the procedure are generally unsatisfactory (some countries even allowing detention of unaccompanied asylum seeking children), while the treatment of the application and the decision process include few child-friendly specificities.

Thus, the overall picture does not seem very positive. However, this study shows that numerous ways of improvement are possible. In fact, we observe good practices in each issue related to the right to asylum for unaccompanied minors. Comparison of these positive examples should guide the national stakeholders and the European institutions in order to improve the situation of these young people who have suffered and who need now a respect of their fundamental rights to build their life in Europe. Although they represent a few part of asylum applicants, unaccompanied children who join Europe to flee persecution are the future of a continent which should ensure they are protected in a high standard basis, in accordance with the commitments and the tradition of the European Union.