

Right to Justice: Quality Legal Assistance for Unaccompanied Children

COMPARATIVE REPORT

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The project

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Chapter 1. Introduction

1.1. Scope of the research and methodology

1.1.1 Purpose and scope of the research

The purpose of this research is to examine the legal assistance systems in place for unaccompanied children in various migration and asylum procedures in **Austria, Belgium, Bulgaria, Denmark, Italy, Spain** and the **United Kingdom**. The countries surveyed include countries at the borders of the European Union (hereinafter EU), transit countries as well as destination countries in Europe. It also presents countries with diverse legal and child protection systems, where the main procedures affecting unaccompanied children are different, depending on the national context.

The project examines all forms of legal assistance provided to unaccompanied children, from legal advice to legal representation in front of courts as well as the different providers of legal assistance, such as legal staff from NGOs and independent qualified lawyers. It aims to contribute to a common approach to help guarantee unaccompanied children's right to an effective remedy and justice, as well as to raise awareness and develop standards on legal assistance for unaccompanied children. The project also identifies problematic issues that need to be addressed along with promoting good practices in this field among Member States, legal advisers and other professionals working with unaccompanied children.

Previous research¹ had shown that some form of legal assistance is usually available for unaccompanied children in asylum, return or immigration procedures but not necessarily during all stages of all procedures (border procedures, accelerated procedures, detention, subsequent asylum applications, etc.), and not necessarily by legal advisors with specific knowledge in child-related issues. In addition, some concerns had been raised regarding the qualifications of legal advisors and the quality of the legal assistance separated children may receive. Another issue that had been identified in previous research was the absence of clear definitions in EU law in terms of representatives and assistance as being one of the challenges in the implementation of provisions relating to the assistance provided to unaccompanied children.

The research looks at issues related to accessing legal assistance, such as the right to free legal assistance under national legislation, information to unaccompanied children about the legal assistance available and their right to it, referral systems as well as potential procedural and practical obstacles in accessing available assistance. The research also reviews the availability of free legal assistance in the various migration and asylum procedures unaccompanied children may be subject to and the various providers of legal assistance. Finally, the research examines some key elements of the quality of the assistance provided, both linked to the system and the individual providers. Such elements include the qualifications and knowledge of legal advisors; the involvement of the legal advisors with the child and other actors, such as the guardian; methods to ensure the child's participation; funding and resources available to legal advisors; and interpretation available and its quality.

The comparative report is complemented by a set of 'Guiding Principles for Effective Quality Legal Assistance', and associated indicators to measure their impact, which are presented in Annex 1 of this report. That document aims to set out key principles which have as their essential goal the safeguarding of the rights of unaccompanied children in accessing quality legal assistance in asylum and migration procedures. It provides a broad set of parameters within which legal assistance can be

¹ ECRE, Save the Children, *Study on the return of children*, 2011; ECRE/ELENA, *Legal Aid Survey*, 2010.

improved. The principles have been developed by ECRE, in consultation with a number of experts, based on the findings of this research and supported by legal standards and authoritative guidance.²

1.1.2 Methodology

The report synthesises information gathered by national experts and ECRE through interviews and analysis of existing literature.

The research is based on a questionnaire developed by ECRE in consultation with the partners, research consultants and the advisory panel members. National experts gathered information and undertook interviews, face-to-face or alternatively through the phone, with various relevant stakeholders during the second half of 2013.³ Some additional information was supplemented up until the publication of this report, but changes in law or in practice concerning legal assistance that occurred in the first half of 2014 may not systematically be addressed in detail in this report.

