



# CHILDREN ON THE MOVE, FAMILY TRACING AND NEEDS ASSESSMENT

**Guidelines For Better  
Cooperation Between  
Professionals Dealing With  
Unaccompanied Foreign  
Children In Europe**



European Commission  
Directorate-General Home Affairs  
Directorate B: Immigration and Asylum  
UNIT B4: Financial Support – Immigration and Asylum





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**Guidelines For Better Cooperation  
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Children In Europe**



NET FOR U

Needs Tackling and  
NETworks Tracing FOR  
Unaccompanied Children integration

**EUROPEAN PROJECT  
HOME/2011/EIFX/CA/1991**



European Commission  
Directorate-General Home Affairs  
Directorate B: Immigration and Asylum  
UNIT B4: Financial Support – Immigration and Asylum

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The IJJO promotes and encourages the improvement of juvenile justice systems and policies, the implementation of international standards, the strengthening of professional competence in the field, and the exchange of innovative good practices.

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[oiij@oiij.org](mailto:oiij@oiij.org)

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## ABSTRACT

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The main goal of this report is to develop a comprehensive comparison and analysis of the Unaccompanied Children's profiles –concerning needs and family tracing issues– in the different host-partners countries and to provide a multidimensional evaluation of the problem at a European level.

This research also aims to foster a cooperative strategy between organizations and stakeholders working at the local, national and international level on these two essential issues.

This report is part of the EU project “**Net for U - Needs Tackling and Networks for Unaccompanied Children integration**” which involved 7 partners and is coordinated by the Istituto Don Calabria in Italy, with the support of the European Commission, DG Home Affairs.

The objectives of the project was to define an effective multidimensional intervention programme aimed at improving the integration of unaccompanied foreign children, as well as ensuring their needs and interests. One of the outcomes of the project is to strengthen both the individual social networks of unaccompanied children and new forms of cooperation within and between services and stakeholders.

Therefore, it is envisaged to serve as a knowledge-based intervention model where a European action plan is provided in order to contribute in developing new forms of cooperation and improving the integration of unaccompanied foreign children.

To this aim, the different reports provided by the national experts of the host-partners countries are here analysed and a research work is carried out on the existing EU guidelines on such matter.

**Unaccompanied children**, also known as Separated children, are defined as non EU nationals or stateless persons below the age of eighteen.

Therefore, Unaccompanied children are a target at high risk of social exclusion and with specific needs which must be regularly reviewed (with a precise attention also to those children requiring special care, protection or treatment for their physical or mental health).

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Moreover, the IJJO would like to express its great appreciation for the valuable contribution of specific articles by Daphné Bouteillet-Paquet, Senior Advocacy Officer in the Save the Children EU Office, by Pascal Reyntjens, Chief of Mission in the International Organization for Migration' Country Office for Belgium and Luxemburg, and by Lilana Keith, Programme Officer at the Platform for International Cooperation on Undocumented Migrants.

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# 1. INTRODUCTION

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**Unaccompanied minors**, also known as Separated children, are defined as non EU nationals or stateless persons below the age of eighteen, who arrive in the territory of the Member States unaccompanied by an adult responsible for them, or who are left unaccompanied after they have entered the territory of the Member States. These unaccompanied minors come to the EU from all parts of the world, most especially from Eastern Europe, Africa, and Asia. Separated from their communities of origin, these children often experience an unfamiliar culture shock and loss of a social network. Despite the various terminology that exists for migrant children, we will focus on the notion of unaccompanied children throughout this report.

In fact, the umbrella definition of **children on the move** entails a more holistic approach to child migration that includes all minors moving within or between countries, and with or without their parents, as a group in need of special safeguards. The definition of unaccompanied children, instead, best represents the profile of children who migrate without their parents. As such, it allows for a more in-depth analysis of the risks they are subject to, as well as of the specific policies designed to provide them with enhanced protection<sup>1</sup>.

Therefore, Unaccompanied children are a target at high risk of social exclusion and with specific needs which must be regularly reviewed (with precise attention also to those children requiring special care, protection or treatment for their physical or mental health).

The challenge of unaccompanied children is growing, both at an International and European Level. At an International level, despite the different reasons, perspectives and vulnerabilities of migrant children, they are generally considered within the framework of the migration of adults. It seems that national policies and legislation on migration usually assume that the migration phenomena only affect adults and a special provision guaranteeing migrant children's needs are not often established. Another international challenge is related to migrant children's profiles assumed by national bodies: the reason for independent migration is often assumed to be related to child trafficking. A wrong approach to the real situation of migrant children hampers their effective protection and a false assessment of their needs.

Another demanding task is that related to the criminalization of irregular migration by national policies; increasing migrant children's vulnerability when parents have been taken into detention, or are subject to exclusion or deportation, which hampers family reunification.

Children in the context of migration, whether accompanied or not, may be subject to violent treatment within the migrant process. This problem gets worse when children in this

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<sup>1</sup> IOM definition, available at: <http://avrr.belgium.iom.int/en/other-projects/unaccompanied-minors.html>



context do not have access to the procedural safeguards established in Article 12 §2 of the Convention of the Rights of the Child<sup>2</sup>.

The EU Agenda for the rights of the child recognises that children on the move are often in circumstances where they are vulnerable to harm and require and deserve special protection. Child protection systems can play an important role in responding to the situation of children on the move, by ensuring that their protection needs *as children* are addressed, regardless of their nationality or immigration status.

At an EU level large numbers of unaccompanied children arrive on EU territory, whether on their own or are left unaccompanied after they have entered EU territory<sup>3</sup>. Despite the different impacts experienced by Member States, all of them are concerned by this phenomenon. Data on unaccompanied children sometimes differs from reality and is not totally accurate, being more consistent for unaccompanied asylum-seekers' children. According to the data presented by the European Migration Network<sup>4</sup>, there were in 2008 a total of 11 292 applications for asylum lodged by unaccompanied children in the 22 Member States<sup>5</sup> participating in the *Action Plan on Unaccompanied Minors (2010 – 2014)*' study. In 2007 a total of 8 030 asylum applications were lodged. The applications in 2008 thus represent an increase of +40.6% for these Member States. The country of nationality of the unaccompanied children varied, although overall nationals of Afghanistan, Iraq and some African states were prominent.

Motivation for migrant unaccompanied children is difficult to categorise but it mainly responds to: *“escape from wars and conflicts, poverty or natural catastrophes, discrimination or persecution; to be sent by their family in the expectation of a better life or in order to access education and welfare, including medical attention; to join family members; as victims of trafficking destined for exploitation, etc”*<sup>6</sup>.

EU Member States' great challenge is related to an under-implementation of CRC principles because of the *comments or reservations* to the rights recognised in this convention that they can establish. This is due to the soft-law nature of this international law tool.

Another challenge within EU Member States would be, on the one hand, continuing the law-making process affecting unaccompanied children, and on the other hand, to work harder on

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2 The Inter-American Court has observed that “[at] times, undocumented migrant workers cannot even resort to the courts of justice to claim their rights owing to their irregular situation” (“Juridical Condition and Rights of Undocumented Migrants”, Advisory Opinion OC-18/03, 17 September 2003). On the same issue, see also “Challenges in implementation”. *Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration*. UN General Assembly. 5 July 2010:10.

3 For the purpose of this paper, the definition of ‘unaccompanied child’ is equivalent to that of ‘unaccompanied minor’ as found in Article 2(f) of Council Directive 2001/55/EC.

4 Synthesis and National Reports available at European Migration Network website: <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=115>

5 Exceptions are Bulgaria, Cyprus, Denmark, Luxembourg, and Romania.

6 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:2.

the networking and cooperation enlargement, as it results that both are currently insufficient for an effective protection and a correct needs assessment and family tracing<sup>7</sup>.

## **The project Net for U**

This report is one of the key outputs of the European project “Net for U - Needs Tackling and Networks for Unaccompanied Children integration” (HOME/2011/EIFX/CA/1991) is a European project involving 7 partners (Europeace Youth, UK; Fundación Diagrama, Spain; Association Diagrama, France; Christian Association of Youth Villages, Germany; Synergia, Italy; The Smile of the Child, Greece; and the International Juvenile Justice Observatory, Belgium) and is coordinated by the Istituto Don Calabria in Italy, with the support of the European Commission, DG Home Affairs.

The main goal of the project is to define an effective, multidimensional intervention programme aimed at improving the integration of unaccompanied foreign minors (UAMs), as well as ensuring that their needs and interests are met. One of the intended outcomes of the project is to strengthen both the individual social networks of unaccompanied children, and create new forms of cooperation, within and between services and stakeholders.

For these main reasons the primary purposes of the project are:

- a) to elaborate a knowledge-based intervention model to help improve the practices of both ongoing special needs assessment (in order to elaborate a coherent life-project for each child) and common family tracing procedures (in order to map familiar relationships – unless this goes against the child’s best interest – as possible emotional and physical care resources to sustain positive paths and wellbeing and/or to promote family reunification);
- b) to provide children with appropriate opportunities for training and education; social and leisure activities; and participation in cultural life where they live and thereby increasing opportunities for interaction with their peers and adults of the host society, and those belonging to the same national or cultural group, in order to provide occasions for the children to live their own culture, ensuring the respect of diversity together with the promotion of the integration in the collective life;
- c) to build a permanent transnational cooperation amongst professionals, stakeholders, social workers and all other figures who work with unaccompanied children, to define international measures, to share positive practices concerning integration through individualised care plans so that they may respond appropriately to their individual needs.

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<sup>7</sup> *Situation and Treatment of Unaccompanied Children in Europe. A Comparative Study of 6 Countries: Germany, Belgium, Spain, France, Italy and United Kingdom.* Daniel Senovilla Hernández. 2007:7-12.

The other key outputs of NET FOR U are the *Toolkit* for a common approach to special needs assessment and family tracing and the *Intervention Manual* to build individualised programmes targeted at children (covering different areas: education, labour, family relationships, social and leisure). A summary of both documents is available in the annexe of this report.

### **A note on methodology**

The main goal of this report is to develop a comprehensive comparison and analysis of the Unaccompanied Children's profiles—concerning needs and family tracing issues—in the different host-partners countries and to provide a multidimensional evaluation of the problem at a European level. Therefore, this project is envisaged to serve as a knowledge-based intervention model where a European action plan is provided in order to contribute in developing new forms of cooperation and improving the integration of unaccompanied foreign children.

To achieve this aim, reports provided by the national experts of the host partners' countries have been analysed and research has been carried out on existing EU guidelines on such matters. In particular, to capture the context of each country and describe the specific challenges faced by practitioners, extensive interviews with experts and professional were carried out by the partners.

Moreover, some of the participants to the final conference of the project, "Improving the work with Children on the move in the EU" personally contributed to this report the articles that are featured in its third section. The conference, held in Brussels on the 24<sup>th</sup> of April, with the support of the European Commission and the European Economic and Social Committee, was an opportunity to exchange best practices between practitioners who deal on a day to day basis with unaccompanied children. In this light, the articles provide particularly interesting insights on the specific perspective of leading NGOs and intergovernmental bodies, and their approach to the concrete challenges of providing the best possible assistance.

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## 2. CHILDREN ON THE MOVE: LEGAL FRAMEWORK

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### 2.1. International and European Legal Framework on the Protection of Children on the move

#### A. INTERNATIONAL LEGAL FRAMEWORK

Since the beginning of the 20<sup>th</sup> Century, a subsequent number of international rules have been developed to protect children in a migration context.

The Universal Declaration of Human Rights; International Convention on the Elimination of All Forms of Racial Discrimination ; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities. All these instruments call for an unaccompanied children-friendly approach, where they should be protected as children first and where they should not fall into unfavourable situations such as stateless status<sup>8</sup> (stateless children are also protected by the **Convention relating to the Status of Stateless Persons** and the **Convention on the Reduction of Statelessness** of 1961, i.e. Art. 1 and 8).

The Article 1 of the **Convention on the Rights of the Child** of 2 November 1989 highlights that unaccompanied children shall benefit from all guarantees established in this Convention. Furthermore, Article 22 §1 declares that States Parties shall provide them with any humanitarian instrument so they can receive appropriate protection and humanitarian assistance. Moreover, Article 22 §2 states that unaccompanied children shall be assisted in the tracing of their family in order for reunification to be possible. Finally, the Convention declares that Unaccompanied Children's needs assessment should be encouraged (i.e. Art. 17 about linguistic needs; Art. 23 about special needs of disabled children; Art. 37 about the needs of children deprived of liberty)<sup>9</sup>.

The Convention on the Rights of the Child also contains important principles that should be applied with no distinction to unaccompanied children. These principles are as follows: **non-discrimination** (Art. 2 §1); **respect of the best interests of the child** (Art. 3 §1); **the right to live, survival and development** (Art. 6); and **the right to be heard** (Art. 12).

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<sup>8</sup> Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. UN General Assembly. 5 July 2010:5.

<sup>9</sup> Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990 in accordance to art. 49.

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** highlights the vulnerable situation that children from migrant families could experience concerning their rights to birth registration (art. 29), to education (art. 30), to not be unlawfully deprived from their identity documents (art. 21), to consular protection and assistance (art. 23) and protection against collective expulsion (art. 22)<sup>10</sup>.

A special protection for children who work is provided by the following normative instruments: the Migration for Employment Convention (1949), the Migrant Workers Convention (1975), and the **Worst Forms of Child Labour Convention** (1999).

In terms of the protection offered by the **Convention relating to the Status of Refugees** (1996), it must be highlighted that even if a specific provision for unaccompanied children is not established, a special protection of the rights of child refugees and asylum-seekers is foreseen (i.e. Art. 22 unaccompanied minors' equal right to education).

The **General Comment no. 6 on the treatment of unaccompanied minors and separated children outside their country of origin** of the Committee on the Rights of the Child provides authoritative guidance on the situation of migrant children in order to monitor the implementation of the core international human rights treaties<sup>11</sup>.

The Special Rapporteur on the Human Rights of migrants addresses the situation of migrant children in its **Report on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development**<sup>12</sup>. With this report the Special Rapporteur recalls “the obligation of the State to ensure the protection of all children in all stages of the migration process. The Special Rapporteur presents an overview of the international legal framework applicable, proposes a conceptual framework and refers briefly to three categories of children affected by the migration process: those left behind by migrating family members; migrant children moving across borders; and migrant children in host countries. The Special Rapporteur concludes the report with recommendations for further consideration and action by States and other stakeholders”<sup>13</sup>.

Both the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, and the **Protocol against the Smuggling of Migrants by Land, Sea and Air**, supplementing the UN Convention against Transnational Organized Crime, contain specific provisions for the situation of migrant children<sup>14</sup>.

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10 Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. UN General Assembly. 5 July 2010:5.

11 Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. UN General Assembly. 5 July 2010:6.

12 (A/HRC/11/7). <http://daccess-ods.un.org/TMP/5189498.66294861.html>

13 Report on the Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to development. Special Rapporteur on the Human Rights of migrants. 14 May 2009:1.

14 Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. UN General Assembly. 5 July 2010:6.

Finally, there are other international instruments that provide protection to migrant children at a regional level: the African Charter on the Rights and Welfare of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Charter of Fundamental Rights of the European Union; the American Convention on Human Rights; and the Inter-American Convention on International Traffic in Minors<sup>15</sup>.

## B. EU LEGAL FRAMEWORK AND GUIDELINES ON UNACCOMPANIED CHILDREN NEEDS ASSESSMENT AND FAMILY TRACING

### I. EU LEGAL FRAMEWORK

- An approach to the concept of unaccompanied children and children on the move.

The concept of unaccompanied children (or minors) is provided by Article 1 of the **EU Council Resolution of 26 June 1997** which states that they are “third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States.”

Following the latest international trends and civil society contributions to this issue, we highlight the concept of “Children on the Move” provided by Save the Children: “those children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement might place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence”<sup>16</sup>.

In order to further the “children on the move” concept, we highlight the European Forum on the Rights of the Child Background Paper for Workshop (2013). According to this paper, and recalling the purpose of our research work of focusing in the topic of unaccompanied children’s needs assessment and family tracing, we highlight that children on the move “may be in vulnerable circumstances because of their nationality or migration status and may face particular protection issues while on the move, for example: (a) Recognition as a child in the absence of proper documentation; (b) vulnerability to trafficking or re-trafficking; (c) living on the street; (d) detention as an irregular migrant; (e) difficulties in restoring family links or maintaining family unity; (f) lack of access to essential services, including health and accommodation services; (g) refusal of entry

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<sup>15</sup> Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. UN General Assembly. 5 July 2010:6.

<sup>16</sup> Children on the Move. International Organization for Migration. 2013:66

at border crossings; (h) sending back and return issues, where a child is transferred to another EU country or a third country”<sup>17</sup>.

- **The Dublin II regulation as a contested measure to reach a better assessment of unaccompanied children’s needs and family tracing**

The Dublin II Regulation<sup>18</sup> is designed to provide an effective law tool to Member States for recognising those situations where they have the responsibility of examining an asylum application.

The main principle of this Regulation is that “*only one Member State is responsible for examining an asylum application*”<sup>19</sup> in order to avoid possible system’ abuses and to offer asylum seekers the safeguard of not being transferred from one country to another. In order to meet this goal, this Regulation establishes hierarchical criteria for defining which Member State is responsible for each asylum application.

The allocation of this responsibility will vary depending on the asylum seeker’s situation when he/she first lodged his/her application within a Member State. In any case, “*family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application*”<sup>20</sup>. This family unit principle is also guaranteed in article 8 of the Council Directive 2003/9/EC.

Despite there being several situations for which this Regulation establishes responsibility of Member States for examining an asylum application, we will only highlight a number of specific provisions that are especially relevant concerning our research topic: the respect of the family unit principle within the family tracing framework:

**(a)** When an unaccompanied asylum seeker minor lodges their application in a Member State where his/her family is legally present, this country will be responsible for examining his/her application (Art. 6 §1 of the Dublin II Regulation). This provision responds to the **family unit** principle. However, if the unaccompanied child has no family in this country, the Member State where the asylum seeker has lodged his/her application (Art. 6 §2 of the Dublin II regulation) and where they are present will be responsible for examining it: “*Where an unaccompanied minor*

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17 *The Role of Child Protection Systems in Protecting Children on the Move*. Background Paper for Workshop No. 3 – 14 November 2013. European Forum on the Rights of the Child. 2012:3.

18 **Council Regulation (EC) No 343/2003** of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

19 [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm)

20 **Paragraph 6 of the Council Regulation (EC) No 343/2003** of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation). <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=1cSCTLndrVpZbY2hPfhK7gqJhTjnNdJ13LvPyCKM91Z1hVzmBnX!743548423?uri=CELEX:32003R0343>

with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the Member State responsible". This ruling means that unaccompanied children who claim asylum in a Member State **cannot be deported** to another State pursuant to the Dublin Regulation"<sup>21</sup>.

(b) In the event where a family member of the asylum seeker is legally residing in a Member State as a refugee, this Member State will be responsible of examining the asylum application when requested by persons concerned (Art. 7 Dublin II Regulation).

(c) Where an asylum seeker has a family member who has already submitted an asylum application in a Member State but this application has not yet been decided, this Member State will be responsible of examining the asylum application, provided that the persons concerned so desire (Art. 8 Dublin II Regulation).

In summary, the Dublin II Regulation emphasizes the obligation of EU-Member States to protect **family unit**. Nonetheless, numerous civil society representatives and practitioners have emphasized the shortcomings of the Regulation. As results from the practice, the overall approach of Dublin II can be inadequate from the perspective of the individual migration project of the child, as well as from that of attribution of responsibilities to different State institutions. These aspects will emerge and be further analysed in the national reports.

- **The Dublin III regulation: enlarging the scope of individual rights.**

In light of the difficulties deriving from the improper implementation of Dublin II, the Dublin III regulation, adopted on the 10<sup>th</sup> anniversary of the previous one, aims to address some particularly relevant issues. Therefore, the ratio of the new act is "to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system."<sup>22</sup>

In particular:

(a) The **right to information** is established in art.4 of the regulation, which provides that, as soon as an application for international protection is lodged, the applicant must be informed by the authorities of the content of the regulation, as well as of the consequences of the application, or of moving during the application. The applicant shall be informed of the possibility to

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21 See *Best interests of the child and the Dublin System* (C-648/11). 2013. <http://europeanlawblog.eu/?p=1877>

22 See *Dublin III, Regulation n.604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, page 2



indicate members of the family who reside in a EU Member State, but also of the possibility to challenge a transfer decision or apply for its suspension. Moreover, with the explicit purpose of ensuring the best possible understanding of the mechanism, such information shall be communicated in written form, and orally, and the Commission is in charge of drawing up a common leaflet, and a specific one for minors, containing the aforementioned details.

(b) A **Personal Interview**, to be conducted before the final decision, and in a language that the applicant understands, is introduced as part of the procedure. Either than facilitating comprehension of the overall criteria and individual rights, the outcome of the interview will be taken into consideration to establish the Member State responsible. At the same time, it is underlined in the regulation how the conditions of confidentiality should be ensured. Therefore, this second measure is directed once again at improving awareness of the applicant, and also at remedying superficial assessments which have characterized the implementation of Dublin II.

(c) Some specific provisions address the issue from the perspective of unaccompanied children. While art.8 recalls the previous formulation concerning the criteria of family reunion and their link to the asylum application, it also adds the possibility of the Commission to adopt delegated acts concerning the practice of **family tracing**. On the other hand, art.6 emphasizes the need to guarantee legal representation and assistance to the child throughout the process,

(d) A last aspect emerges as particularly relevant, and it is the institution of a **remedy mechanism**, that guarantees to the applicant the possibility to challenge a transfer decision in front of a court. To this purpose, art.27 includes some specific prescriptions to Member States, which confer upon the applicant the right to remain within the country during the time to review the decision, and guarantee a rigorous scrutiny of the suspension request. Such mechanism could prove fundamental to prevent violations of individual rights.

## II. ANALYSING EU LEGAL FRAMEWORK AND EU GUIDELINES ON UNACCOMPANIED CHILDREN' NEEDS ASSESSMENT AND FAMILY TRACING

Specific **EU regulations** on the status of unaccompanied children are not developed further than what is established in the UN CRC. As we pointed out before, at an EU level the Council Resolution of 1997 is the main EU legal instrument that regulates this subject, and it must be noted that it hardly covers the particular case of non- asylum seekers' children's status.

According to the Council's Resolution of 26 June 1997 (97/C 221/03), "*the purpose of this Resolution is to establish **guidelines** for the treatment of unaccompanied minors*" (Art. 1 §3), which must "*be notified to Member States and such authorities shall take them into consideration in their action*"

(Art. 1 §5). Furthermore, Article 6 §1 states that Member States should take account of these guidelines in order to ensure that their national legislation complies with these guidelines. Finally, Article 3 establishes minimum guarantees that should be offered to all unaccompanied children related to adequate protection, basic care and representation.

Despite these provisions, the protection of unaccompanied children's rights is not completely guaranteed due to the following reasons: (a) a Member State can deny access to its territory when an unaccompanied minor irregularly cross its borders (Art. 2 §1 and 2 §2); (b) a Member State can deport an unaccompanied minor who is illegally staying in its territory to his/her "country of origin or a third country prepared to accept him, if on arrival therein – depending on his needs in the light of age and degree of independence – adequate reception and care are available" (Art. 5 §1); (c) the guarantees of Article 3 are not accurately listed and they offer protection in general terms, a fact that may lead to exclusion; (d) the Council Resolution' guidelines have no legally binding force because of their non-compulsory nature<sup>23</sup> which is highly visible in the language used ("shall", "should", etc).

Finally, there are other EU regulations that establish a list of guarantees for unaccompanied children, and more specifically, for asylum seekers' children: legal guardianship and/or representation (art. 19 §1 of the Council Directive 2003/9/EC); right to legal assistance and representation (art. 15 of the Council Guidelines 2005/85/CE); accommodation (art. 19 §1 c) and d) of the Council Directive 2003/9/EC); family tracing (art. 19 §3 of the Council Directive 2003/9/EC); guarantees that must be respected by Member States when undertaking medical examinations in order to determine a child's age (art 17. §5 of the Council Guidelines 2005/85/CE)<sup>24</sup>.

Also of importance is the EU Commission's Action Plan 2010 – 2014. The EU Commission identifies various problems that should be addressed in order to improve the enforcement of Unaccompanied Children's rights and to better respond to their needs assessment. Consequently, a number of EU **guidelines** following these *recommendations* are listed. These problems are related to the following issues: **data, prevention, reception, and durable solutions**. The relevant guidelines according to our research topic are as follows:

1. Age assessment and family tracing. "The Commission will: (a) Support Member States in mutual assistance in family tracing in countries where one Member State has established functioning networks for this purpose; (b) Promote a common approach (i.e. best practice guidelines) to age assessment and family tracing including on how to address these issues in the context of appeals<sup>25</sup>.

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23 "According to the Joint Practical Guide of the European Parliament, Council and Commission the Resolutions are –like the Recommendations– legal acts that are not binding for the Member States", see *Situation and Treatment of Unaccompanied Children in Europe. A comparative study of 6 countries: Germany, Belgium, Spain, France, Italy and United Kingdom*. Daniel Senovilla Hernández. 2007:9.

24 *Situation and Treatment of Unaccompanied Children in Europe. A comparative study of 6 countries: Germany, Belgium, Spain, France, Italy and United Kingdom*. Daniel Senovilla Hernández. 2007:9, 10.

25 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:11-12.

2. Reception and procedural guarantees in the EU. “Reception measures and access to relevant procedural guarantees should apply from the moment an unaccompanied minor is detected at external borders or on EU territory, until durable solution is found”<sup>26</sup>.

3. Finding durable solutions. “Durable solutions should be based on the individual assessment of the best interests of the child and shall consist of either: (a) return and reintegration in the country of origin; (b) granting of international protection status or other legal status allowing minors to successfully integrate in the Member State of residence; (c) resettlement”<sup>27</sup>.