A limited number of unaccompanied children and former unaccompanied children were also interviewed in the seven countries surveyed, based on a specific child appropriate questionnaire. The purpose of the research and use of their answers were explained to the young people interviewed and they all signed a consent form. Consent of guardians was also sought for interviewees younger than 18. Quotes from those interviews are integrated in this report where appropriate. Even though interviews were conducted in a semi-structured format and based on a questionnaire tailored for children, (former) unaccompanied children interviewed were not always able to provide information specifically on legal assistance. A number of children interviewed did not make a distinction between the different adults helping them, especially between guardians and legal advisors and some did not receive legal assistance in practice. The quotes from children inserted in this report are illustrative and do not reflect the general situation in the countries concerned.

In March 2014, also as part of this project, an expert workshop comprised of relevant stakeholders with expertise in this area from across Europe was held in Brussels, **Belgium** to discuss findings and provide further input to the draft Guiding Principles. The overall findings were presented at a conference held in Brussels on 7th July 2014. That conference included a discussion on the quality of legal assistance with representatives of four of the countries specified in the research.

The research attempted to gather information on access to legal assistance and its quality in the various migration and asylum procedures that unaccompanied children may go through. However, in four of the countries surveyed, **Austria, Bulgaria, Denmark** and the **United Kingdom**, the vast majority of unaccompanied children apply for asylum. For those countries, national experts were not able to gather as comprehensive information on migration procedures as on asylum given that the practice is more limited. As far as the **United Kingdom** is concerned, legislation and practice is quite distinct in Scotland and Northern Ireland than from England and Wales. Information in this report refers to the situation in England and Wales unless stated otherwise.

The report aims to capture aspects of the quality of legal assistance provided in the countries surveyed. Quality can be impacted both by structural factors, such as funding, and more internal factors such as the qualifications of legal advisors or their involvement with child clients. With regards to internal factors, the report highlights a number of good practices, but findings can often only be illustrative, as practice will be highly dependent on the individuals and limited general conclusions can be drawn.

² See Annex 1 for further information on the specific methodology behind the development of the Guiding Principles.

³ A total of 77 stakeholders were interviewed in seven countries during the course of this project.

Stakeholders interviewed

The following individual stakeholders and organisation representatives were interviewed at the national level as part of this research:

Austria	Legal representatives from the Linz Youth Welfare authorities Legal representatives from the Vienna Youth Welfare authorities Caritas Vienna Diakonie Flüchtlingsdienst Federal Asylum Agency Verein Menschenrechte Österreich Caritas Österreich
Belgium	Lawyer (French speaking Bar) specialised in unaccompanied children Lawyer (Flemish Bar) CBAR-BCHV, Belgian Refugee Council Guardian from Caritas Belgium (French speaking) Guardians (Dutch speaking) UNHCR Belgium (by email)
Bulgaria	State Agency for Protection of Children Agency for Social Assistance, Child Protection Directorate State Agency for Refugees, Integration Centre State Agency for Refugees, Quality of the Procedure Directorate Bulgarian Red Cross Bulgarian Helsinki Committee (by email) UNHCR Sofia
Denmark	Private lawyers working with unaccompanied children Danish Red Cross Save the Children Denmark Danish Immigration Service
Italy	IOM Central Service of the SPRAR (Protection System for asylum seekers and refugees) ANCI (National Association of Italian Municipalities) Law Clinic of the University “Roma III” and lawyer of ASGI Save the Children UNHCR Guardianship judge Association “Diritti di Frontiera” Department of Rome municipality, Office Protection of minors Lawyers specialised on children and migration Guardian Unione Camere Minorili

Spain	Spanish Public Prosecutor's Office UNHCR Spain Madrid Children Protection Service (IMFM) Ciudad Real Children Protection Service Ms. Irene Claro (Comillas University) Asylum Office (OAR) - Ministry of Interior Judge at the Provincial Court of Madrid Lawyers at the Barcelona Bar Association (ICAB) Lawyer at the Madrid Bar Association (ICAM) La Merced Migraciones CEAR Fundación Raices, Fundación ACSAR, Accem, ONG Horuelo, Fundación Canaria Sociosanitaria Prodein Melilla
UK	British Refugee Council The Children's Society Home Office Immigration Law Practitioners Association Coram Children's Legal Centre Garden Court Chambers (lawyer) Legal Aid Agency (by email)

Terminology

The organisation and functioning of national legal systems and child protection systems varies between the countries surveyed. Similarly, the modalities and rules regarding legal assistance can differ greatly. These differences are reflected in the terminology used at national level. In order to facilitate the comparison between countries, common terminology, as defined further below, was agreed upon and used throughout this report.

One of the main lexical challenges when looking at legal assistance is the blurred distinction, in definition, but also at times in roles, between persons “representing” the child. A child’s representative corresponds in some countries to a guardian, while in others it refers to a person, such as a lawyer, who would assume legal capacity for the child or in some instances provide full legal representation before the courts, but would not be responsible for the child’s general well-being in other aspects of their life, such as social assistance and care. Within the countries included in this research, in **Austria** and **Spain**, a guardian may also be referred to as a legal representative. On the contrary, in the **United Kingdom**, the “legal representative” is a qualified lawyer who represents the child before judicial or administrative authorities if necessary.

With regards to guardians, there is no definition available within EU legislation, even though the term has been introduced in the EU Anti Trafficking Directive.⁴ EU law mostly refers either to “legal representative” or “special representative” to describe a person supporting and assisting an unaccompanied child. In the scope of different instruments, such term indicates more of a guardianship role than that of a legal representative by way of a lawyer. Only “legal representative” is defined in the EU asylum acquis. UN Guidelines for the Alternative Care of Children and General

⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, L 101/1 O.J. 15.04.2011.

Comment No. 6 of the UN Committee on the Rights of the Child do not define the term, but provide a description of the role of a guardian.⁵ The Fundamental Rights Agency’s Handbook on guardianship provides further explanation on what the term guardian may encompass.⁶

EU Terminology on the role of legal representative

<p>Asylum procedures Directive, art. 2(n) / Reception Conditions Directive, art 2(j)</p>	<p><i>Legal representative</i></p>	<p>A person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive.</p>
<p>FRA Handbook on guardianship</p>	<p><i>Guardian</i></p>	<p>An independent person who safeguards the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child.</p> <p>The guardian (or legal representative) differs from a qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, migration or other legal proceedings as provided in national law. differ from the qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided in national law</p>

⁵ See UN Guidelines for the Alternative Care of Children, par. 100-102 . UN Committee of the Rights of the Child in its General Comment No. 6, par. 33 states that “the guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child’s should not be eligible for guardianship.”

⁶ Fundamental Rights Agency, [Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), June 2014. The FRA does not provide definitions of terms, *per se*, to be used across the Member states. This is only an explanation of the term as used in the Handbook.

The diversity of definitions, roles and terms used can create difficulty in the application of EU law at national level but may also create confusion within States on the respective responsibilities of persons involved with unaccompanied children.

In order to allow for comparison in this report, the term “legal representative” will generally not be used even if it is used at national level.

For the purpose of this report, the following terminology is being used :

Guardian	An independent person who safeguards the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child.
Legal advisor	A person (a lawyer or other legal professional) who provides legal advice. A legal advisor may also legally represent the child in written statements or before judicial or administrative authorities if necessary.
Lawyer	A qualified legal professional who is registered or accredited with a professional body according to national regulations. This entails having passed relevant examinations to be officially recognised as a lawyer.
Legal assistance	A general term referring to legal advice and/or legal representation provided by legal advisors, either under state-run or project based programmes.

1.2. International and European legislation and legal standards

1.2.1. Legal assistance and the international legal framework

“Legal aid is an essential element of a fair, humane and efficient system of administration of justice that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial and the right to an effective remedy, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the administration of justice.”