Finally, the EC DG Home Affairs establishes a number of guidelines which are addressed to different important aspects for unaccompanied children’ protection (EU Guidelines for Immigration issues). Following the research topic we are developing, the EU guidelines concerning UC’ immigration issues are as they follow: (a) Consider unaccompanied children as being children before being migrants; (b) Allow the admission of parents or grandparents of unaccompanied minor refugees for the purpose of family reunification; (c) Prior to deciding on the return of an unaccompanied minor, provide him/her with assistance by appropriate bodies other than the authorities enforcing return; (d) Before removing an unaccompanied minor, ensure that s/he will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the country of return; (e) If necessary, extend the period for voluntary departure, taking into account school attendance and the existence of other family and social ties; (f) Pending return, ensure that family unity is maintained, emergency healthcare is provided, children have access to the basic education system (for the length of their stay) and special needs of vulnerable persons are taken into account; (g) Unaccompanied children shall only be detained as a measure of last resort and for as short a period of time as possible in institutions that take into account the needs of persons of their age; (h) Border guards must pay particular attention to children (both accompanied and unaccompanied)<sup>28</sup>;

- EU’s action on Unaccompanied children’ needs assessment and family tracing

There are several EU tools that independently regulate this topic but in order to respect the length of this paper, we stress the Action Plan on Unaccompanied Minors (2010 – 2014).

The Action Plan on Unaccompanied Minors (2010 – 2014) is an important EU law tool that regulates this topic, and could well be the EU’s first effective attempt to accurately address this issue.

(i). *Background.* The European Commission addressed its concern of developing an EU strategy on the rights of the child and announced an action plan on unaccompanied minors in its June 2009 Communication. The 2009 European Council’s Stockholm Programme appreciated the Commission’s intention and suggested that the content of this Action Plan should develop

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26 Action Plan on Unaccompanied Minors (2010 – 2014). Communication from the European Commission to the European Parliament and the Council. 2010:8.

27 Action Plan on Unaccompanied Minors (2010 – 2014). Communication from the European Commission to the European Parliament and the Council. 2010:12.

28 Unaccompanied Minors in the EU. EU Agency for Fundamental Rights. 2010:6.

a strategy on unaccompanied children that covers important issues related to their needs assessment and family tracing, such as measures on prevention, protection and assisted return. For its part, the EU Parliament recalled in its Resolution on the Stockholm Programme an EU – third country cooperation on the issues of protection and durable solutions in the best interests of the child.

In this respect, the Stockholm Programme’s request for “*examining and facilitating the return of the high number of unaccompanied minors that do not require international protection*” must be stressed because this practice has been proven to not always respond to the best interest of the child, resulting in a “not-durable” solution. Experience has demonstrated that the answer cannot be limited to return — that is only one of the options — because the issue is much more complex and multidimensional and there are clear boundaries to the Member States’ freedom of action when dealing with unaccompanied children<sup>29</sup>.

(ii). *Content of the Action Plan.* This Action Plan, according to Member States and civil society organizations’ demands (principally those contained in European Migration Network’ and Fundamental Rights Agency’ reports), calls for major unaccompanied children protection and, as we stated before, identifies the problem of **insufficient data**, and proposes four lines of action: **prevention, regional protection programmes, reception and identification of durable solutions**<sup>30</sup>.

## 2.2. “Children on the move” from the perspective of Needs Assessment and Family Tracing<sup>31</sup>

According to the *Children on the Move* document of the International Organization for Migration, there are millions of children that “*move’ both within and between countries*”. Despite the fact that the majority of them are accompanied by their family in the migration process, there is an important number that move on their own. The International Organization for Migration highlights the following reasons of child migration: “*to escape poverty, abuse, violence or conflict, or to access education, jobs and basic services*”. This increasingly significant migratory behaviour of children is drawing the attention of child protection agencies’ who are concerned with the “*specific perspectives, interests and vulnerabilities of children who are on the move and on the consequences – both positive and negative – of mobility on children*”. This concern is leading to a global willingness to strengthen efforts and cooperation in order to set a common approach on their needs assessment.

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29 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:2.

30 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:3.

31 This section is inspired by the *Inter-agency Guiding Principles on Unaccompanied Minors and Separated Children*. International Committee of the Red Cross. 2004.

As the International Organization for Migration stresses, this target group of “children on the move” is not a ‘new’ category of children. Rather, it is an already existing group that includes several previously categorised types of migrant children that responded to different migration reasons: children subject to trafficking; children fleeing their countries of origin in order to seek better conditions of life – education, employment, escaping family violence and abuse -; children escaping wars, conflicts and natural disasters; and street children<sup>32</sup>.

#### A. UNACCOMPANIED CHILDREN’S NEEDS ASSESSMENT

Unaccompanied children’s needs assessment must follow an approach of respect for the best interests of the child. As previously stressed, the child’s opinion must always be listened to and taken into account when making decisions on their future plans about placement, family tracing, return and reunification. All these decisions must meet the prevention principle and solve as soon as possible problems related to separation situations.

A special call for girl’s rights is made by the CRC when stating that this group have specific needs that must be taken into account when planning their protection<sup>33</sup>.

The first step towards better needs assessment of unaccompanied children would be an analysis of care arrangements. These care arrangements, when undertaken in emergency contexts and when family reunification is not possible, other long-term care solutions must be framed within **fostering activities, or other forms of community-based care or institutional care** possibilities and always in due respect of the best interests of the child. In general terms, *community-based* care is preferable to any form of institutional care in order to continue his/her socialisation and development progress.

When children cannot be cared by family, an alternative care option would be *fostering*, where the child would be placed in a household whilst their biological parents continue (normally) to be legally responsible for their children. Fostering is usually a temporary agreement. Fostering should be developed respecting as best as possible children’s cultural customs; facilitating community participation; and promoting local foster care management. When facilitating foster agreements, practitioners must be aware of special vulnerable children, because their specific situation (such as separated children in foster care in the host country) may increase risks ; such as avoiding payment to foster families.

*Institutional care* should be, in general terms, used as a last resort for child care and may respond to economic or social reasons and in order to guarantee children safety and/or education. They are also envisaged for a temporary period and when it has been proven that children cannot be placed in the context of a community-based or foster care. Basic guarantees for

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<sup>32</sup> *Children on the Move*. International Organization for Migration. 2013:65-66.

<sup>33</sup> *Inter-agency Guiding Principles on Unaccompanied Minors and Separated Children*. International Committee of the Red Cross. 2004:17.

children staying in these kinds of institutions must be respected: respect for the same civil and political rights that the rest of the child population enjoys; promotion of activities that lead to family reunification; documentation and registration; cover vital needs such as health, sanitation, nutrition...

Regarding the vulnerable situation of unaccompanied children, guaranteeing legal **guardianship** is extremely important so that a child's best interests are legally represented and in order to ensure that his/her opinion is fairly heard.

With respect to unaccompanied minors' health **care and nutritional needs**, their access must be guaranteed and special needs of vulnerable children such as those of babies or handicapped children must be regarded. Ideally separated children' nutrition will be carried out within the framework of respect of their specific culture.

The right to **education** is also recognised as vital for all children, including unaccompanied children; but this right must be promoted without limiting family reunification. In this respect, separated children's formal schooling should be promoted and monitored. Moreover the return of refugee children to their country of origin, having completed their school certificate should be encouraged.

Finally, the traumatic experience that migration usually involves (reasons, expectations...) may lead to specific **psycho-social needs** that must be assessed and treated.

## **B. RE-ESTABLISHING TIES THROUGH FAMILY TRACING**

Ensuring a child's protection is strongly related to family unity and community. Efforts to avoid separation must be made by national and local authorities.

*"The principle of family unity – or integrity of the family – states that all children have the right to family, and that families have the right to care for their children"*<sup>34</sup>. Family reunification and primary legal care must be a key objective of national and local authorities when guaranteeing their protection.

Three main tasks would derive from this specific goal of **family unit** in order to meet it: preventing separation, evacuation and ensuring legal identity and birth registration.

- *Preventing separation.* On the one hand, analysis of the reasons that are behind child-family separation is necessary in order to prevent it. On the other hand, awareness activities should be promoted for those bodies, institutions, agencies, communities and groups that work with families in emergency cases. Families should be aware as well about the existing risks when

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<sup>34</sup> *Inter-agency Guiding Principles on Unaccompanied Minors and Separated Children.* International Committee of the Red Cross. 2004:16.

they are separate from their children, especially in the case of daughters (sexual exploitation...).

- *Evacuation.* Children should be always be evacuated whenever possible with their family in conflict contexts. The decision of separating children from their families should be carried out when family-group evacuation entails vulnerability and risk to children and care cannot be ensured in place. Above all, this separation must be temporary and International Humanitarian Law offers guidelines for reunification<sup>35</sup>.

- *Legal identity and birth registration.* All children have the right to be registered immediately after birth<sup>36</sup>. Armed conflicts, natural disasters and other risky situations makes it very difficult to achieve this target. In consequence, unregistered children do not have access to healthcare , education and other primary services and, in short, they are excluded from legal protection.

The feasibility of this family unit objective depends on the degree of effectiveness of the **family tracing and reunification** process. Key aspects to be taken into account to meet this objective are as follows:

- *Assessment.* The situation of separated children must be evaluated at the earliest moment when an emergency situation is detected. This assessment should lead to the best response possible for these children and must avoid practices that could stigmatise children, exclude them from community, raise false hopes, a wrong approach when framing them within their political and social contexts, not considering special vulnerabilities that may affect them (disabilities...), etc.

- *Identification, registration and documentation.* First of all, children separated from their families must be identified at the first moment when an emergency situation occurs. The identification process must be carried out by interviewing the children affected on a case-by-case basis. Secondly, registration must cover the child's personal data in order to protect them and take the first steps towards family tracing, Finally, the specific needs of each child must be assessed by a documentation process in order to begin planning his/her future and family tracing.

- *Tracing.* Tracing implies, when talking about children, assisting in the process of “*searching for family members or primary legal or customary care-givers*” or helping parents to trace their children<sup>37</sup>. This tracing process must be started as soon as possible in order to achieve reunification and, when this is not possible, restore family links.

- *Verification and family reunification.* Verification aims to prove that family links discovered in the family tracing process are correct and make sure that the child wants to reunite with his/her family. Family reunification covers all activities aimed to “*bringing together the child and*

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35 Article 78 of the Additional Protocol I to the 1949 Geneva Conventions

36 Article 7 of the Convention on the Rights of the Child

37 *Inter-agency Guiding Principles on Unaccompanied Minors and Separated Children.* International Committee of the Red Cross. 2004:35.

*family or previous care-provider for the purpose of establishing or re-establishing long-term care*<sup>38</sup>.

- *Follow-up of placement and reunification.* This concept is related to the reintegration process of the child within the context of his family, culture, community, etc.
- *The principle of confidentiality.* This must be the key principle governing all stages of family tracing and reunification and means that a strong protection of the child data collection must be guaranteed.

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<sup>38</sup> *Inter-agency Guiding Principles on Unaccompanied Minors and Separated Children.* International Committee of the Red Cross. 2004:37.



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## 3. CIVIL SOCIETY'S PERSPECTIVES: BEST PRACTICES AND CHALLENGES

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This section focuses on the perspective of NGOs that specialise in providing assistance to unaccompanied children upon their arrival and during the period of integration in the host countries. Thanks to the precious contributions of Daphné Bouteillet-Paquet, Senior Advocacy Officer in the Save the Children EU Office, of Pascal Reyntjens, Chief of Mission in the International Organization for Migration' Country Office for Belgium and Luxemburg, and of Lilana Keith, Programme Officer at the Platform for International Cooperation on Undocumented Migrants, both the overall European framework, and specific issues as family tracing will be analysed in detail.

### 3.1 Contribution from Save the Children: working together to ensure the protection and reception of unaccompanied children in Europe

#### INTRODUCTION:

The conference organised by the International Juvenile Justice Observatory within the framework of the European project “Net for U – Needs tackling and Networks Tracing for Unaccompanied Minors integration” offers us the opportunity to reflect on the concrete measures that are needed to offer adequate protection to unaccompanied migrant children in the European Union.

As a member of the Inter-Agency Group on Children on the Move, Save the Children has a long standing experience in assisting those children around the world and in Europe with a holistic approach to children mobility (I).

While progress have been made at EU level in shaping a more comprehensive legal protection landscape for migrant children, there is still a great need for concrete improvements and better coordination of the different actors engaged at the different stage of the reception, protection and integration processes (II).

Consequently, Save the children and partner organizations have developed tools within the framework of the CONNECT project<sup>39</sup> aiming to support a wide-range of actors engaged into working with unaccompanied children on a daily basis. The CONNECT project aims in particular to identify and promote good practices on reception, protection and integration, focusing on the roles and responsibilities of actors engaging in the situation of these children (III).

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<sup>39</sup> The CONNECT project is a 12 months EU funded project led by Save the Children Sweden. The projects involves UNHCR's Bureau for Europe, NIDOS (NL), Coram Children's Legal Centre (UK), Save the Children Italy, Don Calabria (IT), the Italian Ministry of Labour and Social Policies and the County Administration in Västra Götaland (SE).

## I. A HOLISTIC APPROACH TO CHILDREN MOBILITY

Global statistics published by the IOM there are some 33 million international migrants under 20 years of age, concerning which there are 95 female migrants for every 100 male. While the vast majority of these young migrants stay in under-developed countries, there has been a steady increase of the number of migrant children reaching Europe over the last decade. According to Eurostat, in 2013, 12 225 applications were lodged by unaccompanied children in 2013 as compared to 9040 in 2007.

Although official statistics often label these children as unaccompanied and separated minors, non-Governmental organizations have recently developed the concept of “**Children on the Move**” in order to capture the complexity of children mobility. Save the Children defines this concept as: “those children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement might place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence”<sup>40</sup>.

As highlighted in this definition, children are never just economic migrant or victims of trafficking or asylum seekers but go from one category to the other in the same journey and need coherent protection.

Far and foremost, the definition highlights **the specific vulnerability** of this category of migrants and features them as holders of rights as clearly stipulated in the UNCRC. In order to understand the phenomenon of children on the move, it is important to

bear in mind that, in most cases, children who migrate due to the inability to exercise some of their basic their rights in the original place of residence. Decision on migration is mostly motivated by an assessment of parents or caregivers to have more opportunities for a better life elsewhere. Children may then be in a position to follow their parents who have decided to migrate or in a situation where they leave the place of residence unaccompanied by adults, frequently with the aim to provide additional income for the family that stays at home. The process of migration brings about the separation of families, as well as voluntary or forced separation of children from their parents. Forced migration exposes children to numerous risks – the fact that they travel alone entails a range of hazards, exposing children to life-threatening situations, abuse and exploitation<sup>41</sup>.

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<sup>40</sup> Save the Children, *Away from Home – Protecting and supporting children on the move*, 2008

<sup>41</sup> Save the Children *When we are asked, not questioned*, Consultations with Children on the Move, 2014

## II. EMERGING PROGRESS AT EU LEVEL

While thousands of children are on the move in Europe, the needs and interests of these children are still largely absent from mainstream debates on migration. Some awareness has slowly emerged over the last decade, in particular with the adoption of the EU Charter on Fundamental Rights and the Stockholm programme resulting in the development of concrete tools for child rights protection such as the EU Agenda for the Rights of the Child<sup>42</sup> and the Action Plan on Unaccompanied Minors<sup>43</sup>. The latter foresees the delivery of certain practical measures of support by the EU and its agencies which should support national implementation activities (e.g. on age assessment, best interest determination and family tracing). Moreover, the EU has also recently focused attention on how it can better support national child protection systems, including in terms of how they reach out to unaccompanied children<sup>44</sup>.

Although these different tools are important breakthroughs in the common European migration policy, they have brought so far little improvements in practice. Reception conditions<sup>45</sup> as well as access to the asylum and other protection procedures still greatly differ between countries and further progress is needed to ensure unaccompanied children's rights are respected in EU Member States.

The coming years will be a key moment for improving the reception conditions and protection of migrant children across Europe given that Member States must transpose and implement EU legal provisions concerning unaccompanied children, including within the new EU asylum and trafficking instruments. Key issues addressed by these actors include recognition as a child (age assessment) and access to reception services, education and health services. Other important issues are disappearances from centres, detention, restoring family links, status determination

and the search for durable solutions. Given the complexity of national child protection systems and the diversity of actors involved, a crucial challenge is to ensure adequate coordination of the different actors involved both at national and transnational level.

## III. ENHANCING THE MULTI-AGENCY COORDINATION – THE IMPACT OF THE CONNECT PROJECT

The CONNECT project takes as a starting point that ensuring a clear understanding of their respective roles and mandates is a critical challenge for actors interacting with unaccompanied children on a daily basis. Procedures for cooperation and interaction amongst competent

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42 *EU Agenda for the Rights of the Child*, COM (2010) 60 final

43 *EU Action Plan on Unaccompanied Minors*, COM(2010) 213 final

44 *The EU Strategy towards the Eradication of Trafficking in Human Beings, 2012-2016* COM (2012) 286 final.

45 *European Migration Network Study – The Organization of Reception Facilities for asylum Seekers in Different Member States*, European Commission, DG Home, 2014

stakeholders are also often unclear, thus resulting in failure to respond to the needs of migrant children. The project aims to contribute to ensuring proper implementation and application of new EU obligations by identifying challenges and best practices on how actors can best work together.

The project consists of three core activities. First, researchers have carried out **national mappings of existing legal and policy framework** in each partner countries (namely Italy, the Netherlands, Sweden and the UK) with a view to explore how actors work individually and in relation to one another. The mapping reports cover the actors engaged with *all* unaccompanied children, regardless of their legal status (victims of trafficking, asylum seekers, or migrants) thus taking a holistic approach to child protection needs. The mapping reports focus on three priority issues that have been identified as particularly sensitive by project partners, namely: the identification of extra-vulnerability (including trafficking or trauma); preventing and responding to disappearances of children from care; and properly informing status protection procedures. The mapping reports highlight that good practices have been developed in all four countries but they are often limited to particular activities or issues of relevance to the national context. For instance, while Italy has increased its efforts to support children that are transiting through the territory, UK and the Netherlands have focused their efforts on assistance and judicial guarantees within the trafficking context. Sweden has developed efforts to foster cooperation at municipal level. In addition to highlighting key protection gaps, the mapping reports identify areas for improvements over a longer term and points at relevant EU measures that could help strengthening existing mechanisms. Despite the fact that migration contexts are dramatically different, all four countries face common difficulties such as the lack of to adequate specialisation of actors interacting with children or the lack of involvement in transnational contacts about the child.

Flowing from the mapping exercise, a second component of the CONNECT project is to develop **practical tools aiming at lowering practical obstacles for cooperation between actors and at better supporting their respective role**. The tools have been initially designed on the basis of best practice identified in national experiences. They can be duplicated outside the framework of the project and used across the EU Member States.

These tools address specific aspects of actors' work, including:

- A template for first encounter reception practices;
- An assessment tool for the organization of reception practices and cooperation between local actors;
- Existing methodologies for guardians and guidance on organising participation of unaccompanied children;
- A tool that aims to ensure that the rights of the migrant child are met in court procedures by engaging all relevant actors and ensuring a multi-disciplinary approach.

While protection gaps are often linked to a lack of adequate human and material resources, some issues are also linked to the fact that the EU acquis has considerably developed over the last years. Consequently, competent stakeholders often have difficulties to fully understand the scope of their new legal obligations. Against this background, the CONNECT project has developed an **EU Reference Document** that will support EU Member States and other actors in ensuring adequate understanding and proper application of EU law and policy relating to unaccompanied children, in line with the EU Charter of Fundamental Rights and the UN Convention of the Rights of the Child.

Tools and key findings of the project will be discussed within the framework of national seminars, thus allowing to take practitioners' view into further consideration and to further tailor the tool to the needs of competent stakeholders. A regional EU conference will also be organised in order to promote concrete practical and concrete steps in ensuring national implementation. Moreover, it will trigger discussions about the need for the EU and its agencies to further develop practical tools in order to bridge existing protection gaps and further harmonise the level of protection available at national level.

Although the overall picture emerging from the mapping reports does not seem very positive, the project identifies numerous ways of improvements. Beyond the life cycle of the project, Save the Children wants to inspire a change in the perception of the protection needs of children on the move in Europe. We want to generate awareness of the current protection gaps for unaccompanied children – one of the principal sources of child rights violation in Europe.

## **3.2 Contribution from the International organization for Migration: Needs Assessment and Family Tracing**

### **I. HIGHLIGHTING THE IMPORTANCE OF FAMILY ASSESSMENT**

In recent years the issue of unaccompanied children has attracted attention as a phenomenon that is notably increasing. Therefore, in this rapidly evolving context, the mission of IOM is to improve existing policies, fostering as much as possible an approach based on the child's best interest.

The design and implementation of tailored assistance is thus a very important feature of migration management, in particular when dealing with unaccompanied children. In this context, family assessment is fundamental element to be able to conduct the best interest determination on a case by case basis.

The family assessment procedure consists of collecting exhaustive information regarding various aspect of the minor's life: from the social, economic and cultural context of the family of origin, the family's expectations concerning the migration process, as well as the

child's personal project. Particular attention must be devoted to the evaluation of potential opportunities and risks connected with the possibility of family reunification or repatriation. In particular, it should be ascertained whether the process of family reunification could enhance the possibility of refoulement, and, on the other hand, it should also be verified whether there are real possibilities of reintegration within the country of origin.

The objectives of this procedure are multiple, and underline the significance of its use at various levels. Firstly, in fact, family assessment is essential to determine the level of vulnerability of some cases, and report it to the competent authority, as well as to the professionals and the practitioners that are in contact with the child.

Moreover, it is conducted with the idea of facilitating, when possible, family reunification, and also, on a more institutional level, to promote cooperation between the country of origin and the host country. Then, it is also an important part of best interest determination in what concerns the support to the phase of integration within the host country.

## II. PROCEDURAL GUIDELINES

The process of family assessment should start as soon as the minor is assigned a legal guardian or starts being assisted by a social worker. This figure in particular assumes pivotal importance in the context of family tracing, and throughout the period that is necessary to finalize the decision on family reunification. In fact, with the fundamental role of building a direct relationship with the minors and maintain the contact with the family, while at the same time favouring a continuous exchange of information with the legal guardian, the social worker plays an essential part in integrating the legal and the social perspectives within the process.

In line with this approach, it is from one of these actors, the minor, the guardian or the social worker, that the request for family assessment is initiated, and it is again their choice which association is charged with the task of conducting the process.

Therefore, it is suggested that the consensus of all the above mentioned parties, the child, the parents, the legal guardian and the social worker, is taken into account as a crucial criteria to determine the appropriateness of family reunification.

The process itself consists of different phases. It is opened once the request is received, together with a summary of the case. Then, the organization that is charged with the procedure undertakes an "assessment of viability" of the case, to establish whether it will be possible to contact the family. The following step will be to locate the family and begin the communication, often through the help and coordination of a liaison IOM office in the country of origin.

At this point the first hand contact with the family will begin, consisting of various meetings,

in order to conduct an evaluation of the socio-economic context of the family, as well as to understand the role and the expectations of the family regarding the migration.

This phase is crucial to define what decision will better represent the best interest of the child, and this objective cannot be achieved unless the relationship with the family is built on trust. Thus, it is crucial that the process is structured as one of mutual exchange, during which the family will also receive information: about the situation of the minor in the host country, the roles fulfilled by the different stakeholders that assume the responsibility for their child's care, and about the reasons behind family assessment. The process is then concluded with a report that will contain the crucial elements to make the final decision regarding the possibility of family reunification.

The moment of the final decision is a very crucial one, and both the guardian and the social worker, who are in direct contact with the child and should have built a relationship of trust, need to make sure that the results of the evaluation are immediately communicated to him or her. Depending on the countries, the final decision will be taken by one of these figures, usually the guardian, based on the information collected by the IOM through the assessment.

### **III. CHALLENGES OF FAMILY TRACING**

The process of family tracing is a very delicate one, and special attention should be devoted to communication at every stage.

First of all, the fulfilment of the child best interest requires enhanced coordination between all the stakeholders that are involved in the process. In particular, a good communication between the social worker and the legal guardian, allows for a fruitful integration of the social and legal sphere, in evaluating what constitutes the best interest. Such cooperation is also instrumental to bridge social assistance and legal framework, and often to provide solutions to potential gaps in the system.

This consideration goes hand in hand with the need to maintain constant attention to the child and value his or her own contribution to the process, especially considering that the definition of best interest changes not only from case to case, but also with time, according to the different phases of the integration process. It is in this light that the IOM suggests that the consensus of each of these components is taken into account when elaborating the final decision regarding family unification.

On the other hand, the social worker and the guardian might also face the specific challenge of having to balance the need to retrieve information against the child's right to privacy. Moreover, especially when the children have left with a precise project and feels that they are on a mission, they might be very reluctant to provide specific information about their families. To regulate in this blurred territory, the IOM

has established a series of principles regarding data collection, and acts according to: the respect of the legal framework when collecting data, ensure quality, specify the legitimate purpose served by the request of information, respect consent of the parties, as well as confidentiality, but also, on the other hand, facilitate accessibility, transparency, and access to third parties when their collaboration to the project is essential. Then, it has also elaborated oversight and compliance mechanisms, together with internal remedies to violations of the abovementioned principles.

Furthermore, it is also important to frame messages adequately when establishing a contact with the family. In the country of origin, family assessment can be a very sensitive exercise, and thus the assistance of IOM local staff constitutes a very important advantage. Our experience has proved, in fact, that specific skills and knowledge are required to carry out this task, and cultural ties are a crucial determinant. Therefore, the IOM has developed an interview protocol with semi-structured questions, which was conceived to take into account a variety of factors, including guidance for interviewers. Nonetheless, this is not a fixed prototype, but rather a model that is adapted on a case to case basis, as well as to the context of the country of origin. However, the success of this phase of the process crucially depends on the synergies between the various actors managing the situation in different countries.

Last but not least, it is essential to take into account how stressful the procedure can be for the child, and that extreme carefulness is necessary during the last phase in particular, the communication of the outcome. It is very important to provide timely information, and, in case of a negative response, especially when the family doesn't share the same expectations of the child, a very sensitive framing of the message will be a primary concern, together with the possibility to provide psychological assistance to the child to help him to cope with events.