Gabriela Knaul

(UN General Assembly Report of the Special Rapporteur on the Independence of judges and lawyers, 2013)

The right to legal aid and assistance has long been recognised as an important individual right under international law as well as the foundation for the enjoyment of other rights providing persons with the means and knowledge to assert those rights in practice. UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul’s words as highlighted above clearly show the central role legal aid plays in terms of safeguarding the rule of law and access to justice.

Under international law, legal assistance is often considered a component of the right to a fair hearing or trial reflecting the jurisprudential principle of equality of arms. It is derived from the right to an effective remedy as established in the Universal Declaration of Human Rights and the International

Covenant on Civil and Political Rights (hereinafter ICCPR).⁷ The ICCPR lists among the procedural guarantees for people who have been charged with a criminal offence, the right to legal assistance where the interests of justice so require it as does the UN Basic Principles on the Role of Lawyers.⁸ Similarly, in terms of deprivation of liberty, the UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment states that detained persons are entitled to legal counsel. The Convention on International Access to Justice and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems also acknowledge that the right to a fair trial comprises the right to prompt and effective legal aid in national legal systems. The right to free legal assistance has also been proclaimed in other UN guiding documents such as the rules for the protection of juveniles deprived of their liberty (Havana Rules)⁹ and the standard minimum rules for the administration of justice (Beijing Rules).¹⁰ At the regional level the European Convention on Human Rights (hereinafter ECHR), the Charter of Fundamental Rights of the European Union¹¹ and the American Convention on Human Rights recognise the right to legal counsel.¹² Similarly, many UN Committees have called on States to secure equal access to justice within State Parties including by providing legal aid where necessary.¹³

With respect to children's rights, the Convention on the Rights of the Child (hereinafter CRC) is the primary legal instrument in international law enforcing such rights.¹⁴ State parties to the Convention are required to treat the best interests of the child as a primary consideration in all decisions affecting the child without discrimination of any kind.¹⁵ Article 37 and Article 40 of the CRC recognise the importance of access to legal assistance for children deprived of their liberty and subject to criminal

⁷ 1948 Universal Declaration of Human Rights, Art. 8 "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"; 1966 International Covenant on Civil and Political Rights Art. 14(3) "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality; d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

⁸ UN Basic Principles on the Role of Lawyers 1990 Principle 6 concerning special safeguards in criminal justice matters; See also Art. 18 of the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families which includes a similar reference.

⁹ UN Rules for the Protection of Juveniles Deprived of their Liberty adopted by General Assembly resolution 45/113, 14 December 1990.

¹⁰ UN Standard Minimum Rules for the Administration of Juvenile Justice adopted by UN General Assembly resolution 40/33, 29 November 1985.

¹¹ Charter of Fundamental Rights of the European Union (2010/C 83/02), C83/389 O.J. 30.03.2010 (hereinafter the Charter).

¹² Art. 6 ECHR, Art. 47. Charter of Fundamental Rights of the European Union and Art. 8(2)(e) American Convention on Human Rights.

¹³ See for example General Recommendation XXXI (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system by the Committee on the Elimination of Racial Discrimination, General Comment No. 3 (2012) on implementation of Art. 14 by State Parties by the Committee against Torture, General Comment No. 1 (2011) on domestic migrant workers by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Recommendation XXIX (2002) on Descent-Based Discrimination by the Committee on the Elimination of Racial Discrimination, Human Rights Committee General Comment No. 28 (2000) on Equality of Rights between Men and Women and Human Rights Committee General Comment No. 32(2007) Article 14 Right to Equality before Courts and Tribunals and to a Fair Trial.

¹⁴ 1989, United Nations Convention on the Rights of the Child.

¹⁵ Article 3 CRC: "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures; 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

charges.¹⁶ Similarly, the Convention recognises the need for States to provide special assistance and protection for children separated from their families and asylum seeking children in accordance with Article 20 and Article 22 thereof. The UN Committee on the Rights of the Child in examining the situation of treatment of unaccompanied children and the right of the child to be heard in accordance with Article 12 of the Convention obliges Member States also to ensure that such children should have access to a qualified legal advisor.¹⁷ Accordingly, national governments in order to fulfil their obligations under the CRC must ensure access to legal assistance/representation where required.¹⁸

In addition, in terms of the special protection needs of the child, the ICCPR and the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR) recognise that special measures of protection and assistance must be taken on behalf of unaccompanied children.¹⁹

Furthermore, under the 1951 Refugee Convention and the Convention relating to the status of Stateless Persons, Member States have an obligation to ensure free access to the Courts for refugees and stateless persons and those persons shall enjoy access to free legal assistance under the same conditions as nationals in the host Member State.²⁰ The UNHCR Guidelines on child asylum claims and UNHCR Ex Com Conclusion No. 8 both recognise the importance of providing guidance during the asylum procedure as well as appropriate legal assistance.²¹

Unaccompanied children in Europe are entitled to the rights within this broad range of international legal instruments. In addition, all Member States within the scope of this study are party to the UN CRC and 1954 Refugee Convention and its 1967 Protocol as well as other international human rights instruments. Therefore, it is important when examining the regional framework in primary and secondary EU legislation in asylum and migration to take into consideration its implementation in compliance with the international legal framework within which it operates.

1.2.2 Legal assistance and the rights of the child

Due to their inherent vulnerability, unaccompanied children require additional special assistance and protection to navigate asylum and migration procedures which are becoming increasingly complex across Europe.²² The need for additional procedural guarantees for children is not only important in

¹⁶ Although no express reference to free legal assistance is made in the Convention text, General Comment no. 10 on children's rights in juvenile justice expressly refers to the availability of legal assistance which is free of charge.

¹⁷ UN Committee on the Rights of the Child General Comment No. 12 The right of the child to be heard, 2009 and UN Committee on the Rights of the Child General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin

¹⁸ For further information see CORAM CLC Submission to the UN Committee on the Rights of the Child Day of General Discussion, '[Access to justice is a fundamental necessity in promoting the rights of all migrant children](#)' September 2012.

¹⁹ Art. 24 ICCPR and Art. 10 ICESCR.

²⁰ Art. 16 1951 UN Refugee Convention and 1967 Protocol relating to the Status of Refugees and Art. 16 1954 Convention relating to the Status of Stateless Persons; However, Article 16 of the Refugee Convention has predominantly been interpreted as being reserved for refugees who had established a "habitual residence" meaning that formal recognition as a refugee is required before legal assistance under this provision can be relied upon; See further James C. Hathaway, *The rights of refugees under international law*, Cambridge University Press, 2005 p. 909.

²¹ UNHCR Executive Committee Conclusion No. 8 (XXVIII) Determining of Refugee Status 1977; UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Art. 1A(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees.

²² ECRE notes that any refugee seeking protection is in a vulnerable position, but the ability of certain individuals to present an application for international protection is further impaired due to particular personal characteristics or especially traumatic experiences. Such vulnerable groups include, but are not limited to, children especially unaccompanied children, disabled persons, elderly or persons suffering from serious illnesses, pregnant women, single parents with children, persons suffering from mental health problems, victims of human trafficking and victims of torture, rape or any other form of psychological, physical or sexual violence. Similarly,

terms of their understanding of the procedure in the host Member State but also due to the fact that it is often more challenging for unaccompanied children seeking asylum to substantiate their claim for international protection or for unaccompanied children in other migration procedures to substantiate their application permits. Unaccompanied children also face administrative obstacles and linguistic barriers among other challenges in accessing legal aid in practice. The difficulties encountered by children in asylum and migration procedures have been documented in numerous reports.²³ In Europe, without proper support and guardianship, unaccompanied children as migrants and asylum applicants may also be at heightened risk of further exploitation such as child trafficking, economic, criminal and sexual exploitation.²⁴ Similarly, evidence has shown that asylum seekers and migrants without access to legal advice are more likely to be socially excluded and destitute.²⁵ All of these factors mean that a concerted effort is needed at the EU and national level to protect unaccompanied children, regardless of their immigration status. The Commission Action Plan on Unaccompanied Minors (2010-2014) stated that ‘it is fundamental to ensure that any child needing protection receives it and that, regardless of their immigration status, citizenship or background, all children are treated as children first and foremost.’²⁶ This is in accordance with the UN Convention on the Rights of the Child which recognises the need to take special measures to ensure that asylum seeking children receive appropriate protection in accordance with the best interests of the child.²⁷ Such persons should be treated as children first and the asylum and migration procedures should be adapted to meet their needs.