In conclusion, the process of family tracing, albeit extremely helpful to offer tailored assistance to the unaccompanied minor, also presents consistent and varied challenges. According to the experience of the IOM, two aspects appear decisive to determine the best possible outcome in terms of fulfilling the child's best interest. On the one hand, the cooperation between the stakeholders, in particular of those involved in the social service, and those who represent the legal assistance. On the other hand, communication and message framing, as a necessary tool to built relationships based on trust and to accompany the minors in this process understanding his/her needs. These are also the elements that should be at the heart of policy-design, to improve and strengthen the capacities of each stakeholder, and to contribute to a common platform of shared practices.



### **3.3 Contribution from the Platform for International Cooperation on Undocumented Migrants: Addressing the Needs of All Migrant Children**

#### **I. DIVERSE CHILDREN AFFECTED**

Over years of monitoring the human rights situation of undocumented migrants, the Platform for International Cooperation on Undocumented Migrants (PICUM) has been addressing an erosion of the rights of undocumented children in Europe. Although all children have equal rights in law, there are children in Europe who face systematic violations of basic rights - such as the rights to education, health, liberty and family - because they or their parents do not have the proper paperwork to reside in a country.

Undocumented children are those without a valid residence permit, and living outside any system of state support (including the asylum system). Usually this is because they are residing with their parent(s) or other caregiver(s), but unaccompanied children may also be undocumented before they come into contact with state services, or if they disengage with them. Undocumented children are a diverse group, that often change between categories or statuses during the course of their childhood. For example, they may have submitted an application for international protection as a family, which was refused, or applied for an official family reunification scheme through a family member with regular status, but not qualified. If the parent of a migrant child loses their residence or work permit, which can happen when the personal or employment relationship that the permit relies on breaks down, they become undocumented, even when the reason is violence or exploitation. As the child's status is dependent on their parents', they too become undocumented. Undocumented children may also have entered Europe irregularly with one or more relatives or independently, and later joined their families. Some children are born 'undocumented migrants' although they have never moved, because they are born to undocumented parents, and there is no country in the European Union where citizenship is granted based on birth in a country alone.

Children whose own status is regular - who may even be European citizens - can also be greatly affected by the irregular status of a parent, and face limited enjoyment of their rights as a result. All these children can be collectively referred to as 'children in an irregular migration situation'.

#### **II. POLICIES THAT MAKE CHILDREN VULNERABLE**

This diverse group of children is little considered in either migration or social policies. Important developments have been made in the area of migration recognizing the need for additional protections for certain categories of migrant children. However, children, and child rights, are not yet adequately visible and integrated into migration law, policy or practice. At the same time, while migrant children are increasingly targeted in public

social policies, undocumented children are usually not considered or specifically excluded. Therefore, some children – and in particular undocumented children – are falling through the gaps in protection in both policy frameworks.

As a result, children are more at risk of becoming undocumented, as their status is linked to their parents' and their individual situations are rarely considered in decisions to grant or refuse residence permits or claims for international protection. There is very little awareness among policy makers, social workers and the media, and almost no data. To get some idea of numbers, one study from the UK estimated that there were approximately 120,000 undocumented children residing in the UK in 2011, of which at least 60-65,000 are UK born.<sup>46</sup>

Undocumented children are usually subject to the same immigration control measures as their parents, including detention, deportation and restrictions on basic social rights, without due consideration of the impacts on children, their rights, and their well-being and development in the short and long term.

### III. ENFORCEMENT MEASURES

Enforcement measures – apprehensions, detention and deportation – are often carried out in violation of children's rights. Indeed, the Committee on the Rights of the Child has reiterated that the detention of a child because of their or their parent's migration status constitutes a child rights violation, and always contravenes the best interests of the child.<sup>47</sup> Further, the process, length and conditions of immigration detention often violate an array of civil, cultural, economic, social and political rights of children. Another concerning trend is the separation of children from a parent in order to detain the parent and not the child. The Committee has clarified that where deprivation of liberty is required, states should implement non-custodial and community-based alternatives to detention for families, that fulfil child rights.<sup>48</sup>

I. Immigration control interests often take precedence over the best interests of the child in deportation proceedings, although the child's best interests should be a primary consideration, and the Committee on the Rights of the Child has stated that punitive measures should not be used against children.<sup>49</sup> Further, families are deported in traumatic conditions, with it not uncommon for immigration authorities to arrest parents from their

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46 **Nando Sigona and Vanessa Hughes**. *No Way Out, No Way In: Irregular migrant children and families in the UK*, May 2012, ESRC Centre on Migration, Policy and Society, University of Oxford.

47 **Committee on the Rights of the Child**, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 78.

48 **Committee on the Rights of the Child**, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 79.

49 **Committee on the Rights of the Child**, *The Rights of All Children in the Context of International Migration*, Report of the 2012 Day of General Discussion, 2013, para 78.

homes early in the morning (when the family will all be home), waking children, and giving minimal time for their personal belongings to be collected. Children may witness a parent being handcuffed before being taken to a detention centre. There are also cases where families are separated through the deportation of one or both parents.

The fact that immigration enforcement is also carried out by police is another key challenge for children's rights, as it negates their right to access justice through police or judicial remedies. If a parent or child has suffered violence or other abuse, there is a significant chance they will be deported rather than protected, if they report it to the police. It is also very difficult for undocumented children to access justice due to limited possibilities to access information and afford quality legal representation.

## II. ACCESS TO SERVICES

Children's entitlements to access services are usually linked to their migration or residence status. In this way undocumented children are explicitly discriminated against in the legal framework. Further, numerous practical barriers often reduce or limit children's access to the services they are entitled to, or their full enjoyment of their rights. PICUM has looked in particular at children's access to education, health care and housing, as some of the most critical.

Access to compulsory education is often granted to undocumented children by law. This is often due to laws which speak about 'all children' being required to attend certain levels schooling, and undocumented children are not excluded. The laws in some countries are explicit about the right of all children to education, regardless of their residence status. When legislation is explicit, rather than implicit about its inclusion of undocumented children, it limits situations where the right to education is constrained in some way. For example, undocumented children may not be allowed to take official exams or be denied formal certification for studies completed, because they are not officially registered as students or some form of national identification is required to do so. Undocumented children are usually formally excluded from carrying out internships and training, even when part of compulsory education, as it is seen as linked to work although it is an essential part of a child's education. Further, access to non-compulsory education, such as early childhood education and care, 16-18 education (where not compulsory), further training and university, is very problematic for undocumented children and young people to access in most EU countries.

Health care services on the other hand present an even more concerning situation. Except in a few countries, undocumented children have the same entitlements to access health care services as adults, with no additional protection. This means that their entitlements in law are very varied across Europe, and range from emergency care only in a large number of EU countries, to equal access as national children in a few. In between these two extremes, several countries provide undocumented migrants access to 'urgent' or 'essential' treatment. This can be interpreted to include most health care services for children or very few, depending on

the national, regional or local context, either in law or in practice. Undocumented migrants rarely have access to continuous, specialist (e.g. dentistry, optometry) and mental health care.

Furthermore, access to services in practice can vary greatly from the entitlements on paper. There are many practical barriers that are relevant to various social services and EU countries, while others are more specific. Common barriers include: inability to provide documents required for registration or other administrative purposes, such as identity documents and proof of address; discretionary power on local level and discrimination; lack of awareness of undocumented children's rights and the relevant regulations on the part of both service providers and undocumented children and families; complex rules that change often; risk of detection through accessing services, in some cases due to an explicit duty on public officials to report undocumented migrants to immigration authorities; and barriers associated with conditions of living in an irregular migration situation.

For example, undocumented children and families often have to move frequently, live in poor conditions, and struggle to meet costs, such as for transport, lunch and books (education), and for treatment and medications (health care). Rights are also interdependent, meaning that if children are unable to enjoy one right, it can infringe on their enjoyment of others. For example, if a child is unwell and does not have access to health care, their attendance and performance at school might suffer. Children are also affected by the impacts of restricted access to rights for parents, in particular when this results in parent's having poor physical or mental health or in family destitution.

### III. THE WAY FORWARD: A CHILD RIGHTS APPROACH

The current approach to migrant children is piecemeal, focusing on protecting certain categories of children, such as unaccompanied, asylum seeking, refugee or trafficked children. While some children have additional protection needs, this should be based on the individual child and not constructed administrative and legal categories. Furthermore, many children are falling through the gaps in these limited protection frameworks, and facing grave and systematic rights violations. Such categories and specific protection measures must be situated within a holistic approach to migrant children based on child rights.

Therefore, PICUM is working collaboratively - with a range of organizations and institutions working on human rights, migrants' rights, children's rights, health, education and social inclusion - to call on the European Union and its member states to build on the commitments they have made in numerous international, regional and national laws and policies, and reaffirm their commitment to every child regardless of status.<sup>50</sup>

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<sup>50</sup> See for example, *Joint open letter to the European Council calling for European commitments on children's rights to be prioritised in future common migration and asylum policies*, 22 May 2014, available on PICUM website: <http://picum.org/en/news/picum-news/43959/>

From this, children should be ensured non-discriminatory access to services, protection and justice. Laws, policies and practices that discriminate against children according to their migration or residence status should be revised. Detention of children for immigration purposes should immediately cease, and alternatives to detention for families that respect child rights developed and implemented. Existing legal safeguards should be ‘operationalised’ – made a reality in practice for children. For example, further guidance should be developed and delivered on how the best interests of the child principle can be applied in practice. Child rights tools that are being developed and implemented for certain categories of children should be adapted and applied to other groups of migrant children, and the promising laws, policies and practices that are improving protection of all children’s rights regardless of status in some countries and localities should be transferred to others.

As the European Union is currently going through a period of looking forward towards future EU immigration and asylum policies, it is a critical opportunity to take up these joint recommendations to improve the protection of migrant children’s rights in the EU.

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## 4. NATIONAL PROTECTION SYSTEMS REGARDING UNACCOMPANIED CHILDREN' NEEDS ASSESSMENT AND FAMILY TRACING

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The last part of this report is devoted to an in-depth analysis of the national contexts. First of all, thanks to the collaboration of our EU countries partners, we have developed a brief overview highlighting the common features of unaccompanied children in some of the host countries. Then, a series of specific reports highlights the issues that are faced and the services that are provided in five selected countries, Germany, Greece, France, Spain, Italy, and the UK, as well as the practices that have been developed to tackle Needs Assessment and Family Tracing.

### 4.1. Unaccompanied Children' profiles in the EU Host Countries

#### A. GERMANY

Determining the exact number of unaccompanied children (UC) in Germany is difficult. The Office of Foreign Registry (*Ausländerzentralregister*) indicates the age of foreign children – however without determining their family status. Therefore, these numbers do not reveal if a minor entered Germany unaccompanied or with his or her family (Parusel 2009: 17).

According to the Federal Office for Migration and Refugees (BAMF), the number of unaccompanied children filing for asylum in 2011 amounted to 2,126 – compared to 1,304 in 2009. Out of this number, 714 were below the age of 16 and 1,412 were 16 or 17 years old (Bundesamt für Migration und Flüchtlinge (BAMF) 2011).

To assess the total number of unaccompanied children in the country, the Bundesfachverband UMF has provided an analysis which differentiates between the number of unaccompanied children who have applied for asylum and those who have been taken into custody by the Office of Youth Services. According to this analysis the number of unaccompanied children who were taken into custody by the Office of Youth Services has risen from 3,015 in 2009 to 3,787 in 2011 (Bundesfachverband UMF 2012).<sup>51</sup> These numbers include unaccompanied children who have filed an asylum request. While in some states the number of custodial care cases and asylum cases is almost identical, there is significant variation between these categories in other states. This difference gives an indication on the individual state's priorities when directing an unaccompanied child through the asylum process.

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<sup>51</sup> These numbers are estimates only since some states (Bundesländer) do not have reliable statistics on custodial care cases for UNACCOMPANIED MINORS.

## Numbers of Unaccompanied children in Germany, 2009 and 2011

	2009	2011
Unaccompanied Children (UM) in custody of Office of Youth Services	3,015	3,787
UM filing for asylum	1,304	2,126
Below the age of 16	N/A	714
16 and 17 years old	N/A	1,412
UM granted asylum (%)	N/A	11.6
UM receiving subsidiary protection (%)	N/A*	28.4

\* Comparative data to be gathered on request

Sources: Bundesamt für Migration und Flüchtlinge (BAMF) 2011; Bundesfachverband UMF 2012

According to the Federal Agency for Migration and Refugees (BAMF), the **main countries of origin** of UC in 2011 were Afghanistan (1,092), Iraq (199), Somalia (103) and Syria (84). 11.6% of UM were granted asylum in accordance with Art. 16a of the German constitution (*Grundgesetz*) and 28.4 % received subsidiary protection based on humanitarian reasons.<sup>52</sup> The remaining youths who do not fall under either of these protective paradigms commonly receive a limited permit to stay (*Duldung*) – which represents a “temporary suspension of deportation” and which goes along with limited rights and access to services.<sup>53</sup>

Including all individuals who are currently awaiting their court decisions or who have a temporary status, it is estimated that between 5,000 and 10,000 UM are currently residing on German territory<sup>54</sup>.

## B. SPAIN

The phenomenon of child migration begins in Spain in the mid-90s, and it has increased significantly in recent years. In the first stage, most of these children were street children in their countries of origin, but this profile has evolved and currently a high percentage of them lived with their families before emigrating. There are no exact **figures** on the number of UC entering the country. The reasons are different, but we can mainly highlight two:

- On the one hand, there are several sources of information.
- And secondly, a significant number of children are not localized, due in part to high mobility within the national territory.

<sup>52</sup> Subsidiary protection against “refoulement”, § 60 I-VII AufenthG.

<sup>53</sup> § 60a AufenthG

<sup>54</sup> *Germany Net for U report*. 2014: 4 §4.

However, we can speak of estimated data, according to information provided by the Autonomous Communities (regions). In March 2009 there were at least 5,158 unaccompanied foreign children in Spain. A very high percentage of the number of children voluntarily leaves the protection system, looking for better or different opportunities. As for the **origin**, they are mostly from the Maghreb countries (especially Morocco) and the Sahel (Senegal, Mali, Guinea-Bissau, Guinea, Ghana, Cameroon, Gambia, Mauritania) that primarily reach the Canary Islands. The methods for entering Spain have evolved in recent years. The preferred **method** is to travel hidden in the basement of one of the vehicles (trucks, buses) that cross on ferries the Strait of Gibraltar, linking Morocco and Spain. Other children enter Spain by car or plane, accompanied by a family member or someone who the family trusts, from whom they separate once they reach their destination. Since 2003, these children began to use the structures of the mafia groups that control the illegal migration flow between Morocco and Spain, making the journey in small fishing boats called “patera”, upon payment of a sum of money. Regarding **motivation**, there have not been major changes, these children still state that they “want to work and earn money to live in Spain and help their families financially”.

According to data published in 2009 in a report of the European Migration Network, whose National Contact Point is composed of experts from four ministries (Ministry of Labour and Migrations, Ministry of Interior, Ministry of Foreign Affairs and Cooperation and the Ministry of Justice), and coordinated by the Permanent Immigration Observatory, the general profile of UC hosted in Spain is as follows:

**Gender.** Most of them are boys, because, even though migration affects both sexes, there are hardly any cases of unaccompanied foreign girls received in Spain, although this reality is changing.

**Age.** Their average age is fifteen years old. The majority age group is in the sixteen and seventeen, but in recent years there has been an increase in the number of children who are in the age range from thirteen to fourteen years old, finding increasingly younger children, such as those who do not reach the age of ten.

**Nationality.** Most claim to come from African countries: from Maghreb and Sahel areas.

**Family of origin.** About 70% of these children come from families with limited financial resources, dividing the remaining 30% among cases of children who come from families with economical resources or street children.

**Academic and professional training in the country of origin.** These children often drop prematurely their studies to find a job that allow the families to fill economic gaps. Despite these experiences, they have a lack of proper training to join with guarantee the Spanish labour market.

**Motivations and migration expectations.** Economic is the main motivation of these children. In Spain children have a clear economic motivation either to find a way to escape from the precarious life situation in their own countries, or to help their families with the money sent.



The economic problems of most of children's families make them to encourage and push the children to emigrate since they become breadwinners. In addition, migrant children who arrive in Spain have experienced a migration culture and a western lifestyle desire that is often transmitted by their own compatriots, mass media, gangs, etc. In many cases there is an overestimation of leaving their own country as the only option in life. The culture shock they experience, along with the expectation impact of both the minor and the family of getting into a protection system in which they are considered children and therefore unable to work and financially support their families, leads often the children to be frustrated.

So once they enter Spain, their migratory expectations can not be met as they have no personal documents identifying them, or work permit, in many cases they have not even reached the minimum working age and they use to have a lack of proper training. To these must be added the difficulties of the current labour market with high unemployment rates. A high percentage of these children say they did not know what they were going to find in Spain and that they would not have come, but once they are here they do not want to return to their home country, they want to stay and wait for a chance.

From the protection centers, coping with the reality and the expectations that once drove them to start the migration process is part of the work programme. It is a hard process that produce inevitably sequels, therefore it is fundamental the psychological support from the protection system to overcome the migratory grief.

From the arrival to the center, an in-depth interview is made, and the most information as possible is collected for the assessment of the minor. Subsequently, depending on each particular case, the practitioners work with the children at a psychological level conducting individual and group therapy where the needs identified in each one are worked, such as phobias, fears, impulse control, etc.

In addition to the psychological interventions, we work with the children on acquiring basic social skills, supporting them to overcome their adaptation to the host society, thus minimizing culture shock, adjusting their expectations to the reality in which they find themselves.

**Lack of resources and lack of host language skills.** These children are deprived of family and material resources needed to address the situation in Spain, so it increases the risk of organized crime networks. On the other hand, with rare exceptions, these children do not know the host language and its nuances, hindering communication.

**Lack of documentation.** Most children enter Spain without documentation identifying them, in many cases for fear of being repatriated once located his family, as manifested. While it is true that not being documented delays repatriation processes, it is also true that also delays its administrative regularization process in Spain, thus hindering their integration in the host society.

**Child development.** Although due to cultural issues they have a greater degree of maturity of what corresponds to their age, these children often show fear of the future and anxiety by

emotional, social and family uprooting suffered during their migratory journey.

**Lack deeply root in shelter homes and protection centres.** One of their characteristics is a high mobility all over the country looking for a shelter home that meets their migratory expectations, causing short periods of stay in the centres. In recent years it has been detected a progressive increase of the residence time of children in the centres, as they have been adapting their specific needs to the child protection services.

## C. FRANCE

In April 2013, the French Ministry of Justice accounted for about 9,000 of UC in France. Some departments are particularly concerned with the reception of Unaccompanied Foreign Children (UFC) and register a strong concentration on their territories; that's especially the case of:

Department	Recorded UFC
Paris	1.800
La Seine-Saint-Denis	800
Le Nord	500
L'Ille-et-Vilaine	450
Le Rhône	300
La Somme	280
La Moselle	270
L'Isère	270

**Source :** Ministère de la Justice (Présentation DPJJ - Les mineurs isolés étrangers : La situation en France - Données générales - Perspectives, 11 avril 2013)

The reception of Unaccompanied Foreign Children is spread between regions in an uneven way and this, for several reasons: - The geography and the attractiveness of some areas; - The presence of communities; - Hospitality and openness traditions; - The activity of the networks organizing the arrival of young people.

a) **Main nationalities, gender and age of children:**

In November 2013, the French Ministry of Justice published new data<sup>55</sup> about the profile of these minors based on 1551 UFC (98% declared their countries of origin) and it showed that the countries of origin of these children are mainly:

- **Sub-Saharan Africa:** 57% come from Africa and more concretely 250 from Guinea, 231 from DRC, 197 from Mali, 48 from Ivory Coast and 54 from Angola
- **Asia:** 18% come from Asia and more concretely 120 from Bangladesh, 75 from Pakistan 75, 46 from Afghanistan and 8 from Russia;
- **Maghreb / Middle East:** 13% come from there and more concretely 72 from Morocco, 65 from Algeria and 43 from Tunisia;
- **Europe:** represents 10% of the minors (28 from Kosovo and 97 from Albania)

Regarding others data of the profile of Unaccompanied Foreign Children welcomed in France and in order to have a better idea on it, it is also interesting to have a look at representative data collected by the Ministry of Justice in the frame of the same report<sup>56</sup>, based on 1551 Unaccompanied Foreign Children:

- **Age:**

- 0, 5% of minors are under 10 years old
- 10-12 years old: 1%
- 13-14 years old: 11%
- 15 years old: 27%
- 16 years old: 45%
- 17 years old: 10 %

- **Gender:** 12 % are girls and 88 % are boys

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55 *Présentation DPJJ – Les mineurs isolés étrangers: Dispositif national de mise à l’abri, d’évaluation et d’orientation*, novembre 2013

56 *Présentation DPJJ – Les mineurs isolés étrangers: Dispositif national de mise à l’abri, d’évaluation et d’orientation*, novembre 2013

## b) Types of the causes of migration

- Angéline Etiemble's study

The French researcher Angéline Etiemble has set up in 2002 a classification of *Unaccompanied Foreign Children* arriving in **France**, which has been, with certain nuances, an applicable theoretical and practical reference for the rest of the destination countries.

Angéline Etiemble makes the difference between

- "exilés" (children forced to run away from a situation of conflict in their country of origin);
- "mandatés" (children who migrate with the task to create an income and finance the household economy);
- "fugueurs" (children who have escaped or abandoned their family context which is often collapsed);
- "errants" (children who were often trying to survive individually or in group in their country of origin);
- "exploités" (children who are victims or are under control of sexual, criminal or labour exploitation networks).

The line between these categories is certainly instable and absolutely variable all through the migration process of the unaccompanied children.

The Unaccompanied Foreign Children are generally brought to France:

- Either by an alleged member of the family who let them alone when arriving at France;
- Or come alone in order to find a distant member of the family (this is often a source of problems for the child who does not feel well in this family and will run away).
- Or by a smuggler, this is often the case for those who will have to pay a debt of servitude for the family in the country which is threatened by the network.<sup>57</sup>

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<sup>57</sup> The Unaccompanied Foreign Minors in France. *National Report for Net For U Project*. Association Diagrama. 2013:1 §4; 2; 3.

## D. UNITED KINGDOM

### - Current data, main nationalities, gender and age of the children.

The United Kingdom keeps a relatively stable number of applications for asylum by unaccompanied children, around three thousand a year (this figure does not include the age-dispute cases), a number that exceptionally peaked in 2002<sup>58</sup>.

The United Kingdom presents an important heterogeneity of different origins, receiving especially flows of children coming from unstable areas affected by armed conflicts or political repression (Afghanistan and Iran).

### - Sociological profile (motivations and migratory project of the children, or where appropriate that of the families)

The classical prevailing migration profile in the UK are asylum seekers. The regulation models and policies for migration on each territory also have an important influence on the configuration of the profiles of unaccompanied children who end up in each country. This way, in United Kingdom the children show or adopt a profile of potential refugees because their legal integration possibilities go through a first phase of acceptance, investigation and resolution of their asylum application. Depending on the result, this phase is followed by a long administrative or judicial process, which in the best of cases allows them to reside in very unstable circumstances.<sup>59</sup>

## E. GREECE

In Greece, the phenomenon of unaccompanied migrant and refugee children has been relevant at least during the last two decades. These children often appear to be involved in activities such as begging, washing car windows at traffic lights, selling minor items or engaging in petty criminality. Yet, the overall context remains unclear due to the inadequacy of the national migration system. In particular, the lack of a formal official mechanism for registration at the moment of entry means that there is no official record of migrant children. This complicates the challenge of identification, as well as that of identifying the profiles of unaccompanied minors in the territory.

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58 All the figures correspond to asylum applications carried out both at the border as at the Home Office excluding those applications where there is a doubt about the age of the applicant. Source: *Seeking asylum alone: Unaccompanied and separated children and refugee protection in the UK*, Jacqueline Bhabha and Nadine Finch, John D. and Catherine T. MacArthur Foundation & Garden Court Chambers, 2006.

59 *Situation and Treatment of Unaccompanied Children in Europe. A comparative study of 6 countries: Germany, Belgium, Spain, France, Italy and United Kingdom*. Daniel Senovilla Hernández. 2007:22-30.

- **Current data, main nationalities, gender and age of the children.**

Statistical data is available as regards to those who seek asylum and formally enter the asylum process in Greece. According to the most recent statistics of the newly established Asylum Service of the Ministry of Public Order and Citizen Protection from June 2013 to January 2014:

- there were 232 applications submitted<sup>60</sup>
- Two hundred and sixteen (216) by boys and sixteen (16) by girls, all documented as unaccompanied children
- Seventeen (17) children were between 0-13 years old, thirty-one (31) between 14-15, and one hundred and eighty four (184) between 16-17
- The main countries of origin were Afghanistan (82), Pakistan (68), Bangladesh (34), and Syria (10)
- Eleven (11) minors have been granted refugee status, six (6) subsidiary protection, one hundred and eight (108) were dismissed, and one hundred and seven (107) are pending.

- **Main Issues with the Presented Data**

Civil society representatives argue that the actual numbers of unaccompanied minors entering Greece on an annual basis is much higher than the one seeking asylum. There are several reasons behind this:

- First of all, children in most cases see Greece as a transit country and actually want to seek protection elsewhere in Europe. Therefore they are reluctant to enter into formal procedures.
- Secondly, the existing guardianship and overall reception and welfare structures targeting separated children in Greece are very weak making it difficult for those children to access the child protection system, even if they wish to apply for asylum.

A comparison between the official statistics from the Asylum Service and the official statistics provided by the National Centre for Social Solidarity on the provision of shelter to UAMs in the Greek territory supports this assertion.<sup>61</sup> According to the latter's statistics the total number of unaccompanied minors seeking shelter for the period June 2013 – December 2013 was seven hundred and fifty one (758) which provides a stark difference to the one hundred and ninety six (196) that have sought international protection during the same period.

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<sup>60</sup> For the period June 2013-December 2013 the corresponding number was 196.

<sup>61</sup> For the full statistics in Greek please visit:  
<http://www.ekka.org.gr/PressOfficeForceAccountView.action?forceaccountID=21>

## 4.2. EU Host Countries' Action on Unaccompanied Children' Needs Assessment and Family Tracing.

### 4.2.1. GERMANY

This presentation is an extract of the national report the German partner, the CJD-Eutin<sup>62</sup> from Hamburg, has provided in the framework of the European project “Net for U”.

#### A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN

In light of the above-mentioned legal and political framework, the following section will identify and discuss key areas of needs and services for UC based on the interviews conducted with professionals servicing this target-group.

##### - Initial Clearing and Accommodation

Based on § 42 SGB VIII from 2005, the Office of Youth Services is responsible to take a foreign minor into its custody if he or she entered German territory without a parent or legal guardian. In line with this responsibility the Office of Youth Services is mandated to place their wards into age-appropriate places of accommodation. This task is clearly reinforced by the National Action Plan for a Child-Friendly Germany (Bundesministerium für Familie, Senioren, Frauen und Jugend 2005: 75). So far, a majority of German states have created “clearing houses” or similar facilities which constitute the first point of access and accommodation for unaccompanied children<sup>63</sup>. The clearing houses offer shelter for about 3 months during which the youth is provided with basic services including clothing, health care, schooling, legal assistance, therapy – if needed – and recreation. During the initial clearing phase general information on the family situation of the youth is gathered – name of parents and siblings, place of residence of parents and siblings and status of contact with family members.<sup>64</sup> This procedure is in accordance with EU Council Directive 2003/9/EC, Art. 3 which requests EU member states to identify and search for family members as long as this process meets the best interest of the child.

In some cases – mainly in larger cities with higher numbers of unaccompanied children – clearing houses are installed for UC exclusively. In other communities clearing houses accommodate a mix of UC and German youths. Some interviewees have stressed that UC in most cases have a stabilizing effect on the group dynamic in an integrated clearing house. The German youths benefit since UC tend to be “more polite” and “share experiences of

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62 <http://www.cjd-eutin.eu/>

63 In 8 out of 16 states these facilities are named “clearing houses” in other states such as Schleswig-Holstein, Hamburg and Berlin facilities offer similar services.

64 See also Annex 1: Sample intake interview in clearing house. <http://www.oijj.org/en/partners-reports>

extreme hardship”.<sup>65</sup> The UC benefit from communicating primarily in German however there are also concerns that their exposure to disadvantaged, at-risk German youths might have an adverse effect on their own development. The reasons of separation from their families differ significantly between unaccompanied children and German youths, a circumstance that needs to be taken into consideration when choosing appropriate spaces of accommodation.

Some states adhere to the provisions of the Asylum Procedure Law and continue to pursue a **two-tier system between UC under and above 16 years**. Most prominent is the example of Bavaria where UC at the age of 16 are housed in large adult facilities in former military barracks without the necessary pedagogical care. These circumstances have led to a hunger strike of young children in one of the facilities in 2012 (Loerzer 2013).

The unaccompanied children enter the clearing phase after many of them have experienced months – and at times - years of flight. During clearing extensive administrative issues have to be processed.<sup>66</sup> As one of the first steps, the youth has to submit to a medical check to assess his or her correct age – as discussed in the following section. Also, the youth is confronted with an array of bureaucratic tasks which can be overwhelming. Once the youth is accommodated into a clearing house, he or she is familiarized with the legal options that surround his or her stay in Germany. Amongst these options, an asylum request is most common.<sup>67</sup> However, as pointed out above only 11.6% of unaccompanied children have been granted asylum in 2011. Therefore, many interviewees have argued that the youth need a more extended time “to arrive” and “to breathe” to better assess their individual needs and to recover from the burdens of long flight trajectories.<sup>68</sup> During this time, a multi-disciplinary team of social workers, psychologists, translators and potentially anthropologists should determine – in cooperation with the youth – what type of family relations exist, if an asylum request is the best option, what the objectives of the UC are, and if mental health issues need to be addressed. In most cases, such an in-depth assessment is not possible due to a lack of personnel, resources and most importantly legal requirements.<sup>69</sup>

The housing facilities for UC showed significant variation in Germany. While the barrack style accommodation for some UC in Bavaria mark one end of the spectrum, there are clearing facilities with a large array of youth specific services like the LEB clearing house in Hamburg: 10 translators for 34 UCs, 12 staff members for 24 hour supervision, daily group meeting to address various subjects including discrimination and racism (also amongst residents), sports hall, basketball court, computer lab with internet access, craft class,

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65 Interview 5

66 For an example of an initial clearing process view Annex 2. <http://www.oijj.org/en/partners-reports>

67 As pointed out in section, there are significant differences between states. In Hamburg, the number of asylum requests and the number of custodial cases by the Office of Youth Services is almost identical which resulting from the fact that youth are asked to request for asylum immediately upon arrival (Bundesfachverband UMF 2012)

68 Interview 2,5,6,8,16,17

69 Interview 6



language classes.<sup>70</sup> However, after the initial clearing phase of about 3 months the youth is transferred to a more permanent group home to wait for a decision on his or her legal/immigration status.

- Transition after Initial Accommodation

The transition into longer-term housing is linked to significant problems in some communities and particularly in larger cities such as Hamburg and Berlin. In these cities with a highly competitive rental market, unaccompanied children without permanent residence papers compete with German applicants for accommodation. With an increase in unaccompanied children for the past 5-7 years most facilities are overcrowded which in turn leads to backlogs in clearing homes where the youths are only supposed to stay for 3 months but in some cases stay up to 9 months. While stationary – and very cost-intensive-residences – with 24 hour assistance under § 34 SGB VIII are less in demand the largest need can currently be identified for ambulant residences under § 30 SGB VIII which provide both assistance as well as a certain level of independence to the youth.<sup>71</sup> Some interviewees have criticized that the situation is further complicated by granting too many options to the unaccompanied children. The youths are encouraged “to shop” around for residences that best suit their expectations making placements more difficult. This view was rejected by those arguing that the youth need to feel comfortable and accepted in the new place of residence.<sup>72</sup> In addition, there are complaints that the complexity of applying for financial entitlements unnecessarily complicates and prolongs the transition from a clearing house to a more permanent group home (Bürgerschaft Hamburg 2013).<sup>73</sup>

Although the problem of **overcrowded accommodations** is being recognized, cities and communities are unwilling to expand residential facilities due to the lack of predictability of refugee numbers. In fact, many facilities and group homes have been closed down when the numbers of refugees decreased around 2005-2006. The recent increase of refugees confronts communities with new challenges (Espenhorst 2011).

An additional barrier to a smooth transition from a clearing house to a group home is a practice in some states where youths are transferred into geographically distant communities in line with predetermined quotas after their initial 3 months of clearing. This practice avoids continuity of services and interrupts efforts that have been initiated with respect to schooling and social networks.<sup>74</sup>

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<sup>70</sup> LEB Erstaufnahmeeinrichtung 3, Hamburg, site visit on January 21, 2013.

<sup>71</sup> Interview 11,15

<sup>72</sup> Interview 15

<sup>73</sup> The current level of basic entitlement for asylum seekers – which was only recently increased – ranges between 324 and 358 EUR. This level is below the level of Hartz IV (welfare) for German nationals since it excludes the “Ansprungspauschale” – a savings allowance which does not apply to UM who are expected to leave the country again.

<sup>74</sup> Interview 5

### - Age Determination

Many of the unaccompanied children enter Germany without their passports or papers of identification that provide information about their age. In order to determine if an individual falls under the responsibility of the Office of Youth Services all states have developed approaches of age determination – some of which are criticized as a violation of the UN CRC.<sup>75</sup> These practices include **medical examinations** and X-rays of the carpus and teeth if the Office of Immigration assumes that the youth is older than indicated (Wiese 2010). In other states the age of the youth is estimated by a representative of the Office of Immigration. Such practices have been criticized by interviewees who stressed the need for trained pedagogical and psychological staff to assess the age of the youth. These interviewees warned to conduct this assessment immediately upon arrival of the youth. It is advisable to give social workers and psychologists **time to observe the age-specific behavior** of the youth for a more extended period of time.<sup>76</sup> Besides, one social worker stated that many of the youth look significantly older after many months of flight – after two weeks in a protected environment the young person looks more like his or her age.<sup>77</sup>

However, another interviewee stated that one should confront the fact that many UC declare a younger age below 18 to prevent deportation and to gain access to a minimum of services including the right to education.<sup>78</sup> As a consequence, many of those who enter Germany as UC fail to pass the methods of age determination mentioned above. In Hamburg – for example – the age of more than half of all unaccompanied children was adjusted to 18 and above by the Office of Immigration in 2010 (Wiese 2010; Gunßer 2012). This aspect is closely related to the very narrow legal confines which surround the options for unaccompanied children to secure their status in Germany.

### - Legal Assistance and Guardianship

In line with § 42 SGB VIII the Office of Youth Services has to provide the UC with a legal guardian as soon as he or she is taken into custody. As mentioned above, the appointment of a legal guardian is still not put into practice in some states, which adhere to the provisions of the Asylum Procedure Law for UC at the age of 16 and 17.

In the majority of cases, the Office of Youth Services appoints one of their employees as official guardians. In 2011 a revision of the existing custodial law reduced the number of wards per guardian to 50. Prior to that, some guardians had caseloads of up to 200-300 youth including both UC as well as German youth in need.<sup>79</sup> In larger cities like Hamburg and Berlin, the UC is assigned one guardian upon arrival and a different guardian after moving

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<sup>75</sup> BUMF: „Altersfestsetzung“, <http://www.b-umf.de/index.php?/Themen/altersfestsetzung.html>

<sup>76</sup> Interview 6

<sup>77</sup> Interview 2

<sup>78</sup> Interview 16

<sup>79</sup> Interview 8

to a more permanent residence in a different neighborhood of the city. Under these conditions, there is very limited room for establishing a more personal relationship between UC and legal guardians.

One of the **key roles of the legal guardian** is the assistance of the youth in his or her legal process. In general, official guardians that are employed by the Office of Youth Services will pursue the priority of applying for asylum.<sup>80</sup> For some countries of origin however this time-and resource intensive procedure bears very limited prospects of success. This leads to yet another reality that some interviewees have addressed.<sup>81</sup> The current legal framework of asylum is narrowly defined for political refugees only. With the absence of an alternative framework, youths who have fled from poverty and lack of access to education are channeled into the same procedure and are likely to be rejected after lengthy periods of waiting and declined appeals of their asylum cases.<sup>82</sup>

A number of interviewees have stated that the caseload of legal guardians remains too high and have requested targeted training for appointed guardians who – in many cases – lack the knowledge of the (legal) particularities of custodial care for UC. In order to provide the youth with more tailored legal assistance some states have installed a **lawyer as an “assistant” guardian** for more complex legal cases. One interviewee stated that most Germans will need legal assistance to resolve even small legal questions. Therefore, it is unrealistic to expect a foreign minor without German language skills to process the complexities of German asylum law without appropriate assistance. A service provider in Schleswig-Holstein covers 80% of the expenses of the appeal expenses at the administrative court.<sup>83</sup>

Many UC – especially the younger ones – would also benefit from more interpersonal contact. In Germany, some NGOs have specialized on seeking private guardians who develop stronger interpersonal relationships of support for the youth. While some interviewees consider **private guardians** as a very constructive approach,<sup>84</sup> others raised concerns that private guardians are not experienced enough to deal with the administrative hurdles during initial clearing.<sup>85</sup> In addition, one interviewee reported that private guardians at times have misplaced expectations of the youth which cannot be met.<sup>86</sup> The interviewee mentioned that in the 1990s some German families attempted to adopt UC. However, in the majority of cases adoptions were not successful due to the advanced age of the youths combined with diverging cultural frameworks. Therefore, private guardians – just as official/appointed guardians – need to be carefully trained for servicing the particular target group.<sup>87</sup>

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80 Interview 8

81 Interview 16

82 Interview 8

83 Interview 4

84 Interview 8,16,19

85 Interview 6

86 Interview 2

87 Interview 16

Some interviewees have reported on efforts to install relatives (extended family) who live in Germany as legal guardians. However, in many cases relatives lack the space and resources to accommodate the youth and at times there is a certain risk that the service provision might be interrupted when transferring the youth into a family household.<sup>88</sup>

#### - Processing of Asylum Request

The complex procedures of an asylum request constitute an overwhelming experience for many youths especially if they are not accompanied by a legal guardian. The first decisive step is the official interview at the Federal Office of Migration and Refugees where the UC is requested to present his or her flight reasons. According to a study by the European ASQAEM<sup>89</sup> Project initiated by UNHCR the interviewing procedures and techniques at the Federal Office demonstrated a number of shortcomings in responding to the needs of the particular age group. Examples introduced by the study were inappropriate waiting rooms that were intimidating rather than comforting, several interruptions of the interview through frequent phone calls and colleagues entering the room and insufficient interview skills to gain the trust of the youth (Lange 2009). According to one interviewee from the Federal Office of Migration and Refugees the agency is aware of some of these deficiencies and has taken initiative to improve the accommodation of UC.<sup>90</sup> Due to organizational hurdles it has not yet been possible to assign individual interview times resulting in extensive waiting times for the youths. To alleviate the stress during waiting periods separate waiting rooms for UC have recently been installed. Apart from logistical adjustments, the Federal Office has appointed designated interviewers specialized on UC. These interviewers receive special training taking into consideration aspects of psychological development as well as cultural and educational factors impacting the experiences of the UC. The interviews of UC in the agency are based on the “Dialogical Communication Method (DCM)” developed by Gamst and Langbelle at the University of Oslo (Lange 2009: 5) with the intention of creating an atmosphere of trust and safety. Apart from the interviewing techniques it is important to find an age-appropriate approach to informing the youths about the asylum procedure. The above-mentioned study has found examples in which interviewers have submitted the UC to very lengthy and formal explanations which were difficult to understand (Lange 2009: 6). The Federal Office of Migration and Refugees is currently developing a concept for a multimedia introduction to asylum procedures for adults that should also be used for UC in the near future.<sup>91</sup>

#### - Access to Education

Although all states grant a general right to schooling for UC, there is no common approach in Germany of how to implement this right. In addition, three states exclude UC from compulsory

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88 Interview 13

89 Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern European sub-region

90 Interview 17

91 Interview 17

school attendance arguing that their presence does not constitute “a regular residence” as defined by school legislation.<sup>92</sup> The absence of compulsory school attendance has implications for the provision of educational services and the funding of logistics including transportation and school books (Parusel 2009: 59, Studnitz 2011).

Once again, UC at the age of 16 and 17 face larger obstacles to obtain schooling. In some states, access to education is only provided in cases where special exceptions and agreements are made between the Office of Youth Services and the school administration. In one of the states without compulsory school attendance, an interviewee explained the difficulties to secure schooling after the release of the youth from a clearing house.<sup>93</sup>

Practitioners are faced with **large variations of educational experiences** between the youth. While some UC have never attended school some have reached more advanced levels of education in their countries of origin. However, due to the limited German language skills an accurate assessment tends to be difficult. To address this issue, the Institute for Vocational Education in Hamburg has agreed to invite native speakers to conduct the education assessments.<sup>94</sup>

In the initial phase, the main focus is placed on German language classes. In some “Bundesländer” UC are only allowed to attend “regular” schools below the age of 16. After that they have to attend special vocational training schools with only other refugees. The disadvantage here is that the interaction with native speakers is limited. Most teachers are not prepared – and allowed – to teach “German as a second language”. Some interviewees have reported low motivation of teachers and cynical approaches to educating this target group: “you’ll be a cleaning lady anyways...”.<sup>95</sup> There is a great need to **train teachers** to educate this target group. However, there are also examples of motivated teachers and school directors: e.g. “Welcome classes” for non-German speakers in Berlin, which are gradually being incorporated into regular classes.<sup>96</sup> Another highly innovative and dedicated initiative to provide schooling for UC is the non-profit organization “**Schlau Schule**”<sup>97</sup> in Munich which can be translated as “Smart School”. Founded in 2003, the private school provides educational assistance to about 140 UC and has a success rate of 95% of students who reach their “Hauptschulabschluss” – the basic educational degree in Germany. The initiative places a strong emphasis on (re-)building the confidence and self-esteem of the youths and also develops opportunities for internships and vocational training to facilitate the transition from school to employment. Given the visible success of the initiative a replication in other localities would be desirable. From a policy level it is questionable however to delegate the responsibilities for education to non-governmental stakeholders.

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92 These states are Hessen, Baden-Württemberg, Saarland.

93 Interview 5

94 Interview 14

95 Interview 12

96 Interview 16

97 <http://www.schlau-schule.de/>

However practitioners have pointed out that it is essential to identify the motivations of the UC. While some are eager to pursue their education others place their priority on finding employment to reimburse those who financially supported them during their flight. As stated by one psychologist school attendance can represent enormous pressure for some youths – especially for those with a limited educational background. These youths might have gathered significant practical working experiences that might be more useful in a working environment. Yet, social workers, legal guardians and judges seem to place the primary focus on schooling.<sup>98</sup>

- Work/Employment

For the past few years, a **public debate around demographic change and the shortage of “professionals”** has emerged in Germany and various government incentives to recruit qualified personnel from abroad have been introduced.<sup>99</sup> With this shortage in mind, many interviewees have criticized that the potential of UC is not sufficiently recognized. After 6000 miles and months of flight many of the youth have significant social capital and motivation to be trained.<sup>100</sup> In addition, many of the youths have gained substantial vocational experience working for years as a carpenter or tailor or other professions in their countries of origin.<sup>101</sup> However, according to German Asylum Procedure Law a UC is not allowed to work during the first year of residence in Germany.<sup>102</sup> After this period, UC with a temporary legal status (Duldung) fall under the priority rule for 4 years during which priority needs to be granted to an EU job applicant.

Given the young age of the UC, they would be a target group for the dual vocational training system which is prevalent in Germany and provides integrated practical and theoretical training for certain professional areas. However, in order to start a dual vocational program a UC needs the approval of the Immigration Office and the Federal Employment Agency which assesses the potential priority of EU applicants.<sup>103</sup> Besides these administrative hurdles, the temporary legal status of most UC – unless they are approved asylum seeker- is a deterrent to most employers. Interviewees have reported on UC who have been successfully placed into internships and performed to the great satisfaction of their employers. However, a continuation into a dual education training program was not possible due to their short-term legal status.

Some states have recognized the **potential of unaccompanied children** as candidates for the dual education system and are very interested in addressing administrative barriers which would include the incorporation of German as a foreign language classes as modules in the

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98 Interview 19

99 <http://www.bluecard-eu.de/>

100 Interview 4

101 Interview 19

102 § 61 AsylVfG

103 Interview 18

dual education system.<sup>104</sup> One interviewee has reported on the significant language barriers during the dual education process for many UC. The interviewee criticized that there are very limited efforts made by the school system to facilitate the transition from school into the vocational training system. In addition, UC are discouraged by the lack of financial support during vocational training resulting from conflicting competencies of government agencies which would need to be streamlined to better service this target group. While German youths in need are eligible for financial support during their vocational training, UC need to prove a residence in Germany for four years. This delay creates a serious obstacle for many UC who are likely to lose their “momentum” during this time period.<sup>105</sup> This regulation further appears short-sighted given the significant discrepancy between open positions for vocational training and low numbers of applicants in Germany.<sup>106</sup> Given the bureaucratic hurdles and the financial burden many UC work under precarious conditions in the services industry.<sup>107</sup>

In an effort to circumvent these hurdles and to prepare the youth for vocational training and employment the Refugee Mental Health Clinic in Hamburg has started to launch an internship project for its patients. The clinic is attached to one of the largest and most renowned hospitals in Germany – the University Hospital of Hamburg (UKE). A staff member in charge of community outreach has developed internship possibilities for nursing assistants, janitors, etc. with the hospital and youths receive assistance in writing applications, preparing for job interviews and learning about the job market in Germany.<sup>108</sup>

- (Mental) Health Care

In the course of the interviews practitioners reinforced the **importance of psychological therapy** to address the emotional needs of the UC. Interviewees have reported that the UC are “traumatized – extremely traumatized”.<sup>109</sup> While the interviewees stressed the need to address questions of mental health some stated that it is important to let the youth “arrive” before starting the intervention. Upon arrival most UC are most concerned about their legal status and making a living: “they want freedom, money and a place to stay”.<sup>110</sup> At the same time, one interviewee stated that residents of a clearing house are requesting very frequent doctor’s visits which might result from sincere health concerns but might also reflect the desire for emotional care and attention.<sup>111</sup> Some interviewees have mentioned initial cultural barriers

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104 Hamburger Institut für berufliche Bildung (HIBB).

105 In Schleswig-Holstein, an engaged teacher has brought this shortcoming to the attention of the political arena and has submitted a petition to the government. Supported by the Green party this initiative is currently pending, Erdmann, K.: Wie Flüchtlinge zum Nichtstun verdammt werden, [www.ndr.de/info/programm/sendungen/reportagen/audio155563.html](http://www.ndr.de/info/programm/sendungen/reportagen/audio155563.html)

106 In Hamburg there are currently 5.400 open positions that employers cannot fill: Keine Bewerber für tausende Lehrstellen, <http://www.ndr.de/regional/hamburg/ausbildung369.html>

107 Interview 11

108 Interview 19

109 Interview 2

110 Interview 6

111 Interview 6

and low levels of motivation with respect to psychological treatment – at least during the initial phase.

According to one psychologist, there is a large variation between patients and therapy approaches need to be adapted accordingly.<sup>112</sup> Some youth suffer from basic challenges of adaption to their new environment and the loneliness that goes along with them. In order to avoid a deterioration of their mental condition it is essential to provide them with low-intensity treatment. However, a significant number of patients are also diagnosed with **post-traumatic stress disorder** requiring for more intense treatment on a weekly basis for at least one year. While some patients are open to treatment others are highly reluctant to opening up and have serious thoughts of committing suicide. They tend to relive situations in which they experienced severe fears of death. According to the psychologist the symptoms of traumatic stress are largely universal. However UC from countries in which feelings tend not to be discussed openly show a larger tendency for physical symptoms such as insomnia, headache, panic attacks, etc.<sup>113</sup> Therefore, it is important to provide a safe and calm location and setting for the therapy session.

While many of the youths have been exposed to **violence** in their countries of origin, the most severe instances of traumatism often occur during the flight itself when many UC become victims of physical and sexual abuse. The fear of abuse continues after their arrival in Germany. According to one interviewee the influence of traffickers remains high and constitutes a severe risk for the emotional stability of the youths. **Traffickers** exert pressure by demanding for additional fees although the flight is completed and force the youths to work for them as drug dealers. Due to the illegal nature of hiring a trafficker practitioners and UC are faced with the challenge of pressing charges against the offenders.<sup>114</sup> Apart from the trauma surrounding their flight trajectories, a number of youth further express severe fears of being sent back to Greece under Dublin II.<sup>115</sup> An additional – and key factor – for the continuation of fears and trauma is the **insecurity** that Unaccompanied children face concerning their legal status in Germany. Given this accumulation of ongoing challenges and fears the parameters for in-depth psychological therapy are often limited. Although the UC have arrived in Germany “in their minds the drama continues, they continue to be on the run”.<sup>116</sup> However, according to recent studies psychological therapy has proven to be effective even for those UC with a precarious legal status.<sup>117</sup>

There are also a number of practical challenges including the **identification of an appropriate therapist**. In larger cities such as Hamburg and Berlin the waiting lists are extensive. In Hamburg, a youth has to wait for 3 months before getting an appointment. Some therapists

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112 Interview 19

113 <http://protect-able.eu/wp-content/uploads/2013/01/protect-global-eng.pdf>

114 Interview 19

115 Interview 2,6

116 Interview 14

117 Interview 19



who speak the native languages of the UC are not certified by the health insurances others on the other hand do not have the language skills. These therapists rely on translators which bears the risk of impeding the openness of the treatment process. Therefore the clinic for mental health in Hamburg requests translators to avoid contact with patients outside of the therapy context. By hiring translators in various languages significant costs are being accumulated which are not covered by the health insurance. In Hamburg's clinic for mental health an array of translation services can only be offered with the support of "Children for Tomorrow" a foundation dedicated to supporting refugee children.<sup>118</sup>

Despite these challenges most clearing houses and group homes have established good relationships with providers of therapy. While most interviewees appreciated the impact of therapy some raised concerns about the quick **prescription of psycho-pharmaceuticals for UC**. Others argued that in some severe cases medication might help them to sleep and establish a daily routine.<sup>119 120</sup>

## B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY

Closely related to the question of mental health is the **question of family relations** which play an important role in addressing the emotional needs of the UC. The separation from their family environment is a key reason for the vulnerability of the target group. Although practitioners recognize the importance of family relations the interviews demonstrated that they are amongst the least formalized domains of interventions. Despite the great significance of family relations particularly for this age group, they are often treated as a taboo and evoke a certain level of **ambivalence** for both UC themselves as well as for the social worker who provides integration services to the youth.

### - Challenges of Family Tracing

When considering the circumstances of family relations of UC it needs to be acknowledged that there is a **reason why these youths have arrived on their own in Germany**. These reasons vary depending on the individual but can roughly be categorized into four scenarios:

- 1.) The UC arrive alone because their parents are no longer alive and often times have been the victim of violence in the UC's country of origin.
- 2.) The UC have been separated from their families during their flight. According to one interviewee young men commonly are asked to walk while children and the elderly are

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118 [www.children-for-tomorrow.de](http://www.children-for-tomorrow.de)

119 Interview 15

120 *Germany Net for U report*. Svenja Heinrich, CDJ-Eutin 2014: 19,20.

transported with vehicles often leading to different pathways.<sup>121</sup>

3.) The UC have been sent by their parents to escape from their countries of origin for economic or political reasons. In this scenario the youth is burdened with enormous pressure to succeed and to pay back the family and traffickers.

4.) Domestic violence and abuse in the family have been key reasons for the flight of the UC. According to one interviewee UC flee from civil conflict but also from the effects that these conflicts have on their families – “war as a catalyst for destroyed families”.<sup>122</sup>

From a social services point of view these particularities of family relations need to be carefully assessed and understood on a case by case basis to provide the youths with services that correspond to the individual “best interest of the child.” However, an **accurate assessment of family relations** is complicated by the fact that most UC fear repercussions for their asylum request and for their families at home when they reveal details on their family lives. In fact, many UC are briefed by traffickers – and families themselves – to deny the existence of their families and consequently have to juggle two narratives about their families (see also European Union Agency for Fundamental Rights 2010: 58).<sup>123</sup> In many cases, they have developed a completely new identity after arriving in Germany (Woge e.V. 2000: 14). On the one hand, the narrow legal parameters which would secure a permit to stay urge the youths to suppress overt contact with their parents/families. On the other hand, most youths yearn for family contact even in those cases where dysfunctional family dynamics might have led to their escape.<sup>124</sup> Some of them have feelings of guilt because they have left their families behind; they want to rescue their families. This behavioral pattern constitutes a reversal of the child-parent dynamic and places a heavy burden on the UC.<sup>125</sup>

To incorporate family relations into needs assessment and service provision social workers therefore need to find very **individualized and informal ways of addressing the family history**. However, in this process practitioners find themselves in an ambivalent position. For one, they face the challenge of gaining the trust of the youth – which tends to be a very time-intensive process. Once the trust is established and the youth reveals information about his or her family the practitioner has to determine how to process this information.<sup>126</sup> While a psychotherapist is bound to professional confidentiality, a social worker only has a limited obligation of confidentiality and can be called upon by judges and the immigration office. Therefore, the social worker faces a potential **conflict of interest** in wanting to protect the best interest of the child and providing information to state authorities in charge of the UC’s legal process.

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121 Interview 19

122 Interview 14

123 Interview 6, 9, 16

124 Interview 7,19

125 Interview 14

126 Interview 9,10

- Ensuring the Best Interest of the Child in Family Tracing

When considering the parameters of family tracing two questions should – according to the practitioners – guide the process: **Is family tracing in the best interest of the child?** And if yes, which channels of family tracing should be chosen?

In a letter to the European Commissioner for Home Affairs, the International Committee of the Red Cross (IRC) states that family tracing should stem from “a genuine wish from the child to search for his or her family members” and that “restoring family links” should be a “humanitarian goal as such... separate and distinct from any family tracing in the context of asylum determination or return procedures.” According to the Red Cross the complex activities of family tracing and reunification needs to include “knowing the fears or real wishes of a child.”<sup>127</sup>

According to an interviewee representing the organization International Social Services (ISD) a careful assessment of the best interest should not automatically lead to family tracing but could also reveal that the parents are not in a position to raise their child. In some cases parents simply might not see any other option than sending their children away, in other cases parents might have “sold” their children to provide for them. Also, interviewees have reported on cases in which the UC’s father urged his son to join the Taliban against his will – constituting a reason for flight. Therefore, a verification of the best interest of the child needs to be conducted without prejudice. Given the complexities of identifying the best interest of the child – and the serious repercussions of a mislead assessment – interviewees have stressed the need for **well-trained personnel** to conduct this assessment.<sup>128</sup> Apart from pedagogical experience, interviewees have emphasized the need for experts who speak the language of the youth and are familiar with his or her cultural context.<sup>129</sup> One interviewee representing an advocacy group has stated that the revision of the Dublin II regulation will place a stronger responsibility for family tracing on the Federal Office of Migration and Refugees and questioned the capacity of this authority to fully address the best interest of the child given its mandate as a federal agency. In an interview the Federal Office of Migration and Refugees acknowledged that family tracing needs to be conducted in close cooperation with external partners such as the International Red Cross (IRC), the International Social Services (ISD), UNHCR, Clearing homes, youth group homes, immigration offices and other experts working with UC.<sup>130</sup>

- Logistics of Family Tracing

Once it is established that family contact is wanted and in the best interest of the child

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<sup>127</sup> Letter from Francois Bellon, Head of Delegation of Comité international de la Croix-Rouge, to Celia Malström, European Commissioner for Home Affairs, July 10, 2012.

<sup>128</sup> Interview 10

<sup>129</sup> Interview 7

<sup>130</sup> Interview 17

several paths can be chosen. The **International Red Cross (IRC)** in collaboration with its local partners is most prominent in re-establishing contact in regions with limited access to communication technologies or in so-called failed states. The IRC can also assist when families get separated during their flight trajectories. In fact, a representative of the IRC reported that there is a growing number of search requests within the territory of the EU. Due to its international mandate as an independent humanitarian organization the IRC emphasizes the protection of the individual who decides to start the search procedure and does not reveal information on family relations to immigration authorities.<sup>131</sup>

Although the IRC International Search Services remain in demand, an unpublished study by the organization has found that most youths are in contact with their parents and families facilitated by tools of **new media** including facebook, e-mail and mobile phones. This finding was supported by most interviewees who stated that UC pursue these lines of communication without significant intervention from their social workers. Most facilities provide the youths with the technical infrastructure of using the internet, skype, etc. While almost all UC have access to these media in Germany, the access to these communication tools in their home countries might not be as prevalent and limits the frequency of contact. Some interviewees have reported that the youths have had emotional breakdowns after speaking to their family in their home countries.<sup>132</sup> In cases where the youth was closely supported in establishing family contact, he or she tended to better process the emotional impact. Interviewees reported on cases where the social worker accompanied the search for an extended period of time and when contact with the mother of the youth was finally established he was extremely happy and became much more positive. A translator also reported on a lengthy search which resulted in establishing contact between a UC and his father. The youth feels relieved and frequently sends money to his father giving him a sense of “giving back”.<sup>133</sup>

Apart from providing the technical “logistics” of communication, some facilities actively support UC in visiting family members in other EU states during their vacation.<sup>134</sup> In addition facilities support UC in developing contacts with relatives who are already in Germany and who are willing and able to become the legal guardian of their family member.

#### - Family Reunification and Voluntary Return

Once family tracing has been established as a practice in line with the best interest of the child the question of **family reunification with three potential scenarios** emerges:

1.) Family reunification in any EU member state: According to Art. 6 of **Council Regulation (EC) No 343/2003 (Dublin II)** “family unity should be preserved in so far as this is compatible

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131 Interview 8

132 Interview 2, 11

133 Interview 7, 14

134 Interview 2

with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.”

2.) Family reunification in Germany: According to German immigration law § 36 Abs. 1 AufenthG the parents of an UC can be issued with a residence permit to join their unaccompanied child even without prove of income or sufficient living space which constitutes an exception to general requirements.

3.) Family reunification in the UC's country of origin through facilitating voluntary return.

There has been an increase of requests to international search services for **family tracing within the territory of the EU**. A number of interviewees have confirmed this trend. Some social service providers actively support the youths in visiting their family members not only in other parts of Germany but also in other EU member states. These visits and the prospect of joining a family member have reportedly had a positive effect on the UC. According to the Federal Office of Migration and Refugees the **new Dublin legislation** will further intensify efforts to reunify UC on EU territory. The government agency representative stressed that these efforts of family tracing are limited to EU member states and are not targeting family reunifications in the countries of origin of the UC.<sup>135</sup> However, the interviewees also stated that UC are extremely fearful of being sent back to Greece or Italy to reunite with their families. The conditions in these countries of primary entry for refugees with large case numbers have been extensively criticized by NGOs (Human Rights Watch 2013; Bordermonitoring.eu e.V. 2013) and have led to a decision by the European Court of Human Rights in 2011 to stop deportations to Greece due to “the risk of being submitted to inhumane treatment” (European Court of Human Rights 2011). In line with this decision, the German Minister of Interior has ordered a **ban on deportations to Greece** due to “serious shortcomings” in the Greek asylum procedure (Bundesministerium des Inneren 2011). Although a clear ban has not yet been pronounced for Italy, deportations are currently being halted (European Court of Human Rights 2013).

Despite the above-mentioned favourable legal regulation, the numbers of **family reunifications on German territory** remain very limited. Although the parents of UC are exempt from the strict income and self-sufficiency rules for other migrants, family reunifications are complicated by two legal restraints. First, the UC needs to have a permit of residence or needs to have an approved asylum status and secondly, the UC needs to be under the age of 18.<sup>136</sup> Due to very lengthy asylum procedures and the low numbers of approved asylum appeals these two conditions can hardly ever be met leading to only 9 family reunifications with UC in 2007 (Parusel 2009: 55).<sup>137</sup>

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135 Interview 17

136 § 36 Abs.1 AufenthG

137 A recent decision by the German Bundesverwaltungsgericht authorized both parents of UAM to join their child as long as he or she is under the age of 18, <http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2013&nr=23>

Some interviewees have reported on successful family reunifications in Germany.<sup>138</sup> In these cases, the parents of the UC have arrived in Greece or Italy and were able to join their unaccompanied children. However, the process reportedly is very time-intensive and can take up to one year. The interviewees have demonstrated that family reunification often depends on the personal engagement of the individual social worker who takes the initiative to seek cooperative partners in other EU member states and devotes time to intensive bureaucratic procedures.<sup>139</sup> According to the interviewees family reunification in Germany could also represent a certain burden for some youths who are not yet in a stable position – an aspect that most UC do not consider prior to initiating family reunification (See also European Union Agency for Human Rights 2010: 58). For example, reuniting a family might also mean that the UC has to be housed in an adult accommodation with his/her family which does not provide the relevant services. The re-submission to the family hierarchy after having reached a certain level of independence might also bear the potential for conflict.<sup>140</sup>

Some interviewees have stated that the **voluntary return** of a youth to his or her home country should not be excluded as an option. Some youths continue to be emotionally unstable and suffer from homesickness. Once the youth expresses the desire to return, the repatriation needs to be closely supervised. It is paramount that the return includes the family and ensures that the youth is accommodated by a safe guardian in his or her country of origin. One interviewee reported on a current case in his facility where a youth had a strong desire to return but due to the absence of a safe accommodation in his country of origin German authorities were not allow to repatriate the individual.<sup>141</sup> The International Red Cross facilitates this return process – provided the youth agrees to return – however according to one representative it is too late to establish family contact just before the youth is being sent back.<sup>142</sup> Although there are a number of humanitarian programs that support the voluntary return of UC and provide them with assistance upon arrival<sup>143</sup> the number of UC who return voluntarily to their home countries remains low. Between 2005 and 2008 only 137 UC returned voluntarily and their number decreased gradually over time from 54 returnees in 2005 to 19 in 2008 (Parusel 2009: 62). The reluctance to consider a voluntary return amongst UC was confirmed by most interviewees. Despite hardship and loneliness in Germany, most UC fear the return to violence, poverty and the lack of perspectives in their home countries and hope to benefit from the opportunities they expect in Germany.

## CONCLUSION: KEY RECOMMENDATIONS FOR NEEDS ASSESSMENT AND FAMILY TRACING

The interviews and literature research on UC have demonstrated the **complexity of needs** of this target group. Policy makers and practitioners are confronted with a variety of factors: the

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138 Interview 2,11

139 Interview 2

140 Interview 11

141 Interview 6

142 Interview 8

143 REAG: Reintegration and Emigration Programme for Asylum-Seekers in Germany; GARP: Government Assisted Repatriation Programme in Parusel 2009: 62.

young age of the population, the diversity in countries of origin and cultural backgrounds, the legal confinements, experiences of trauma and abuse, and the emotional and socio-economic needs of the target group.

Throughout the interviews the focus on “the best interest of the child” was emphasized. However, how does one appropriately assess the “best interest of the child”? And who is in a position to provide such assessment? And even if such assessment is professionally conducted which means does one have to respond to these interests based on the confining legal and economic parameters? These questions remain and practitioners continue to address these challenging tasks when performing their role as caretakers in the absence of parents and families. In summary, some **key recommendations** can be made to better service this target group:

**Streamlining of services for UC in all German states:** This recommendation applies to the particularities of the German administrative system and includes the request to abolish a two-tier system which differentiates between UC under 16 and over 16 years of age in some states. All UC under the age of 18 should be accommodated in youth facilities and should be appointed a legal guardian.

**Extended period of clearing tailored for the target group:** Well-trained staff needs to have sufficient time to obtain a more in-depth knowledge of the individual’s flight motivation and family situation. Based on this assessment, legal options need to be explored that correspond to the individual context of the UC. The “one size fits all” approach of applying for asylum fails to acknowledge the multitude of flight reasons – some of them rooted in severe economic need and abuse rather than political persecution. The current clearing phase of 3 months should be extended to 6 months to allow the UC to “arrive” and to devise the most appropriate plan of intervention. To assist the UC in managing the bureaucratic hurdles upon arrival the above mentioned national advocacy group B-UMF has developed a very useful tool – a welcome brochure in 8 languages with detailed insight into the German (legal) system written by refugee youth for refugee youth/UC (Bundesfachverband UMF 2010). This publication is not only informative but also empowering in its emphasis on the rights of the youth.

**Training and familiarization for staff and legal guardians:** A reoccurring theme was the lack of trained legal guardians and staff in government agencies, social service facilities and clearing homes. While practitioners might be experienced in working with youths in general it is paramount to improve intercultural competencies – which at times means leaving one’s own comfort zone. The competencies should also include a broader knowledge of the individual countries of origin, of legal particularities and of assessment tools for identifying mental health needs. These competencies appear to be an important condition for gaining the trust of the UC. Throughout the interviews it became evident that due to the informality of the flight process questionnaires are not an appropriate tool to assess the best interest of the youth. Rather long-term personal relationships and patience will encourage the youth to reveal relevant information.

**Institutional cooperation:** The service provision for UC concerns a variety of stakeholders including social workers, psychologists, immigration offices, offices of youth services and courts. The interviews have demonstrated a certain level of antagonism between these stakeholders. While the social worker tends to be viewed as the “the good cop” with the “best interest of the child” in mind, the immigration office is often perceived as “the bad cop” with the primary objective of deporting the UAM. However, an effective approach to servicing the “best interest of the child” can only be found if these entities cooperate closely from the very beginning. To promote this process the organization of International Social Service (ISD) in Berlin offers regular training workshop for joint teams of representatives from the Office of Youth Services and the Immigration Office from the same locality. Applications are only accepted if participants from these two agencies apply in tandem.<sup>144</sup>

**Holistic Approach to Service Provision:** There needs to be an integration of services that address the socio-economic and the emotional needs of the youths. A pure focus on legal proceedings and educational development does not account for the psychological needs of the UC. On the other hand, an emphasis on psychotherapy will be ineffective if it is not connected with social contacts, recreational programs, and a meaningful structure outside of the therapy context. In Hamburg the above-mentioned Refugee Mental Health Clinic with the support of the foundation Children for Tomorrow is currently developing a network of resources including arts therapy, job/internship preparation, a mentoring program as well as supervision and training for social workers in clearing homes to assist them in identifying psychological needs. The NGO Oase Pankow e.V. in Berlin initiates partnerships between new arrivals UC and those who have already completed the clearing phase to promote social contact with peers (Parusel 2009: 60).

**Promote recreation/arts projects:** Many facilities offer opportunities for recreation such as sports activities and excursions which tend to be limited however by a lack of financial resources and personnel. The CJD Hamburg + Eutin recently launched an innovative theater project giving a voice to UC. Participants are young refugees from various countries of origin with no previous experience in acting or theater performance. The youths are encouraged to tell their stories by means of their theater character and are actively involved in developing the script of the play. Producer of the experimental theater project is a young Afghan director. The play is shown at a highly established theater in Hamburg and is an on-going project with a sense of longevity.<sup>145</sup>

**Advocacy and implementation of Dublin II revision:** As pointed out above, different legal tools should be developed for youths who fled from political persecution and those who left their countries for other reasons of socio-economic hardship. Both groups are expected to continue to enter EU territory. Both groups remain vulnerable and are in particular need of advocacy. A number of advocacy groups have emerged in Germany and have worked towards influencing legal decision-making – most prominent amongst them the Bundesfachverband UMF e.V. with a great level of policy involvement and networking potential. The draft for the new Dublin III

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144 <http://www.deutscher-verein.de/03-events/2012/gruppe7/f-728-12/>

145 „Gott und die Welt und Ich“: Kooperation des CJD Hamburg + Eutin und des Thalia Theaters in Hamburg: <http://www.cjd-eutin.eu/145.0.html>



legislation includes a clear commitment to family tracing and extends the current definition of the core family to an extended family approach. Interviewees appreciate this new legislation with a clear dedication to the “the child’s best interest”. However, it remains questionable if stakeholders like the immigration office and the Federal Office for Migration and Refugees who also decide on the individuals asylum case are in a position to appropriately address the question of family tracing. According to interviewees this task of family tracing should be delegated responsibilities to pedagogical experts.

**Transition from Youth Services to “Independence”:** Many interviewees have brought up the difficult transition from a relatively tight network of protection when under the wings of the Office of Youth Services and the “free fall” for some UC when they turn 18 and are released from these structures. In a number of cases the youths transition into adult accommodations and await the lengthy decision on their asylum case without employment or training. A relatively smooth transition was observed in those cases in which social workers began to search for more permanent housing prior to the move of the UC. The difficulties of the transitional phase are mainly rooted in the narrow legal parameters for schooling and vocational training for the target group. To “park” young and often motivated individuals while awaiting a trial decision does not only contradict humanitarian principles but also seems shortsighted from a cost-benefit analysis in the context of a shortage of professionals in Germany.

## 4.2.2 GREECE

### A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN

#### - Definition of Unaccompanied Children within the Country’s Legislation

According to the Greek legislation<sup>146</sup> unaccompanied minor is a person below the age of 18 who arrives in the Greek territory unaccompanied by an adult responsible for him/her whether by law or by custom applying in the country of origin, and for as long as he/she is not effectively taken into the care of such a person, or a minor who is left unaccompanied after he/she has entered Greece.

There have been many reports and different publications presenting the protection of unaccompanied minors in Greece, highlighting gaps both in legislation and in its enforcement. Among the issues<sup>147</sup> that emerge the urgent response and require immediate legislative and institutional reaction could be considered the constant and prolonged detention of UAM, the

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<sup>146</sup> Presidential Decree 220/2007 Article 1 (f) (Transposing the Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers) and Presidential Decree 114/2010 Article 2 (j) on minimum standards on procedures in Member States for granting and withdrawing refugee status

<sup>147</sup> The Greek Ombudsman, Department of Children’s Rights, Parallel Report to the UN Committee on the Rights of the Child, Findings and recommendations of the Independent Authority “the Greek Ombudsman” on the implementation of Children’s Rights in Greece (July 2003 – December 2011), April 2012, <http://www.synigoros.gr/resources/parallel-report-un.pdf>

lack of adequate reception facilities, the absence of an official and standardised age assessment practice, the deficiencies of the guardianship system and the lack of protection measures for those getting 18 years old.

- Initial Clearing and Registration

As was mentioned before, the lack of an official registration mechanism upon entry makes the identification of unaccompanied children a challenge both upon their arrival and during their stay within the Greek territory. As a result there are no official figures on how many unaccompanied children entered or/and crossed Greece. This drives us to the conclusion that many of these children have been invisible and not referred to any child protection mechanism, thus, not protected. Many different organizations and institutions tried in different periods to estimate the number of children and provide relevant to their profiles information too.<sup>148</sup> The lack of relevant data has been effecting the formulation of appropriate tailored responses in respect to the size, status and special needs of the population.<sup>149</sup>

In general, migrants and refugees entering the country irregularly have been, as a standard practice, detained at the borders in view of their deportation. Thereafter, with the exception of nationalities who are readmitted to Turkey (Iranians, Iraqis, Syrians, Georgians), most third country nationals are eventually released with the order to leave the country, but end up in Athens or at exit points (Patra, Igoumenitsa). UAM have been receiving such orders too no matter their minority.

Only in 2011<sup>150</sup>, Greece set, for the first time, specific screening procedure for irregularly entering third country nationals, through which unaccompanied and separated children could be duly identified.

The Law<sup>151</sup> 3907/2011 establishes the First Reception Service under the authority of the Ministry of Public Order and Citizen Protection, with a territorial competence for the entire country. Although the Central Service was established in 2011, the First Reception Centre started its operation in the beginning of 2013. According to Article 7 “All third-country nationals who are arrested while entering the country without the legal formalities shall be subjected to First Reception procedures.

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148 Unaccompanied Minors at the Greek-Turkish Border: *Euros, March 2011 – March 2012* (Ασυνόδευτοι Ανήλικοι στα Ελληνοτουρκικά Σύνορα: Έβρος, Μάρτιος 2011 – Μάρτιος 2012)

149 Human Rights Watch, *Left to Survive, Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008, [http://www.hrw.org/sites/default/files/reports/greece1208web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/greece1208web_0.pdf)

150 Adoption of Law 3907/2011

151 This new Law transposes in the Greek Legislation the provisions, of the Directive 2008/115/EC, on common standards and procedures for returning illegally staying third-country nationals and foresees the establishment of an Asylum Service and a Initial Reception Service

First Reception procedures for third-country nationals include:

- a) a verification of their identity and nationality
- b) their recording
- c) their medical check and the provision to them of any required care and psycho-social support
- d) their update on their rights and obligations, in particular with regard to the conditions under which they can be placed under international protection status and
- e) the care for those belonging to vulnerable groups, so that they are subject to the procedure laid down for such cases.”<sup>152</sup>

- Accommodation

For an unaccompanied child, the first need to be met is the accommodation, unless medical issues emerge, and then immediate referral to hospital is made. During the first contact that the practitioners have with the unaccompanied children, they inform them of the possibility to be accommodated at the reception facilities, and it depends on their wishes if they will be further referred to one of them.

If the children express the wish to be referred to a reception centre for unaccompanied children the NGO representatives inform the prosecutor and the Unit<sup>153</sup> in charge for the Management of Accommodation Requests of Asylum Seekers and Unaccompanied Minors in order to identify a free space among the reception centres.

The referral of unaccompanied children to reception centres often face administrative challenges, such as the low capacity of the reception centres, the need to escort the child and complete a medical screening before s/he is transferred to a facility.

As far as the legislative framework is concerned, the housing needs of the unaccompanied children are addressed in article 19 par. 2 of the Presidential Decree 220/2007<sup>154</sup> :

*When an unaccompanied minor lodges an asylum application, the authorities competent to receive and examine it shall take immediately the following measures:*

- a. They shall ensure that the accommodation needs of the child are covered by placing him/her with adult*

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<sup>152</sup> UNHCR, *Protecting children on the move, Addressing protection needs through reception, counselling and referral, and enhancing cooperation in Greece, Italy and France*, July 2012, <http://www.unhcr.gr/fileadmin/Greece/General/publications/cotmUNHCR.pdf>

<sup>153</sup> National Centre for Social Solidarity, General Secretary of Social Welfare within the Ministry of Labour and Social Security and Welfare

<sup>154</sup> Transposing article 19 of the Directive 2003/9/EC on the minimum standards for the reception of asylum seekers

relatives, with a foster-family, in Accommodation Centers with special provisions for minors, or in other accommodation suitable for minors and that this form of accommodation shall protect it from the risk of trafficking or exploitation.

b. They shall act so that siblings be kept together, taking into account their age and degree of maturity and, more generally, the best interests of each minor concerned.

c. They shall endeavor to trace the members of the minor's family as soon as possible.

d. Changes of residence of unaccompanied minors must be limited to a minimum.

e. In cases where there may be a threat to the life or to the integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care shall be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

At the moment, in Greece there are 10 reception centres for unaccompanied children, and their capacity is around 400 beds<sup>155</sup>. Although mostly they operate in the framework of European Refugee Fund, in many occasions they also host children who do not wish to submit an application for international protection.

When an unaccompanied child is identified either by the Police or by an NGO, the prosecutor's office is informed (acting as temporary guardian by law) and a claim for accommodation is forwarded to the Unit in charge of the Management of Accommodation Requests of Asylum Seekers and Unaccompanied Minors<sup>156</sup>.

According to the statistics referring to the period from 12/03/2012 until 31/12/2012, the Unit received 822 requests for accommodating unaccompanied minors. The 94,65% were from boys and only the 5,35% from girls. Among the requests, 34 were from children under the age of 12; there is no reception centre in the network of ERF specialised in young ages and the need for establishing such shelters is emerging. Most of these cases are referred to reception centres run by NGOs<sup>157</sup>, Church or public institutions.

According to the same statistics only the 73,92% of those who lodged an application finally entered the reception facilities; the rest neither turned up nor refused the placement, as their wish was to remain in Athens and not to travel and be hosted at a shelter outside the capital. The 61,44% of the unaccompanied children was referred by authorities and the 36,98% by NGOs.

It is worth mentioning that the time it takes from the application to the placement in the

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155 One of the shelters hosts exclusively girls and women, thus no specific number of beds is destined for unaccompanied girls

156 National Centre for Social Solidarity, General Secretary of Social Welfare within the Ministry of Labour and Social Security and Welfare

157 Such as "The Smile of the Child"

reception centre may be up to 30 days; during this waiting time the children may be at a detention centre, homeless or in any other unsafe environment, with all the dangers that this may entail. Finally, the average time of stay at a reception centre is only 49 days, due to the children “run aways”, in most cases an attempt to continue the trip to other European countries.

- Age Determination

As described previously, up to very recently there has been no specific screening procedure through which the unaccompanied children could be identified and treated in accordance with their needs and vulnerability. Thus, in practice, it has been the Police Authorities at border locations, who during the registration procedure of third country nationals entering Greece in irregular manner have been identifying the unaccompanied children. The conditions under which the registration is realised, in most cases without interpreters and under the pressure of excessive workload, may challenge the transparency of the procedure and the further treatment of those entering in Greece. Such recording practice relies upon the declarations of the new comers and as a result may effect to the identification of the unaccompanied children: in several cases, minors are recorded as adults, and vice versa. The legislative provision for the development of a system of age assessment has not yet been implemented and the relevant implementing ministerial decisions have not been issued.<sup>158</sup>

Also the children may be registered as accompanied by any adult with whom they may have travelled with or appeared together before the Police Authorities. Moreover, there is no legal act foreseeing the protection after the age of 18.

- Legal Assistance and Guardianship

Legal guardianship is regulated by the general provisions of the Civil Code (articles 589 – 1665). Article 24 of the Greek Civil Code provides that Greek Courts may appoint a legal guardian for a foreigner who has his/her usual residence in Greece. Among the guardian’s duties are the obligation to take care of the child, to represent the child in any legal or judicial proceeding, to hear the child prior to any decision-making, and to act in the child’s best interests (Articles 1647 and 1648 of the Greek Civil Code). Furthermore, the Articles 1518, 1606, 1647-1648 of the Greek Civil Code foresee the guardian’s obligation to take care the child’s upbringing, education and housing).<sup>159</sup>

Although Articles 64 and 66 of Law 2447/1996 provided some hope for the development of the

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<sup>158</sup> The Greek Ombudsman, Department of Children’s Rights, *Parallel Report to the UN Committee on the Rights of the Child, Findings and recommendations of the Independent Authority “the Greek Ombudsman” on the implementation of Children’s Rights in Greece (July 2003 – December 2011)*, April 2012, p. 18, found at: <http://www.synigoros.gr/resources/parallel-report-un.pdf>

<sup>159</sup> Centre for European Constitutional Law, Themistokles and Dimitris Tsatsos Foundation, *European Migration Network, Policies on reception, return, and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study*, Report on GREECE, Study submitted to the Ministry of Internal Affairs, Directorate for Migration Policy, August 2009,

guardianship system in Greece through the establishment of new social services, in practice this Law remained inactive.

Regarding unaccompanied children, Article 19 of the Presidential Decree 220/2007 provides that the competent authorities should take the appropriate measures to ensure the child's necessary legal representation, through the appointment of a guardian, irrespective of the child's status as asylum seekers. Therefore, law enforcement authorities inform the Public Prosecutor for Minors, or in the absence of the latter, the territorially competent First Instance Public Prosecutor, who acts as temporary guardian and takes the necessary steps in order to appoint a permanent guardian for the child. According to this provision, all unaccompanied children in Greece are entitled to have temporary guardians, who are public prosecutors by law.<sup>160</sup>

#### - Processing of Asylum Request

If the children express the wish to apply for international protection different actions are followed depending on their age; in accordance with the art. 4 of PD 114/2010<sup>161</sup> par.3 "A minor whether unaccompanied or not, aged above 14 years, can lodge an application on his/her own behalf, if the above mentioned competent authorities deem that s/he has the maturity to understand the consequence of his/her actions" and par.4 "An unaccompanied minor who does not fulfill the above mentioned criterion of maturity may lodge an application through his/her representative..". In practice the Public Prosecutor for Minors or, in his/her absence the territorially competent First Instance Public Prosecutor is informed by the NGO representatives about the children's wish and appoints the representatives to take care of the legal procedures related to the asylum application.

The age level imposed by this PD may effect the involvement of Public Prosecutor for Minors/ First Instance Public Prosecutor from the very first moment when the child is identified. The Public Prosecutor for Minors/First Instance Public Prosecutor in some cases is informed of cases regarding children under the age of 14 and, as provisional guardian, orders the placement of the child at a reception centre.

Moreover, the law 3907/2011, which regulates the First Reception procedures, also foresees the establishment of the Asylum Service, whose mission is to implement the legislation on asylum and other forms of international protection for aliens and stateless persons, as well as contributing to the development and the formulation of the national asylum policy.<sup>162</sup> Among the Asylum Service's competencies is to register, examine and rule at first instance on all applications for international protection. Therefore, the service is also in charge of collecting and assessing information on the economic, social and political situation of countries of origin of aliens, and of constantly monitoring developments in these countries. Moreover, in cooperation

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160 UNHCR, *Protecting children on the move, Addressing protection needs through reception, counselling and referral, and enhancing cooperation in Greece, Italy and France*, July 2012, p.19, <http://www.unhcr.gr/fileadmin/Greece/General/publications/cotmUNHCR.pdf>

161 Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status

162 Law 3907/2011 Article 1 par.1

with other Greek or foreign authorities competent for this purpose, especially under relevant international agreements, the Service will provide aliens who are applicants for international protection, as well as beneficiaries of international protection, with the stipulated legal and travel documents, and will process the applications for family reunification of refugees.

- Access to Education

Article 72 par. 3 (d) of the Aliens law 3386/2005 guarantees access to primary and secondary education for all migrant children living in Greece, irrespective of their residential status in the country. Furthermore, Article 9 of the Presidential Decree 220/2007 states that it is a child's unconditional right to have access to primary and secondary education.

Despite these provisions, it remains a challenge for the unaccompanied children who live outside the reception centres to register in school, as they need a guardian to take care of their enrolment and follow their school progress, thus, in practice only the children who live in reception centres can actually rely on these provisions.

Although there is an attempt to provide special reception classes aiming at encouraging the integration of foreign children into the school environment, in reality the language barriers, as no cultural mediators are foreseen, and the lack of classes prepared to welcome illiterate children constitute two of the main reasons for the high frequency of drop outs.

- Health Care

Article 14 of the Presidential Decree 220/2007 (transposing Article 15 of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers) provides that asylum seekers shall receive the necessary health, pharmaceutical and hospital care free of charge, if they are uninsured and financially dependent. According to paragraph 2 of the same provision, emergency medical care shall be provided free of charge. Article 14 par. 3 stipulates that special medical assistance will be provided to persons with special needs, including unaccompanied children.<sup>163</sup>

## **B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY**

- National Legislative Framework regarding Family Tracing and Family Reunification

The necessity of Family Tracing is pointed out in article 19 par. 2 of the Presidential Decree

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<sup>163</sup> UNHCR, *Protecting children on the move, Addressing protection needs through reception, counselling and referral, and enhancing cooperation in Greece, Italy and France*, July 2012, p.20, found at: <http://www.unhcr.gr/fileadmin/Greece/General/publications/cotmUNHCR.pdf>

220/2007<sup>164</sup>, which declares the obligation of the authorities to make efforts to “trace, as soon as possible the member of the minor’s family”. Furthermore, reunification may be realized under the criteria for the determination of the state responsible for the examination of an asylum application set in Regulation 343/2003 (Dublin II). In addition, Presidential Decrees 131/2006 and its complementary P.D. 167/2008 provide for the conditions of family reunification of migrants and of refugees respectively.

In particular, Greek Aliens Legislation (Law 3386/2005) does not prohibit explicitly the return of unaccompanied minors to their country of origin and/or to the country they transited before their entry to Greece, unless the Juvenile Court has ordered rehabilitation measures against them (i.e. when they committed criminal acts).

Furthermore, according to Article 25 of the Law 3907/2011 “*Before deciding to issue a return decision in respect of an unaccompanied minor and after having given due consideration to the best interests of the child, assistance shall be given by appropriate bodies, other than the authorities enforcing return, pursuant to Article 19 of P.D.220/2007<sup>165</sup>, who shall act accordingly*”; the Law goes further saying: “*Before removing an unaccompanied minor from the territory of the country, the competent authorities shall ascertain 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*”.

#### - Challenges of Family Tracing

Although the law foresees the involvement of “appropriate bodies” and “competent authorities” in the returning process, in practice there is no official body, institution or committee addressed with the task to consider the child’s best interests, allocate family members or any other person or facility who would welcome the child upon his/her return and take care of him/her. Practically, in case the Aliens Department does not trace in Greece the parents or other caregivers, INTERPOL is informed in order to search them in their country of origin. Once the above mentioned procedure is completed, deportation decisions are issued, providing for the detention of the unaccompanied minors concerned. When their deportation is not feasible due to the lack of airplane connection with their country of origin (eg Afghanistan) or to other problems hindering their removal to their country of origin (eg. Iraq) minors are released by application of article 78 of Law 3386/2005 that provides for the possibility to suspend the enforcement of the expulsion decision and to impose restrictions to the third country nationals.<sup>166</sup> In this case, police authorities inform the competent Minor’s Prosecutor and in collaboration with the National Centre for the Social Solidarity and non governmental organizations unaccompanied minors are accommodated in reception centres. Having in mind the conditions under which such actions take place, we may have doubts whether all

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164 Transposing Directive 2003/9/EC on the minimum standards for the reception of asylum seekers

165 Article 19 of Directive 2003/9/EC

166 Centre for European Constitutional Law, Themistokles and Dimitris Tsatsos Foundation, European Migration Network, *Policies on reception, return, and integration arrangements for, and numbers of, unaccompanied minors – an EU comparative study*, Report on GREECE, Study submitted to the Ministry of Internal Affairs, Directorate for Migration Policy, August 2009, p.25 & 26



the safeguards are considered before the child's safe return.

At this point it is worth mentioning that according to the practice the minors receive notification (deportation order) to leave the Greek territory because they violated the migration law due to illegal entry, whereas they are referred to protection structures as the law foresees. Although these children are by law represented by a (temporary) guardian, their irregular status as migrants who illegally entered the country remains unchanged. As such, they are subject to arrest, detention, and deportation.<sup>167</sup>

In the Greek context I.O.M. has been implementing programs of Assisted Voluntary Return, through which special attention is paid on the cases of minors who wish to return to their countries of origin and all the relevant safeguards are assured by the Organization prior and after the minors' return.

Additionally, the Anti-trafficking Law provides for specific measures to be taken for the repatriation of the victims; Article 13 provides for the right of every victim to be repatriated in safety and dignity.

As regards reunification of unaccompanied children with their families, who reside legally in another European State, this is realised under the criteria for the determination of the state responsible for the examination of an asylum application set in Council Regulation (EC) No 343/2003 (DUBLIN II).

#### - Logistics Family Tracing

Although the intervention of INTERPOL is mentioned for the family tracing, in practice there is no such action undertaken; it is only IOM in Greece with its Headquarters in Geneva that follow their official guidelines and operate assisted voluntary returns. Such practice is activated when an unaccompanied child expresses his/her wish to return back to his/her family. The IOM offices undertake the task to trace the family and provide the Greek Prosecutor, who acts as provision guardian and gives order for the child's return, with a social investigation that includes information about the parents' wishes and consent to welcome the child back, their economical status and security issues applying in their zone of residence.

As regards the family tracing at European level, according to the NGOs' statements, in most cases the children have with them the contact details of their families and it is easy to allocate them and facilitate the family reunification through the DUBLIN II.

In other cases the NGOs use their European networks and other organizations, with whom they collaborate in different levels, in order to facilitate the family tracing.

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<sup>167</sup> Human Rights Watch, *Left to Survive Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008 p. 16, also found in: [http://www.hrw.org/sites/default/files/reports/greece1208web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/greece1208web_0.pdf)

Lastly, it is the Tracing Directory of the Hellenic Red Cross that focuses on the family tracing. They activate their international networks and optimise different means of tracing such as internet, radio etc.

#### CONCLUSION: KEY RECOMMENDATIONS FOR NEEDS ASSESSMENT AND FAMILY TRACING

According to the discussion among the field actors the main constraints and challenges in protecting unaccompanied children and assisting their integration are considered the following:

1. Limited reception centres with no standard operating procedures
2. Deficiencies of the guardianship system
3. Prolonged detention in inadequate conditions

In fact, the child's placement at a reception centre it is the professionals there who undertake the task to fully assess the needs of a child and try to respond to them. The individual profiles include every child's personal information, health status and integration within the centre, school performance and progress.

Nonetheless, due to the poor funding of the centres, which results in limitations to both activities and human resources, and due to the deficiencies on the guardianship system, the unaccompanied children do not fully enjoy many of their rights.

At the moment all the **reception centres** for unaccompanied children do not follow any standard operating procedures and their facilities and services may differ from one to the other. In some cases such inequality affects the children's stay and drives them to run away from centres or very often children's demand is to be referred to particular centres (e.g. at urban centres such as Athens and Thessaloniki).

As regards the **guardianship system**, although the Greek legislation foresees the appointment of a guardian, the practices that we come across on the field prove that this provision is activated only in theory and not in practice, due to the different difficulties that the prosecutors experience while assuming their rights as provisional guardians and in their attempt to appoint a permanent guardian. Among those difficulties we could mention the work overload that the prosecutions' offices face, the limited human resources within the court social services, who could follow up the cases, the lack of Public Prosecutor for Minors in the whole territory (appointed only in Athens and Thessaloniki) etc. Furthermore, we should mention that there is no body or other relevant institution to whom the prosecutors could refer in order to appoint permanent guardians; individuals cannot easily assume the guardianship due to challenges as regards the profile and the dynamics of the target group that very often absconds and their tracks get lost.

There are cases where the prosecutors pass the full guardianship to the directors of the reception centres, although this practice is met less and less due to the challenges mentioned before.

Moreover, it is declared that in some occasions the prosecutor may issue a proxy to an adult in order to act as a guardian for a specific purpose e.g. school registration.

Due to all these challenges, there is no standardized practice followed by all prosecutors in the territory; it seems that the procedures followed depend on the discretion of every prosecutor and at the supporting services that he/she may have at his/her disposal (NGOs, social services etc).

Also, many organizations highlight that the reaction of the prosecutors differs when the minor is less than 14 years old; these children can be referred also to reception centres that host Greek children; the management of the centre assumes substantially the custody of the child. These reception centres are units for social care and their operation falls under the supervision of the Ministry of Health and Social Solidarity. Their target group is minors usually between 3-12 years old, who are not protected and are deprived of family care.

Furthermore, there have been cases of social workers for minors, within the social services of the courts, who voluntarily accepted the guardianship; some prosecutors went further with this practice and passed the guardianship to other court social workers for minors without their consent. Such practice, when it takes place without the voluntary involvement of people, no matter their professional background, cannot really guarantee the substantive involvement of the guardian in the UASC' every day life.

Moreover, we could also refer to the challenges that unaccompanied children face during their **school integration**. Due to the economic crisis in Greece the operation of multicultural schools is limited to some reception classes that are formulated within the Greek public schools when a certain number of foreign children are enrolled in the school. There are different factors that are not taken into consideration such as the illiterate children who are asked to attend a reception class although they have never attended a school before. The different ages within a class may discourage the older children to continue with their studies and eventually drop out.

NGOs highlight the lack of reception facilities capable of responding to children with special needs e.g. mobility, psychiatric. Such cases maybe referred to centres where Greek children go but due to the absence of cultural mediation and interpretation the centres may not accept the referral itself. In such cases the unaccompanied children may continue living outdoors or/and with other co-nationals letting them at high risk of becoming victims of exploitation etc.

Additionally, we definitely need to take into consideration the lack of legislation and appropriate structures and mechanisms to protect unaccompanied minors who do not fall within the international protection and however reach Greece. On the same line, there are

no measures taken for children when they turn 18. Also, the public education system does not encourage the school enrolment as in many cases it does not meet the characteristics and needs of the unaccompanied children.

At the moment in Greece there is an initiative from the General Secretary of Human Rights (Ministry of Justice, Transparency and Human Rights) to open the discussion for the protection of unaccompanied children and integrate related issues in the Action Plan that will be developed for Human Rights in Greece.

Furthermore, during 2013 the First Reception Centres will start its operation where screening procedures will be in place and formulate the registration of the populations entering Greece without legal documents.

Additionally, the new Asylum Service will start operating sometime during 2013 and as a result all the applications for international protection, in 1<sup>st</sup> and 2<sup>nd</sup> instance, will be reviewed and assessed by the Asylum Service itself and not any more by Police.

**Considering the specific challenges of family tracing**, the organizations working for the protection of unaccompanied children have a long experience on this field, recruiting very capable and well trained staff. All the professionals involved in such activities in many occasions have been working under big pressure, difficult conditions and with limited resources. Especially those working at reception centres that operate exclusively with European Refugee Fund, struggle to maintain the smooth running of the centres as there is no standard transfer of the funds through the Greek responsible for the ERF authority (General Secretary for Welfare, Ministry of Labour and Social Security).

Another issue that is considered as a constraint to the needs' assessment of the unaccompanied children is the fact that there is not any **official body in charge of this particular target group**; as a result there is no central coordination among the different actors and this has an impact in the effectiveness of the provided services. In the same line another constraint could be considered the absence of one file that can follow the child throughout his/her life in Greece since his/her first identification; such practices occur in some cases where the child is referred from one organization to the other, thus a brief information on the child's history is provided.

As mentioned before the **needs' assessment** may cover all possible fields effecting the child's physical, psychological and social development. However, the limited resources in staff and funds cannot identify all unaccompanied children and cannot assure for all of them the basic right to accommodation. This goes further as the limited funding sources cannot support additional services that could strengthen the reception centres' operation and provide to the hosted children a safe environment to live in.

It seems that all these problems are quite well known to the children and their families, who very often push their children to continue with their trip and not stay in Greece. As a result the children refuse to enter in the reception centres and in many cases declare that

they are adults in order to make sure that they are released as soon as possible and find the means to carry on with their trip to other Northern European States.

In some of these cases the children may have their family in Europe but the lack of proper and accurate information drives them to look for other means of reunification rather than the legal one.

Furthermore, the family tracing in countries of origin may not be feasible to all of them due to security reasons. Funds are not always available for such tracing.

Last, we need to mention that in Greece there is no official body or committee that can decide upon a **child's best interest**. In most cases the best interest determination comes from the Prosecutor's order that relies on the organizations' statements and social investigations and goes further on deciding upon the child's best interest.

### 4.2.3 ITALY

#### A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN

##### - Definition of Unaccompanied Children within the Country's Legislation

The term Unaccompanied Foreign Minor is used for those minors without Italian citizenship or citizenship from other EU countries, and who, by failing to apply for asylum, find themselves within the Italian territory without assistance or representation from their parents or another legal guardian, in accordance with the Italian normative in force<sup>168</sup>. Unaccompanied foreign minors are bearers of all Rights guaranteed by the Convention on the Rights of the Child (New York, 1989) which states that all decisions regarding minors must take into account the "best interest of the minor" (art. 3) without discrimination of any kind, irrespective of the child's parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Art 2, par.1)<sup>169</sup>.

The juridical status of the foreign minor is quite complex, placed at the border between two laws: that which concerns minors and that which concerns foreigners. Such legislation can differ, and focuses on competing guiding principles: the first one is based on support and protection, whilst the second one involves the delicate topic of public security, and hence it is focused on control and defense principles.

During the last ten years, a sort of normative network has been created; therefore, the

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168 Council of Ministers Presidential Decree n.535/99". The Italian normative governing the issue of unaccompanied foreign minors is the *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero* (D.LGS of 25th July 1998, n. 286 - artt. 19, 33).

169 <http://www.hri.org/docs/CRC89.html>

individuation of minor's juridical status cannot be reduced to the gap between regular and irregular. Therefore, when dealing with a foreign minor it is fundamental to be aware of his/her juridical status.

The principal Law governing the issue of foreigners is Article 10 of the Italian Constitution; in paragraph 1 the following is argued: "the juridical status of the foreigner is governed by the Law in accordance with international standards and regulations. The principle of reference is hence one of *civil equality*, only the Parliament can give or take out subjective right.

When dealing with the issue of foreign minors, amongst international standards, the Convention on the Rights of the Child (New York, 1989) must be recalled -ratified by Italy with Law 176 of 27<sup>th</sup> May 1991. In particular, in Italy, unaccompanied foreign minors have the right to preserve their identity, including their nationality, name and family relations, the right to education, health care, family unity, and placement in a safe place. Furthermore they have the right to protection in case their parents are not in a position to exercise parental authority, and to foster care if the family environment is not adequate<sup>170</sup>.

#### - Initial Clearing and Accommodation

In the case of unaccompanied foreign minors, expulsion is prohibited (D.Lgs. n.286/1998, art. 19, co. 2). The process to be followed, once an unaccompanied foreign minor has been traced, is as follows:

1. Communication of the presence of the minor to General Direction for Immigration and integration policies by the Ministry of Employment and Social Policies.
2. The taking in charge and the support by the Municipality where the unaccompanied foreign minor has been traced. The municipality is also responsible for paying the fee to the Community hosting the minor, according to national and regional law.

In this section we'll briefly introduce the **National Programme for the protection of Unaccompanied foreign minors** set up by ANCI on behalf of the Ministry of Employment and Social Policy. The objective of the programme was to draft a national support system based on the experience of a number of local authorities able to respond to the wellbeing and inclusion needs of unaccompanied foreign minors, with a specific focus on their initial reception.

The program therefore aims to encourage the local authorities involved to participate in the drafting, testing and implementation of a standardised model concerning the reception of unaccompanied foreign minor.

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<sup>170</sup> D.Lgs 286 of 25th July at article 2 states the principle of equity between Italian and foreign citizens arguing that concerning the relationship with public administration and the access to public services foreigners have the same rights of Italian citizens.

The program is composed of 4 macro areas.

### 1. Initial reception of unaccompanied foreign minors

Local authorities are legally bound (art. 403 Italian Civil Code) to ensure accommodation in a safe place (at a physical and psychological level) to all abandoned children, in order to foster positive social educative relations. The accommodation considered as suitable include all types of reception centres listed in the local and regional registration in force (reception centres, family houses, forest homes), which are able to provide accommodation and associated services that may be required.

The staff employed must of course have professional qualifications and the necessary skills to work with these minors. The number of staff members must ensure and guarantee adequate psychological and social support from the very beginning and for the initial reception period. At this stage, social workers and psychologists will support the minors during the first phase of information collection (physical and psychological examination, migration plan, how they arrived in Italy and family/socio-economical context, contacts or relatives that they may have in Italy and so on). Minors will be also checked for any signs of abuses suffered and an investigation about possible persecution will be carried on. If the investigation gives positive outcomes, the minor will need further forms of protection (social protection or request for asylum). Other fundamental information concerns the minor's expectations, skills, competences and school level. The proposed pathway will naturally consider age, gender and the cultural background of the minor. In order to inform the minor about his/her rights, duties and opportunities, the involvement of cultural mediator is fundamental to facilitate communication and establish a relationship of mutual trust.

### 2. Legal Assistance and Guardianship

Each local authority has the legal obligation to notify to the Directorate-General for immigration and integration policies (Ministry of Employment and social policy) of the presence of the minor in order to register him/her.

Once the child has been registered, he/she can be placed in a safe place and the family tracing process can start. After this, a formal communication of his/her status of 'unaccompanied minor' is forwarded to the Civil Court, in order to appoint a legal guardian (representing the youth in the administrative and social services procedures). The regularisation of a minor's status is essential and fundamental to plan a tailored pathway<sup>171</sup>.

### 3. Integration of unaccompanied foreign minors in the Italian context

A real social inclusion can take place only if based on the acquisition of knowledge about

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<sup>171</sup> Local authority will have to provide the minor with legal guidance and a cultural mediator as already highlighted.

the new context and culture (the learning of the language for example is crucial) taking into account the minor's needs, expectations and skills.

In close cooperation with key public actors minors will have access to the health service, Italian language learning services, the school system and professional training services.

The level of schooling and training provided must of course take into account the minor's age, expectations, skills and attitudes.

The pathway planned for, and with, the minor must focus on his/her harmonic growth and aim for integration and autonomy.

#### 4. Testing and promotion of foster families

In regards to the guardianship of minors without a stable family environment, there is the opportunity to place the minor in a family, preferably with other children, able to provide for the minor's needs (physical and psychological health, education, training and so on) for his/her harmonic growth (Law 184/1983).

##### - Aftercare for youths turning eighteen

Last but not least, another important issue is the aftercare pathway once the minor has turned eighteen. The minor's intervention will be therefore be focused on autonomy and responsibility in his individual and relational pathway.

Such a phase is very delicate and requires educational support, aiming to respond to the specific needs of the youths. Given that they arrive in Italy when they are around seventeen, the period at disposal to support them in their social inclusion pathway is quite short<sup>172</sup>.

##### - Access to Education

The Convention on the Rights of the Child (New York, 1989) guarantees *the right to education for all minors* (art. 28). Unaccompanied foreign minors present on the Italian territory are subject to right/duty to education/training. The registration of the minor must be accepted at any moment even if without residence permit or documents (D.P.R. 394/99, art. 45). Unaccompanied foreign minors aged between 15<sup>th</sup> and 18<sup>th</sup> years temporary present on the Italian territory are hence subject as well to the right/duty to education (Law n.53/2003).

##### - Health Care

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<sup>172</sup> Some regional laws state the planning of reception services targeted to intervention aiming to autonomy of youngsters close to 18 years.



Unaccompanied foreign minors without a residence permit cannot be registered for the National Health Service, but can access day hospitals and emergency healthcare (D.Lgs 268/98, art. 35).

## **B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY**

### **- National Legislative Framework regarding Family Tracing and Family Reunification**

The national legislation recognizes the rights of the minors according to their needs, and ensures the respect of international norms. Concerning unaccompanied minors, the competences of the Directorate-General for Immigration and integration policies are as follows: control over living arrangements for the youths, ensure inter-administrations cooperation, assessment of the status of unaccompanied minor, carrying out of needs assessment and research in order to promote family tracing, approving the measures of assisted return, census of unaccompanied minors present on the territory.

Although there is no particular incoherence at the legislative level, the lack of coordination between the various regional regulations is a considerable issue, especially in light of the discrepancies regarding the reception procedures in general. Despite the remarkable attempt of the Coordinamento regioni-ANCI to set up a unitary national procedure, the lack of enforcement measures undermines the concrete progress in this sense.

### **- Challenges of Family Tracing**

The main objective of family tracing investigations is to provide the different stakeholders, municipal entities, social assistants and practitioners in direct contact with the minor, with the essential elements in order to:

- Get to know the personal history of the child and his/her motivations for migrating.
- Achieve a better understanding of particular vulnerabilities that might have emerged in the framework of the personal relation with the minor.
- Shape the reception/integration pathway of the child depending on personal motivations and aspirations.
- Evaluate the possibility of repatriation and reintegration in the context of origin, respecting the best interest of the child.

Therefore, it is fundamental to take into account that, in any case, the family of origin is part of the child's motivation to migrate, and thus is implicitly involved in his/her project upon arrival. Nonetheless, it is essential to consider the difference between migration as escape, and migration as a mission. In the former case, the opinion of the family retains significance under the point of view of planning only in a negative sense, and tracing may be detrimental to the individual project of the child upon arrival. On the other hand, in the case of migration as a

mission, contact with the family can strengthen the project and needs to be granted adequate relevance in its development. It is also important to underline that migration does not eliminate the character of parenthood as both a duty and a right, and as a consequence it is necessary, as far as it is possible, to integrate the aspirations of the minor with those of the family.

- Ensuring the Best Interest of the Child in Family Tracing

Family tracing is fundamental to understanding the context of origin of the minor (family, education, work). Information and data on minor's condition before his/her departure from the country of origin and about the family context (internal relationships and socio-economical conditions) are essential to enable social operators to draft an integration project in Italy or, if the necessary conditions are fulfilled, the assisted repatriation to the country of origin if the minor agrees. In order to fulfill these objectives, assisted repatriation is a measure that can be arranged by the General Direction for immigration and integration policies, only if the following criteria are met:

- Willingness of the minor to re-join the family
- Positive outcome of family tracing
- Consent of the legal guardian and social services of the Municipality
- Authorization from judicial authorities

Any decision regarding the minor must consider his/her best interests.

The model adopted by Italy on family tracing has been considered good practice at the European level.

- Logistics of Family Tracing

The Directorate-General of Immigration and integration policies, which is part of the Ministry of Employment and social policy, is the competent authority for family tracing and assisted repatriation (D.P.C.M. n. 535/1999, art 2 and art 7).

At present, the Directorate-General delegates the actual phase of investigation in the country of origin to the International Organization of Migration. In practice, though, this procedure is often activated directly by the Social Services, which are responsible for the guardianship of the minor on the basis of the dispositions of Juvenile Courts or the Judge supervising guardianship.

The IOM provides support for the procedure of tracing the parents of the unaccompanied minor and then provides the necessary information to get to know and understand the background of the child. This investigation is ensured in all countries of origin, except for those cases that entail very critical conditions, such as ongoing wars, for instance. At the moment, the situation

is particularly severe in Egypt and Morocco, where national authorities refuse to authorize the process of investigation and family tracing of minors on the Italian territory.

Therefore, the model of minor protection stated by Italian law concerning family tracing and assisted repatriation represents a complex intervention involving multiple stakeholders (Directorate General for Immigration, Municipalities, Juvenile courts, International Organization for Migration - OIM) and can be considered as a positive example of multi-level governance.

## CONCLUSION: KEY RECOMMENDATIONS FOR NEEDS ASSESSMENT AND FAMILY TRACING

The Italian system of assistance for unaccompanied minors presents some very positive aspects. In particular, institutions appear to have developed a notable degree of sensitivity when dealing with this issue, and their action is complemented, on the social level, by a very active non-profit sector, that has proved competent and also capable of contributing suggestions and concrete projects. On a more personal level; that concerns the functioning of the direct relationship between legal guardians, social workers and minors; great attention is devoted to the development of the personal project of the children. In this light, the opportunities offered by family tracing, carried out in third countries and on the Italian territory, have enriched the possibilities to provide material as well as psychological support to migrant minors.

Nonetheless, some critical issues undermine the effectiveness of the overall framework. In particular, at the legislative level, the fragmentation of norms and regulations between the various regions threatens the development of a **unitary approach at a national level**, which should be firmly pursued, in order to provide, and guarantee a more coherent handling of the different cases.

Furthermore, when considering policy implementation, the **coordination between the different stakeholders** has, at times, proved cumbersome. The delays in authorizations from the competent authorities, for instance, often slow down procedures and are very costly; materially, socially and psychologically; for the children.

At the social level, the system pays the price of **limited and irregular financing** for the overall structures, and also for the salaries of specialized figures to respond to the various needs of the children. This results in an excessive turn-over of practitioners, who find themselves in a difficult position, frequently overworked and lacking job security.

Concerning the practices of **needs assessment and family tracing** specifically, the interconnection between these two aspects determines the results. Therefore, the investigation of the social, educational and relational background of the minor, which is always very delicate due to the involvement of different actors, needs to be constantly calibrated on the evaluation of the child's best interest.

It has emerged; in particular, that family tracing appears to acquire different importance

according to the age of the minor. In the case of children younger than 6, the necessity of family tracing is indisputable, as the situation appears to be a consequence of critical family situation or obstacles during migration. In the case of children between 7 and 12, family tracing seems mainly instrumental to reintegration in the context of origin, except if the conditions are particularly traumatic, as the capacity of a designing a personal project are rather limited at that age. Then, for minors between 13 and 18, family tracing fulfils two crucial objectives: the aforementioned participation of the family to the construction of a personal project, and the contextualized territorial support from extended family.

Indeed, it needs to be taken into account that children often have relatives and extended family within the Italian territory, which constitutes an extremely relevant resource for the minor, also under the psychological point of view.

It is fundamental that future progress takes into due consideration those aspects that have emerged from the practice, in order to develop a more effective approach, starting from the phase of policy design.

#### **4.2.4 FRANCE**

The issues of Unaccompanied Foreign Minors in France lie within a complex juridical structure. Various organizations, whether state-run or part of the charity sector, share a mission to welcome and take responsibility for unaccompanied children.

##### **A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN**

###### **- Legal Framework**

The legal basis for the reception and duty of care/responsibility for unaccompanied children can be found, principally, in the following texts:

- Convention on the Rights of the Child 1990
- Article 375 of the Civil Code :
  - An educational assistance measure may be prescribed by the Judiciary “if the health, safety or morals of an non-emancipated minor is in danger, or if the conditions of their physical, emotional, intellectual and social development are severely compromised.
  - It provides for the jurisdiction of the Juvenile Court Judge “for everything that concerns educational assistance”
- Child Protection Reform Act of 5th March 2007 (see also Article 112-3 of the Social Action and Family Code)

- Age Determination

Once a young person has arrived on French soil, the first action taken by professionals is to check that the individual is a minor, in order to determine which organization to place the child in. Thus, the children are allocated at the national level<sup>173</sup>, rather than at the departmental level, as was previously the case.

France recognises the validity of civil status' issued abroad, unless other records or documents possessed, external data or elements drawn from the record in itself establish that the record is irregular, forged or that the facts declared therein do not square with the truth.(see Article 47 of the Civil Code)

An Unaccompanied Foreign Minor without civil status documentation or whose identity papers are considered suspect can be submitted to, as soon as they are placed in a detention centre, a medical-legal expert to ensure that the age declared or the age appearing on their documents is their real age. This expert analysis can also be carried out to determine whether the minor should mandatorily be enrolled in school whilst their administrative regularisation in France is prepared.

There is no legal obligation concerning family tracing.

- Legal Assistance and Guardianship

1. Legal Representation

Parental authority is delegated to the family, to Social Assistance for Children (à l'Aide Sociale à l'Enfance) or to another service, or even a third-party, when a clear lack of interest or inability to exercise parental authority is evident.

The Law of 4<sup>th</sup> March 2002 on Parental Authority, for the first time, provides for the appointment of an ad hoc administrator to represent unaccompanied children when crossing the French border.

The ad hoc administrator is designated administratively for asylum seekers, young people in the waiting area, or for those who spend an auxiliary judgment "when a foreign non-accompanied minor without a legal representative is not allowed to enter France, the prosecutor, notified immediately by the administrative authority, shall appoint without delay an ad hoc administrator"<sup>174</sup>

The ad hoc administrator is in charge of representing the minor "during their time in

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173 *Circulaire Taubira*, 31 May 2013

174 Article L221-5 Of the Code for Entry and Residence for Foreigners and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*)

the detention centre, and to ensure their representation in administrative and judicial proceedings.

## 2. Social and Judicial Protection

Respect for the universal right to Social Assistance for Children is practiced irrespective of nationality. However, the term ‘unaccompanied foreign minors’ does not have a clear definition under French law. Protection for these minors is therefore based upon the protection provided for children in danger, by the French legal system, irrespective of nationality. The Decentralisation Law of 1982 provided for the jurisdiction of individual departments concerning the administration of protection for children in danger.

To organise the management of unaccompanied foreign minors within their territory, some departments have established exceptions to the common law system and / or devices and structures for emergency reception, accommodation, monitoring, guidance and support for these young people in danger.

Judicial protection occurs after a judicial authority has ruled on the need to support a minor due to the danger, or risk of danger they face.

Two principal actors are involved in the process of judicial protection of children in danger: the Juvenile Court Judge who is required to take measures for educational assistance (Article 375 of the Civil Code) or provisional placement orders (Article 375-5 of the Civil Code), and the Public Prosecutor, who can also order provisional placement in case of emergency (Article 375-5 of the Civil Code).

Young people who turn eighteen whilst being monitored can benefit from contracts for young people aged eighteen and over: “Until the age of twenty-one, any adult or emancipated minor experiencing serious problems of social integration has the option to ask the Juvenile Court Judge to extend, or organise an action for judicial protection<sup>175</sup>. “

### - Access to Education and Professional Training

It is mandatory for unaccompanied foreign minors under the age of sixteen to be enrolled in school, as it is for every child in France. The welcome organization for first-time migrant children, created by the National Ministry of Education takes into account the following factors:

- a. Many of the children have had a break from schooling due to their journey.
- b. Education programmes are not always equivalent in different countries.

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<sup>175</sup> Law n°2007-293 of March 5<sup>th</sup> 2007

Upon arrival, these children should be entitled to an assessment that will evaluate their:

- Knowledge of the French language, to determine whether they are complete beginners or if they have mastered the elements of spoken and written French;
- Academic skills built into their Languages of Schooling, and their familiarity with academic writing;
- Their experience in different areas, as well as their interests which could provide educational support.

The results of these assessments are used to develop the most appropriate pedagogical response, according to the profile of the individual.

In the case of the minor being a non-French speaker, or not fully proficient in writing, their assessment is referred to the Academic Centre for the Education of Newcomers and Children of Travel.

- **French for Speakers of Other Languages**

These unique, intensive classes teach French to students who are complete beginners. Depending on their date of arrival in France, students receive between 110 and 300 hours of classes.

- Vocational Training

To carry out vocational training, one must either take a vocational training course (in a classroom), or via work experience (with a contract). It should be noted that, in order to take part in these vocational training programmes, participants require a valid work permit..

- Health Care

Unaccompanied children constitute a population whose needs are particularly important, both in terms of physical and mental health.

Physically: The precarious conditions in which unaccompanied children were forced to leave their country of origin and the difficulties encountered during the journey have consequences on their physical health. The situation in which they find themselves during their first few days in France doesn't offer much more protection (notably, when the children have been sleeping on the street or who have met individuals who could be considered a 'bad influence')

Mentally: The injuries that can be suffered by unaccompanied children are numerous. They could well be sustained from the situation they faced before they left their country of origin (family drama, war, extreme poverty...), from event during the trip (abuse anxiety...) or after their arrival in France (isolation cultural differences, institutional abuse)

Article 26 of the Convention on the Rights of the Child states that:

“States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”

Nevertheless, access to healthcare is not always easily accessible for unaccompanied children. Indeed, to access health care, unaccompanied children must be able to open their rights to social cover. However, their status as an unaccompanied child gives rise to numerous problems in the approach to their healthcare entitlement:

- Unaccompanied children must provide proof of a direct debit (by an approved body, by an individual...) to be able to exercise their right to health insurance.
- The absence of civil status or identity documents, or doubt over the authenticity of these documents can preclude the registration of unaccompanied children, and therefore their right to obtain health insurance.
- Difficulty in identifying the type of insurance needed by the unaccompanied child who has presented themselves. Indeed, depending on the situation of the unaccompanied child (whether supported or not by the Social Assistance for Children), and their nationality (whether within the EU or outside of the European Union), health insurance schemes can differ.

## **B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY**

### **- National Legislative Framework regarding Family Tracing and Family Reunification**

The Family Tracing process is not a priority upon the arrival of a child to an organization. There are numerous obstacles that can be encountered when trying to make contact with the family:

- Locating the family
- The communication methods in use by the family
- Time differences
- Language Barriers

The child can keep their family history secret in order to emphasise their isolation, and to benefit or profit from the guarantee of protection from the French State. The child could be considered ‘isolated’ in France, but being in contact with their family, and certain services are



aware of this communication, may result in family tracing and the return of the minor to their country of origin without the reception centre being fully aware of the conditions in which the minor is going to live.

In France, the French Red Cross<sup>176</sup>, and more specifically, the Re-establishment of Family Ties service, is in charge of looking for missing persons via a large international network of partners.

#### **CONCLUSION: KEY RECOMMENDATIONS FOR NEEDS ASSESSMENT AND FAMILY TRACING**

The concept of trust is an important area of focus for professionals that work with unaccompanied foreign children, because during their journey they haven't always had the chance to meet caring adults (instead they may have met smugglers, exploiters etc.) Over time this trust can be earned, but it must be consistent with the project at hand.

The young people's priority is to formalise their situation and to stop living in secrecy, in order to get the necessary papers and later, a job. The fact that there are limited numbers of interpreters in France also presents a challenge when trying to gain the trust of the child.

Despite existing measures, numerous unaccompanied children and families still have no news of each other. Legislation differs between many European countries on the subject of unaccompanied foreign minors; it would therefore be beneficial to create new lines of communication, not only between countries, but between different associations (on Child Rights, existing communities, the possibility of accommodation, the right to work etc.) so that the network becomes even more efficient.

Young people who leave their country of origin may not be well informed of their rights and of the situation in which they're getting themselves into. It would be of interest to both practitioners, and unaccompanied children, if young people leaving their country received more realistic information, as nowadays, each minor has the idea that, upon reaching their final destination, all their problems will disappear.

## **4.2.5 THE EXAMPLE OF THE UK**

### **A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN**

#### **- Initial Clearing and Accommodation**

Unaccompanied children seeking asylum go into the public care of the local authority. Accompanied children (which covers separated children, children in private fostering arrangements and those

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<sup>176</sup> <http://www.croix-rouge.fr/Nos-actions/Action-sociale/Aider-accompagner-reinsérer/Retablisement-des-liens-familiaux/Le-Retablisement-des-liens-familiaux-RLF-qu-est-ce-que-c-est>

who arrive with a parent or guardian) will be cared for by the adult identified by Home Office or Local Authority officials as accompanying them (or receiving them into a private fostering arrangement). Unless there are identified concerns about the adult claiming to be responsible for them, they will not go into the public care system.

Social Services have a duty to provide accommodation and young people are placed in a variety of living arrangements. Younger children up to the age of 16 years are usually placed with foster carers or in residential children's homes, whereas those aged 16 – 18 years are usually placed in semi-independent living.

A high level of satisfaction was found with designated residential homes for young refugees. Certain Local Authorities have a great deal of experience in providing specialist homes for young refugees, as there was a feeling that such accommodation could offer a 'safe haven'. It was also thought that because of the specialist nature of these homes, they could attend to cultural and identity needs better<sup>177</sup>. The following guidance has been useful in helping young people to settle:

- Somewhere to live that provides safety and support;
- Somewhere to live where their experience will be recognised, but they will not be pressured to verbalise these;
- Somewhere to live is appropriate in terms of language, culture and religion<sup>178</sup>.

It is difficult for Local Authorities to provide appropriate accommodation and placements in light of the wider shortage of social housing. Often fostering doesn't match the cultural-linguistic background of the young people, thus they may not share religion, dietary or cultural beliefs and practices. Professionals may make assumptions about placements, which may be based on prejudices and stereotypes of refugees, and young people may not be consulted on these issues<sup>179</sup>.

#### - Age Determination

Age determination impacts the types of services and support unaccompanied children receive. An asylum seeker who presents him/herself without documentation, or documentation that is suspicious, will have their age assessed. The age determines:

- (1) Whether the person will be subjected to adult or child asylum procedures;
- (2) If they are assumed as below 18 yrs of age the local authority has responsibility for their

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177 Stanley, K *Cold comfort. Young separated refugees in England* (2001)

178 DoH, *Children in Need: Preliminary results of a survey of activity and expenditure as reported by Local Authority Social Services Children and Families Teams for a survey week in September/October 2001*2000; Kidane, *Food, Shelter and Half a Chance. Assessing the needs of unaccompanied asylum seeking and refugee children* 2001;Prevatt Goldstient & Spencer, "Race" and Ethnicity: A consideration of issues for black, minority ethnic and white children in family placement 2000

179 Dutt, *Placing Refugee children* 2000

accommodation and support while their asylum application is processed. While if they are assumed as 18 yrs of age or over the UKBA is the responsible agency.

For applicants that have no documents, the initial assessment by the UKBA is solely based on appearance and demeanour. If the applicant's physical appearance "very strongly suggests that they are significantly over 18 years of age" they will be treated as adults<sup>180</sup>. In all other case, they will initially be treated as a child, but this initial assessment is not a final decision on their age. The local authority then carries out further in-depth assessments. The applicant should be informed by the local authority that an assessment will be carried out, and the results will be shared with the UKBA. The assessment carried out by the local authority has prominence. However, the UKBA can legally challenge the decision of the local authority.

Age Assessment by the local Authority: There is no prescribed methodology for local authorities in carrying out age assessments. The UK courts have provided some general guidance to local authorities:

The decision maker must explain to an applicant the purpose of the interview.

- Except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant.
- In general, the decision maker must seek to elicit the general background of the applicant, including the applicant's family circumstances and history, educational background, and the applicant's activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to their age, the decision maker will have to make an assessment of the applicant's credibility, and he will have to ask questions designed to test the applicant's credibility.
- If the decision maker forms the provisional view that the applicant is lying, the applicant must be given the opportunity to address the matters that have led to that view.
- Adequate reasons must be given for a decision that an applicant claiming to be a child is not a child (though these need not be long or elaborate).
- Cases vary, and the level of inquiry required in one case may not be necessary in another.
- A local authority may take into account information obtained by the Home Office, but it must make its own decision, and for that reason must have adequate information available to it.

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<sup>180</sup> UKBA Asylum Process Guidance, Assessing Age, para 2.1

### - Legal Representation

The entitlement to legal representation is established for children involved in asylum procedure. Provision of legal advice for immigration is regulated by the Immigration and Asylum Act 1999, which means only authorised actors can lawfully give legal advice to this group. UK immigration rules require UKBA to ensure legal representation is in place for unaccompanied asylum seeking children. Legal representation should be secured before applying for asylum, as this can support the child in understanding the complexities of the situation. These decisions are made without any guardianship system in place, leaving the child to deal alone with the emotional experience. The quality of legal representation plays a major role in determining the ultimate success of the claim, and early intervention is advised. Through this process the child may have to interact with many aspects of our legal system including a range of legal professionals dealing with a range of issues (criminal lawyers, community care lawyers etc...). The legal representative's role does not provide pastoral support to child and is limited to advising the child on their options and then acting on instruction.

Changes to legal Aid for asylum seekers have negatively impacted young people. Children are often given leave to remain in the U.K. till the age 17 ½ yrs. At which stage they place application for an extension. Most applications for an extension are rejected. Often this decision comes after they have turned 18 yrs of age. The next step could be to appeal this decision, but because they are 18 yrs or above, they are no longer entitled to legal aid. Therefore, young people's ability to regularise their status and associated paperwork is extremely difficult. This will significant impact their future including access to further education, higher education, employment, training and housing.

### - Legal Guardianship

A pilot for a Scottish Guardianship Service had starting in September 2010. Unaccompanied asylum seeking and trafficked children from outside the EU were provided with an advocate independent of the immigration authorities and local authority. The pilot was evaluated independently, and in its report concluded that guardians had provided clarity, coherence and continuity for the children involved and had enhanced overall service provision by creating opportunities for greater collaboration, information sharing and interagency working<sup>181</sup>. This service has now received funding from the Scottish Government for a further three years.

In June 2013, the Joint Committee on Human Rights (JCHR) published a report on the human rights of unaccompanied migrant children in the United Kingdom. This report was significant because among the recommendation, the issue of legal guardianship was beginning to be addressed for England and Wales. One of the key recommendations of this report was that the

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181 Heaven, Crawley and Ravi KS Kohli, 2012 'She endures with me': An evaluation of the Scottish Guardianship Service pilot, 2013: [www.scottishrefugeecouncil.org.uk/assets/0000/5864/Final\\_Report\\_2504\\_2.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/5864/Final_Report_2504_2.pdf)

Government commission pilots in England and Wales that builds upon and adapts the model of guardianship tested in Scotland. The guardian should provide support in relation to the asylum and immigration process, support services and future planning, help children develop wider social networks, and ensure that children's views are heard in all proceedings that affect them. The Government should evaluate the case for establishing a wider guardianship scheme throughout England and Wales once those pilot schemes are complete.

- Access to Education

Under Section 14 of Education Act 1996, local authorities have a duty of care to provide full time education to all children under 16 yrs of age within their borough. This is irrelevant to their immigration status. Therefore, children in public care should be found a full-time education placement in a local mainstream school within 20 school days. Under section 20 of the Children Act 1989, local authorities also have a duty to provide extra support for asylum-seeking children who are 'looked after'. This would include personal education plans, which are coordinated by a designated professional within the school. Despite legislation, due to the difficulty of finding placements, children often start midway through the academic year, with little paperwork e.g. student files/assessments to support their educational, emotional and behavioral needs.

However, the experience of being in education is often positive for the young people as this provides some degree of normalization and socialization within a caring adult environment. They often found the educational experience better than in their home countries, believing this would provide them with better opportunities for the future. Although most teachers do not seem to know the legal immigration situation of the children, they are seen as people that can be trusted. A specific hurdle that has been highlighted in the UK has been that unaccompanied children from Afghanistan have struggled in accessing schooling in the UK<sup>182</sup>. This may be on account of the fact that some of these young people are experiencing a 'school setting' for the first time in their lives.

Young people who need ESOL (English speakers of other languages) classes often miss out on periods of schooling as there is no significant adult pushing for their full entitlement of full time education. There is a lack of research and literature about this experience.

The transition to further education is more problematic and the experience has often been anxious and frustrating arising from young people's exclusion from the education system, due to their legal status. Due to pressures on completion rates and funding, some colleges don't accept students who are awaiting a decision on their status, despite the fact that they might complete their course before a decision has been made. Again, funding to access higher education is also dependent on the immigration status of the young person.

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182 Sigona & Hughes, *No way out, No way in – irregular migrant children and families in the UK* 2012

- (Mental ) Health Care

Primary health care, including registration with a GP, is available to all. A person's immigration status does not affect access to primary health care. Secondary health care, the second stage of treatment usually provided by a hospital, is available on the National Health Service for anyone who is 'ordinarily resident' in the UK. A person is regarded as 'ordinarily resident' if she or he is lawfully living in the UK voluntarily and for a settled purpose. Failed asylum seekers or undocumented migrants are not entitled to secondary health care.

The experience of migration, which may include being trafficked for sexual exploitation, puts children at a greater risk of developing mental health issues. The prevalence and possible causes of emotional problems in unaccompanied children have been extensively described. Empirical studies about the emotional well-being of unaccompanied refugee children however remain scarce, in spite of the wide ranging emotional, developmental and behavioral problems which may afflict them, such as:

- sleeping problems,
- concentration disorders,
- nightmares,
- depression,
- withdrawal,
- anxiety,
- post-traumatic stress symptoms,
- somatic symptoms,
- severe grief reactions and sadness,
- aggression,
- diminished interest,
- hyper-arousal,
- low self-esteem,
- severe guilt feelings,
- fatalistic view of the future,
- substance abuse, violent behaviour,
- suicidal acts,
- psychosis and delinquent behaviour

Notions of "Health" may be culturally specific and what a young person is able to talk about in relation to their health, and the symptoms they present, may be influenced by their cultural

background and current circumstances. For example, young refugees may feel under pressure to say that they are healthy, because many say that they care how they are 'perceived' by the public. One study around half the young people felt that their health had deteriorated since arriving in the UK<sup>183</sup>.

## B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY

### - Needs assessment in the UK

Needs Assessment range widely within statutory bodies such as the UKBA and Local Authorities, with very different remits and objectives that can often clash on the grounds of ideological perspectives and interpretation of the law. NGOs and third sector organizations also have their own methods for conducting a need assessment, which might have specific objectives linked to them e.g. improving English skills or challenging a decision of the UKBA. Professionals are involved at various levels of needs assessment; however, identifying additional or appropriate resources/services is challenging within the current climate of Local Authority cuts backs in manpower and contracting specialised agencies.

Basic needs of accommodation, some form of education and sustenance are generally met with little assessment and review. However, access to psychological, social and emotional support services is often more difficult. NGOs and Local Authorities are consistently trying to readjust service provision in accordance with funds, existing and viable options; however the resources do not meet existing levels of need.

### - Challenges, Logistics, Ensuring the Best Interest of the Child in Family Tracing

The RC is unable to trace enquiries on behalf of third parties (such as the UKBA) and will thus only accept tracing/message requests directly from the child. This is because the RC wants to be an independent neutral actor equally distant from other agencies. This position is rooted back to the fundamental principles of the organization's ethos: their neutrality, which supports their ability to trace family members in conflict situations. The organization also wants informed consent from the child before tracing family members.

When a child asks to trace a family member, information is gathered on names, dates of birth, place of birth (child and parent), last known address, and how they got separated (the narrative). The information collected at this stage informs teams on the ground to search for family members. How this search is conducted depends on the specific country and what kinds of information statutory bodies hold – voter lists, registrations of births and deaths etc... Therefore, the RC could approach the authorities, schools, faith leaders, and village elders

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183 Gosling, *The Needs of Young Refugees in Lambeth, Southwark and Lewisham* 2000

depending on the context. This is keeping in mind security constraints and considerations of that specific context. They use a wide range of tools and media to search, which might include publication of photos, radio broadcasts, and field visits to neighbours and teachers. The approach is contextualised and individualised (based on what the child's wants and doesn't want i.e. they may not want their photo published, or the ex-teacher approached). It is explained to the child that the more limitations he/she imposes, the harder it will be to find the person.

There were concerns about an appropriate adult being in the tracing family meetings because:

- RC needs to ensure that the child is making the enquiry of their own free will and has not been pressurised to do so by other people.
- Concerns that the appropriate adult is writing up what is discussed in the meeting – thus breaking confidentiality.
- RC tracing service does not want to be a part of the asylum seeking process.

Families of child soldiers are particularly difficult to trace, as the child was very young when they were 'recruited' and can't remember where they came from or details about their parents. If countries don't have birth records it can be difficult to trace a family. The RC focuses initially on children separated due to conflict, migration and disaster. However, it also works with adults and has cases pending from World War II.

The majority of children that use this service are from Afghanistan, Somalia, Congo, Iraq and West African nations. They are predominantly male. The primary purpose of the RC is to restore contact; what happens next depends on a range of factors.

Experience has shown that questions such as 'why are you looking for them?' and exploring the motive for the search is for the child a very emotionally dangerous question to ask. During the interview the RC is trying to gather facts that can help in finding the family member. However, for the child, this is a very painful process which may re-ignite memories that have been suppressed. Questions around how they became separated require the child to revisit those difficult stages of their life. The RC interviewers acknowledge that the child is going through a difficult part of their lives and is supported through it with the interview techniques, which includes being aware of the process, active listening and giving time (this could mean stopping and the child coming back after a week). There is training for RC staff around working with unaccompanied minors.

#### **CONCLUSION: KEY RECOMMENDATIONS FOR NEEDS ASSESSMENT AND FAMILY TRACING**

Several recent and imminent developments in law and policy will have important consequences for asylum seeking children now and in the future. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the further changes announced by the Ministry of Justice in



*Transforming Legal Aid* (Ministry of Justice, 2013), the current Immigration and Modern Day Slavery Bills working their way through Parliament, and forthcoming statutory guidance on unaccompanied and trafficked children from the Department for Education are amongst the most important. The changing policy and legislative landscape, which these young people inhabit offers both opportunities and threats to finding durable solutions for their situation.

Acknowledge that the political field around the issue of unaccompanied children is constantly changing, there needs to be more consistent support for children arriving to the U.K. Based on our experience of working with unaccompanied children, and through the learning of this project we can share some recommendations, which can support professional working in this area:

**Identity:** children and adolescents arrive to the U.K. whilst they are still forming ideas about who am I? Migration has a large impact on this process, as they have travelled from the 'known' to the 'unknown', leaving behind their family, friends and community. There are a different set of demands, expectations and influences in their host country. The process of migration and reception become interwoven with the development of the child's identity. This process needs to be acknowledged and incorporated as a key theme for professional working with unaccompanied children.

**Legacy of Experience:** children have often travelled vast distances, over a long period of time, through many countries, with traffickers that may have abused them. They arrive in a new country facing a range of new and unexpected challenges. They have left their families, siblings and friends to come to a place where they may know no one. These experiences will have a cumulative effect on the child. Professionals' needs to create spaces that are safe, free of judgement and fear of deportation, where the child can, at their own pace, begin to start making sense of what has happened.

**Non-Oppressive Practice:** This should underpin all interventions with children. They will be experiencing themselves and being perceived by others as 'different'. This can expose them to conscious and unconscious prejudices held by professionals, peers and themselves. To facilitate the exploration of these thoughts, beliefs and experiences, non-oppressive practice needs to be underpinning activities and interventions with unaccompanied children. This would create the safe spaces to explore how this has impacted their identity and inter-intra personal relationships.

**Way for unaccompanied children to connect with each other:** through our experience, we have found that bring these children together in a group can significantly support the development of their identity. This provides a consistent and supportive space with peers who are in similar positions. They are often struggling with the same themes such as language learning, accommodation, food, immigration status etc... Through the group process issues such as inclusion, safety, identity formation are positively supported.

**Nurturing:** We have found the literature consistent refer to unaccompanied minors as children first and migrants second. Children need a loving, nurturing, safe environment for

health child development. The responsibility of provided such an environment is solely on the adults, as they have the means, knowledge and resources to create such spaces.

**Keeping Safe:** It is alarming to know how many children and young people ‘disappear’ from the ‘system’, with children going missing from homes and being re-trafficked. Internal trafficking is significantly growing. The U.K. ranks third in country of origin for children trafficked.

**Return to host country:** this is an extremely complex issue. Families may have used significant savings to send their children to Europe, for a better life. The child feels they have purpose and aim to fulfil. Therefore, to be deported back, can be seen as failure. The country of origin might be too volatile to send children back to, or may not have any reception arrangements in place. Some young people have been left in no-man lands, with their appeals for asylum being rejected, but cannot be deported due to instability in their country or origin. This raises questions on what ideology and intentions underpins the deportations. Would it not be considered better that young people are provided with an education, skills and knowledge that they can then chose to use in re-building their home countries? How can countries of origin, transit and destination work more cohesively in supporting unaccompanied children?

**Moving beyond agreement in theory and recognising best practise:** As mentioned above there is a wide acknowledgement that we are dealing with children first and migrants second. However despite this, children are still being held in detention centres, repeated questioned and scrutinised. We need to ensure that if they are going to be considered as children first, the reception and support needs to reflect that in practice e.g. implementing a guardian system. A large focus has been on recognising methods that work and classified as good/best practise. How can we move toward implementing, changing and adapting practice? So it is an active process impacting the lives of children, rather than simply documentation. These aspects around theory and practice need to be included within a wider set of training parameters for professionals working with these children.

**Age Assessment:** more humane ways of determining age assessment need to be developed, as some cases have shown medical examinations have been very intrusive for children, already under intense scrutiny.

## 4.2.6 SPAIN

### A. NEEDS ASSESSMENT AND SERVICE PROVISION FOR UNACCOMPANIED CHILDREN

#### - LEGAL FRAMEWORK

We can highlight two types of rules regarding unaccompanied children, on the one hand immigration in general, and, on the other hand, protection of minors.

In turn, due to the division of powers between the State and the Autonomous Communities (regions), governed by Articles 148 and 149 of the Constitution, in Spain there are two types of regulations on protection of children: state regulation and autonomic regulation.

*a. Immigration law.*

- Organic Law 4/2000, of January the 11<sup>th</sup>, about rights and freedoms of foreigners in Spain and their social integration, modified by Organic Law 8/2000, of December the 22<sup>nd</sup>, and amended by Organic Law 14/2003 of November the 20<sup>th</sup>. Of particular relevance is Article 35, which governs the legal status of foreign children in situation of neglect, establishing the obligation to serve and document them.
- Royal Decree 865/2001, of July the 20<sup>th</sup>, approving the Regulation of recognition of stateless status (applicable in the event that the minor cannot be documented).
- Circular of the General Prosecutor of the State 3/2001, of December the 21<sup>st</sup>, on the performance of the prosecution in immigration matters.
- Royal Decree 2393/2004, of December the 30<sup>th</sup>, approving the Regulations of Organic Law 4/2000, of January the 11<sup>th</sup>, on the rights and freedoms of foreigners in Spain and their social integration.
- Circular 2/2006, of July the 27<sup>th</sup>, about several aspects of the regime of foreigners in Spain.
- Royal Decree 240/2007 of February the 16<sup>th</sup>, about the entry, free movement and residence in Spain of citizens of the Member States of the European Union and other States party to the Agreement on the European Economic Area (When the minor documentation proves he/she comes from a European Union state or has relatives in the Union).
- Organic Law 2/2009, of December the 11<sup>th</sup>, amending Organic Law 4/2000, of January the 11<sup>th</sup> on the rights and freedoms of foreigners in Spain and their social integration.
- Royal Decree 557/2011, of April the 20<sup>th</sup>, approving the Regulation of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009. Chapter III relates to unaccompanied foreign minors.
- Correction of errors in Royal Decree 557/2011, of April the 20<sup>th</sup>, about approval of the Regulation of Organic Law 4/2000 about the rights and freedoms of foreigners in Spain and their social integration, after the amendments by Law 2/2009.
- Public Consultation 1/2009, of November the 10<sup>th</sup>, about several issues relating to the records of determining the age of unaccompanied minors.

**b. Minors protection regulations.**

- Spanish Constitution of 1978. In the Constitution, childhood is present in Title I dedicated to the fundamental rights and duties. Thus, Article 39, fourth section, provides that children shall enjoy the protection provided for in international agreements which safeguard their rights.
- Law 21/1987, of November the 11<sup>th</sup>, amending the Civil Code and the Civil Procedure Act in respect of Adoption (BOE no. 275 of November the 17<sup>th</sup>, 1987).
- Organic Law 1/1996, of January the 15<sup>th</sup>, about the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act (BOE no. 15, of January the 17<sup>th</sup>, 1996).
- Spanish Civil Code.

- Legal Assistance and Guardianship

The administrative declaration of neglect of an unaccompanied migrant minor by the competent regional protection services, has the automatic effect of establishing administrative guardianship assumed by the same public body.

During the time that elapses until the declaration of abandonment occurs and becomes effective the guardianship, the regional protection services should proceed to give to children the immediate care needed.

In cases involving his/her personal status and in those in which the child protected does not share the performance (or omissions) of the guardianship body, they may request the judicial authority to represent and defend the interests of children in court proceedings aimed at determining which is the solution that best suits their interests.

- Initial Clearing and Accommodation

Usually, unaccompanied minors arriving in Spanish territory are illegal, with no chance to know their identity and age. When this happens, as set out in the legislation: *“In the cases in which state security bodies and forces locate (or obtain knowledge) an illegal foreign which age under 18 cannot be established with certainty, he/she will be given the relevant child protection and care, informing immediately the public prosecutor, who has to determine the age, for which, as a matter of priority, the appropriate health institutions will collaborate carrying out with the proper age assessment”*.

Once confirmed the minority, the regional protection services take responsibility of the unaccompanied minors. They entry immediately into a host centre, considering that their situation corresponds to the definition of neglect established in the Civil Code. This “automatic access” to the measures of protection must subsequently be endorsed by an administrative decision, stating that the child is in the aforementioned situation of helplessness.

Article 215 of the Regulation of Organic Law 4/2000, about the rights and freedoms of foreigners in Spain and their social integration, states: *“In the Directorate General of the Police and Security Forces there will be a children’s registry of unaccompanied minors with identification purposes only, which will be coordinated by the General Prosecutor, for the fulfillment of the competences attributed to the prosecution under Article 35 of the Organic Law 4/2000, within the scope of its guarantee function and protection of the interests of the child”*.

#### - Aftercare for youths turning eighteen

In Spain some health care programmes for young people have been developed, former minors under guardianship, but we cannot say that there is a generalized system of transition for adult life. As regularization possibilities, children who reach adulthood documented with a residence permit, will have three months to renew at the expiration of the same. Whereas minority circumstance that gave rise to the permit is not maintained, these children will have to transform this document into a residence and work authorization.

Meanwhile, those who are 18 being undocumented, may request, at the initiative of the supervisory body, a residence permit for exceptional circumstances to be awarded based on a number of discretionary assessment criteria (basically the participation in training and integration activities).

#### - Housing and basic needs.

The competence for the guardianship of unaccompanied foreign minors corresponds to the protection services for children in the different regions in Spain in which the minor is located. Each region has developed its own residential care procedure to assist these children, therefore, practices and resources are very different from one region to another.

In some cases they have created specific centres for unaccompanied minors for both initial reception and long-stay phases. In other cases specific resources for the first reception are promoted, and then progressively integration is sought.

- Education and professional training.

Immigration law guarantees access to basic, free and compulsory education for all foreign children. In some cases, given that their main objective is to work, they often show little interest in formal training. In others, their curricular gaps generate difficulties in adapting to the educational process that correspond to their age.

- Healthcare

Immigration legislation ensures full access to health care for all foreign minors on equal terms with the Spanish people.

## **B. EMOTIONAL NEEDS ASSESSMENT AND THE ROLE OF THE FAMILY**

- Voluntary Return

The Ministry of Employment and Social Security, through the General Secretariat for Immigration and Emigration, Directorate General of Migration, funds programmes of voluntary return for foreigners, financed in part by the European Return Fund.

There are different Voluntary Return programmes. The requirements to participate are (not explicitly mentioned to the situation of unaccompanied foreign minors):

- Being in a precarious economic or social vulnerable situation.
- Having no economic resources to return by their own means.
- Having remained in Spain, at least six months.
- Submitting a statement of willingness and commitment not to return to Spain in a period of three years.
- Giving up official documents that link with Spain (residence permit, health card, registration, etc).
- Being not in any of the prohibited cases of leaving Spain under the Immigration Act.

Specifically, the *Voluntary Social Care Return Program* is aimed at third countries immigrants who are in particularly vulnerable situations, tested through the Social Services of their area of residence, or specialized NGOs. The program provides the following services:

- Information and general guidance.
- Information on the status of the country of origin.
- Individual and family support in the return journey.
- Psychological support, if necessary.
- Return ticket to home country.
- Financial support for the reintegration in the country of origin.
- If necessary, payment of travel costs from their place of residence in our country to the nearest international airport.
- Accompanying expenses on the trip if necessary.
- Unforeseen expenses of drugs.

#### - Family Reunification

The legislation establishes the prevalence of the principle of family reunification as the first desirable solution to be adopted when an unaccompanied minor is localized. But in practice, the percentage of children who are repatriated is very low. This is due to several factors. First, it is not clear which body is competent to carry out with the necessary research to locate the family of the child. There is a lack of appropriate means and staff necessary for it. In addition, the countries of origin, especially Morocco, do not offer the necessary cooperation to develop these tasks.

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## 5. CONCLUSIONS: BUILDING A EU NETWORK

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In the framework of the EU Commission's Action Plan on Unaccompanied Children (2010 – 2014), the EU legislative and financial instruments on asylum, immigration and trafficking of human beings already directly or indirectly address the specific situation of unaccompanied children, and provide for enforced protection of their rights. But there is a **need for greater coherence and more cooperation** within the EU and with countries of origin and transit, so that the EU and Member States provide concrete and effective responses. An EU common approach is therefore needed.

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 UNCRC, in particular the principle of 'the best interests of the child' which must be the primary consideration in all actions related to children taken by public authorities. It must also be based on solidarity and the sharing of responsibilities between Member States and with the countries of origin and transit, as well as on enhanced cooperation with expert civil society organizations and international organizations<sup>184</sup>.

As previously stressed, the *EU Statistics Regulation* obliges Member States to share their data on unaccompanied asylum-seeker children. However, *"this is actually a limitation that creates shortcomings in harmonised and complete statistics on all unaccompanied minors arriving on EU territory. Statistics should therefore cover all unaccompanied children. The Commission and agencies<sup>185</sup> already assists by participating in studies on this subject. Existing networks such as the European Migration Network should support exchanges of information and data between Member States"*<sup>186 187</sup>.

Moreover, the *Action Plan on Unaccompanied Minors* highlights the necessity of involving *"the countries of origin and transit (...), as well as the cooperation of civil society organizations and international organizations operating on the ground, and will be without prejudice to the unaccompanied minors' right to seek international protection in the EU"*<sup>188</sup>.

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184 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:3.

185 Fundamental Rights Agency, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), the European Asylum Support Office.

186 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:3.

187 In order to know more about EU's action on improving the existing sharing and collecting data' cooperation, please consult *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:5.

188 *Action Plan on Unaccompanied Minors (2010 – 2014)*. Communication from the European Commission to the European Parliament and the Council. 2010:6.



Already in 1995, in the report on a European strategy for children<sup>189</sup>, the *Parliamentary Assembly of the Council of Europe* encouraged children's rights as a political priority by adopting a comprehensive, consistent and coordinated approach to childhood policy, as well as multidisciplinary structures at all deliberation and decision-making levels, in particular at the ministerial level.

More recently, the EU Parliament, in Ms Nathalie Griesbeck's *Report on the situation of unaccompanied children in the EU*<sup>190</sup>, recalls that *the EU and the Member States should step up their cooperation with third countries of origin and transit concerning unaccompanied minors, respect for their fundamental rights and issues such as the identification of durable solutions, family tracing, monitored return and readmission when it is in the child's best interests, the restoration of family ties and reintegration.*

As previously mentioned, national child protection systems vary considerably from one country to another. Nevertheless, as recognised in the different European recommendations, Europe aims to foster the **cooperation and the exchange of good practices**.

In December 2013, the 8<sup>th</sup> European Forum on the Rights of the Child organised a Workshop on "The role of Child protection systems in protecting children on the move"<sup>191</sup>. Taking due account of the role of the EU and its competences, the participants of this workshop highlighted the importance of an exchange of experience, information and a better coordination and cooperation among experts and stakeholders on the role of child protection systems in responding to the situation of children on the move: "Social workers do crucial work on the ground but cannot shoulder the burden alone. A coordinated approach among all actors must be assured. Cooperation among agencies should be strengthened whilst fully involving child protection authorities in immigration decisions in all Member States"<sup>192</sup>.

If, as we have mentioned, the EU has made important developments in the protection of unaccompanied children in the last four years, a concerted effort is still needed in order to "enable the reunification with the family, a family tracing and an assessment of the socio-economic situation of the family needs to be carried out. There is not always a clear view on how the system works within a given EU member state. Due to the involvement of a number of different stakeholders in the process, clarity on procedures and methodologies used in family tracing and assessments is a necessity in order for EU member states to build synergies in family tracing methodologies".

At the political level, then, the aim of a stronger cooperation between EU Member States is to inspire actions and strategies at the transnational and national levels. In this light, setting out a catalogue of common strategies, to improve the conditions in which these children

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189 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1551.htm>

190 <http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2263%28INI%29>

191 [http://ec.europa.eu/justice/fundamental-rights/files/s2\\_forum\\_move\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/s2_forum_move_en.pdf)

192 [http://ec.europa.eu/justice/fundamental-rights/files/8th\\_forum\\_report\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/8th_forum_report_en.pdf)

live, would represent an important step to promote the efforts of those who actively support unaccompanied children's and children on the move rights.

Furthermore, on the level of the practice, all the partners of the Net for U project have highlighted, during these last two years of implementation of the project, the importance of fostering a **permanent transnational cooperation between professionals dealing with family tracing and needs assessment issues** related to the children on the move, in order to guarantee their rights in Europe.

In this light, a series of propositions and suggestions has been analysed and discussed in the course of the different meetings, during which the partners had the opportunity to debate the diffusion of best practices.

One of the proposals regarded the possible setup of a **helpline** directed to children in need of assistance, following the model of the European 116 helpline, addressed and promoted specifically to children on the move. The main intention would be, in setting up such a service, to provide continuous and reliable first-hand help throughout Europe. Nonetheless, the effectiveness of such a service is easily disputed, considering the reluctance of migrant children to get in contact with a system that they might suspect has direct links with the authorities and the police.

Considering that the overall migration project often drives these children to continue moving from one country to the other, the use of a personal journal could help provide some continuity to the activities undertaken in different contexts. Designed as a "**record of achievements**", the journal would not collect information regarding the legal status of the child, but rather a compilation of the educational and training activities attended and completed during the stay in a given country, or area. This would allow the personal project of the child to develop coherently despite the fragmentations of his or her journey. Confidential and personalised, the journal should focus on the subjects that the child has shown particular interest for, highlighting personal achievements and progress. A particularly important aspect to underline would be related to language skills. The collection of this information, gathered with the participation and the consent of the child, would be directed mainly to social assistants and practitioners, providing an opportunity to shape a tailored plan for the reception of the child. At the same time, it would also constitute an important tool for the child, fostering the feeling of having built a meaningful journey.

Instead, taking into consideration possible improvements in the cooperation between stakeholders, an important first step would be the creation of a repertoire of contacts. This would include the contacts of all national and local associations that are in charge of providing initial assistance to unaccompanied children. In fact, as was repeatedly highlighted during the course of the project, it is the *lack of coordination at the lowest level* that often has crucial repercussions on the effectiveness of the overall system. In this sense, the repertoire would be a particularly significant instrument, allowing direct contacts between the various associations in the 28 member states, and clearly facilitating the process of tracing a missing child, as well as information exchange in general. In other words, it would contribute to building up a transnational structure of primary assistance.

At the same time, it would also be important to create a space of strategic coordination for the professionals of the 28 Member states. Therefore, the construction of a **civil society - platform**, following the model of other European platforms or networks that already exist such as the *EU Civil Society Platform on Trafficking in Human Beings*<sup>193</sup> which serve as a Forum for civil society to engage at the EU level and exchange experiences in order to enhance coordination and cooperation amongst key actors, would be a necessary further step. The main aim of such a platform would not be to make advocacy or dissemination on the situation faced by unaccompanied children and children on the move but to foster the communication and share information between the professionals of the 28 European member states in charge of the children's reception and accommodation in the field, and to deal with the most pressing issues, and devise common strategies in the best interests of these children and the respect of their rights in Europe.

Finally, the creation of an online forum, as the one created by the IJJO in the framework of the Net for You project, would also provide a consistent opportunity for the professionals of European countries dealing with children on the move to communicate in a more flexible and less formal way, to exchange on practical aspects, sharing difficulties and finding solutions, but also to communicate on ethical or policy issues, and diffuse information on their promising practices, a necessity that is the crux of a more coherent European approach.

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193 <http://ec.europa.eu/anti-trafficking/>

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# ANNEXES

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## THE NET FOR U PRACTITIONERS' MANUAL AND TOOLKIT FOR WORKING WITH UNACCOMPANIED MINORS

The Net For U Practitioners' Manual and Toolkit were prepared based on national reports and material provided by the project partners (France, Italy, Germany, Greece, Spain and the UK), available European and International literature, and the inputs of the experts who participated in the "Net For U Experts Seminar" held in London on 28th and 29th October 2013.

The final versions of the tools were designed thanks to the support of the practitioners, who, after implementing the national experimentations, gave comments and suggestions, based on their daily work with the specific target group of the project.

### - Practitioners' MANUAL

The Manual aims to provide a guide for practitioners who work with unaccompanied minors (UAMs) providing for the involvement of their family, in different way and situations, always taking into consideration the best interest of the minors.

It must be emphasized, that the manual can must be considered the key to better understanding the other output of the project – the 'Toolkit'.

The Manual seeks to provide useful guidance for the practitioners, and used together with the Toolkit, can help practitioners to guide their work with UAMs and their families.

Working with unaccompanied minors (UAMs) is challenging and complex, requiring practitioners to continuously re-invent their approaches on the basis of individual needs. While much has already been done at the EU level to provide practitioners with concrete guidance, this tool focuses on the key concept of family, as indicated in the Preamble to the UN Convention on the Rights of the Child. As such, work with children deprived of their families - such as unaccompanied minors - needs to work towards the establishment of a healthy family environment that supports the minors' well-being. The role of family for UAMs varies from case to case, at times representing a source of pain and trauma, at times a source of support, at times both. Regardless of the individual situation, practitioners, in working with UAMS, need to put all of their professional and interpersonal skills and competencies into play in order to best address this difficult, but essential issue.

In the first paragraph, the Manual provides the definitions necessary to work with unaccompanied minors; it:

- defines the notion of unaccompanied minors;
- illustrates the international context;
- defines the best interest of the child;
- indicates the significance and importance of unaccompanied minors' families.

After providing a definition of the unaccompanied minors, The Manual provides guidance in relation to the international context and points out how Conventions and Regulations give importance to the role of the family in daily life.

Furthermore, the manual goes on to define the best interests of the child, highlighting also how this interest does not necessarily coincide with the family reunification: the operators must be able to make a tailored assessment, case by case, since sometimes the involvement of the family could prove traumatic for the child. In the light of that, the Manual continues asking and suggesting questions to the practitioners in order to gather a full understanding of the children and their history.

The second paragraph focuses on the assessment of subjects' needs and on the perceptions that the child has of reality. This part offers suggestions for daily work speaking about: relationships based on trust, the offer of real possibilities, assistance to distinguish between myth and reality, as UAMs often have trouble doing so. It is stressed that it's fundamental to understand their perspective, the mental categories and patterns and personal concepts.

In general, the Manual indicates to the operators a better way to approach this target group always taking into consideration history, expectations, culture and habits. Often, the need to deconstruct the myth and the reality is emphasised, in order to support the child in understanding what is actually real and what is not.

The third paragraph focuses specifically on the role of the family of the UAMs, and on the way in which the practitioners have to deal with expectations and needs of these families, always taking into consideration the best interest of the children. Indeed, some guidelines and plans are provided for the family evaluation. Moreover this section provides:

- several suggestions to the practitioners on how to set up relationships with family;
- important instructions on how to assess the family relationship, both emotionally and geographically, through what is called «Mapping geographical and emotional distance». The mapping exercises represent the starting point for exploring the nature of the relationship between the children and their families.

It's stressed that this evaluation should still be aimed at ensuring the future life of the

minor bearing in mind his/her positive path. The Manual points out the importance of the expectations that the minors have for their future, and suggests questions and inputs for the practitioners that they have to set to support the personal paths.

### **Practitioners' TOOLKIT**

This tool is composed by some practical exercises that are intended to facilitate the daily work with UAMs as well as instruments to help collect and assess information in order to improve the possibility of developing a realistic life project that could help ensure the minor's independence and success in the transition to adulthood.

The Net For U Toolkit is designed to go hand in hand with the Net For U Practitioners' Manual.

The Toolkit offers practitioners some practical instruments and exercises intended to help them in assessing the needs and potentialities of UAMs in order to develop and implement life project that can effectively help them transition into an independent and stable adulthood. The Annexes that compose it are not intended to be exhaustive, but represent a starting point for developing life projects and other interventions that make the most of family resources, while operating in the best interests of the child. These also provide exercises and suggestions to support practitioners in re-assessing their own positions and views in order to further enhance their skills.

Divided into three parts, the Toolkit begins with exercises to address the myth-reality balance discussed in the Manual, both in regards to the minor and his/her family and the practitioner (Annex 1 "Balancing myth and reality"). This section includes two exercises that can be used to better understand and address the myth-reality balance:

- Exercise A "Understanding Transit Country and Dream Country Myths in a Group" is intended as a group discussion exercise with multiple children, and;
- Exercise B is an information matrix that can be used in conjunction with Exercise A or separately, meaning that the information can be collected in other ways.

These matrices represent a starting point for understanding not only where each individual is now (and hence potential sources of misunderstanding and conflict), but also where, and how to intervene in order to ensure a beneficial myth-reality balance.

The second part is dedicated to the collection and use of information about the minors and their families and for these objectives we can refer mainly to Annex 2 "Case study report and family involvement plan"\* & Annex 5 "Creating a family profile". Among them, Annexes 3 "Identifying and assessing family" and 4 "Family focus questions" should be used to help collect information for previous ones.

As previously mentioned, all of these instruments are intended to be used to guide the practitioner's work: profiles and data should be reassessed on an as-needed basis when new information becomes available.

Deserved attention is put particularly on Annex 3 on the exercise "Mapping Geographical and Emotional Distance" that can be employed to map both the geographical and emotional distance between the minor and his/her family members as well as to help identify the relationships where practitioners should intervene. The mapping exercises represent the starting point for exploring the nature of existing relationships including, but not limited to, the identification of: sources of stable support; cases of abuse, neglect or violence; emotionally significant but troubled relationships; individuals that are harmful to the minor and where distance should be maintained and/or increased, etc.

Taken together, these exercises provide information that can be useful in determining how to best work with the UAMs and the family by providing the practitioner with a basis for understanding the current situation and an ideal future situation - both from the minor's point of view.

Finally, the third part of the Toolkit (Annex 6 "Group processes for practitioners") focuses on the practitioner, as an individual and as part of a team. This series of questions and considerations represents a starting point for increasing awareness within the individual practitioner and stimulating discussion and exchanges between practitioners who work with this specific target group at different levels.

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