Special measures and procedural safeguards including legal advice are paramount in ensuring effective access to justice for these children. The UN Committee on the Rights of the Child recommends ‘*in cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation*’.²⁸ With respect to the best interests of the child the Committee has also recognised that ‘*the child will need appropriate legal representation when his or her interests are to be formally assessed and determined by relevant Courts and equivalent bodies*’.²⁹ Similarly, both the UN High Commissioner for Refugees and the Separated Children in Europe Programme whilst recognising the inherent vulnerability of unaccompanied children held that such children should have legal assistance. Equally the Fundamental Rights Agency (hereinafter FRA) has called upon Member States ‘*to ensure that appropriate legal representation, advice and counselling, as well as free legal aid, as appropriate, is provided to separated, asylum-seeking children and their legal guardians or*

the International Association of Refugee Law Judges (IARLJ) for their guidelines on procedures for vulnerable persons, October 2008 (Guidance note I of IX) defines a claimant or witness as a vulnerable person as follows “*a person whose ability to understand and effectively present their case or fully participate in proceedings may be impaired, because of intrinsic factors (who they are) and/or because of extrinsic factors (their experiences). Such persons may include, but are not limited to, persons with mental illness or learning difficulties, people with disabilities, children, the elderly, survivors of torture, survivors of genocide and crimes against humanity, women and men who have suffered gender-related harm, trafficked persons, persons in detention, and those in poor health.*”

²³ For example in the UK the Children’s Society publication *Going it Alone, children in the asylum process* 2007; Fundamental Rights Agency, *Separated, asylum-seeking children in European Union Member States*, comparative report 2010, France Terre D’Asile, *Right to asylum for unaccompanied minors in the European Union*, comparative study in 27 EU countries, 2012.

²⁴ Frontex, *Unaccompanied Minors in the Migration Process*, Risk analysis unit, 2010.

²⁵ Asylum Aid and Bail for Immigration Detainees, *Justice Denied*, 2005 p. 11.

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

²⁷ CRC Art. 22(1) “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

²⁸ Committee on the Rights of the Child, General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin para. 36, 2005 CRC/GC/2005/6.

²⁹ UN Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14 para 96.

*other representatives, in the context of legal procedures, as soon as possible, to ensure fair access to justice.*³⁰ The provision of quality legal assistance is not only of benefit for the individual child concerned, it also benefits the asylum or migration procedure in question.³¹

1.2.3 European Legal Framework

According to Article 3 of the Treaty of the European Union, Europe shall promote social justice and the protection of the rights of the child.³² The Treaty also declares that the European Union is founded on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.³³ Furthermore, the Charter of Fundamental Rights of the European Union (hereinafter the Charter) is now binding primary EU law since the adoption of the Lisbon Treaty and secondary EU legislation must be interpreted and applied in a manner compatible with it. The Charter recognises a number of important rights of relevance to unaccompanied children including the right to non-discrimination, human dignity, equality before the law, respect for the rights of the child and the right to good administration and an effective remedy.³⁴ Article 24 of the Charter on the rights of the child is significant in recognising that children shall have the right to such protection and care as is necessary for their well-being and that in all actions relating to children whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.³⁵

In terms of the European Council, the Stockholm Programme has declared that the rights of the child including the best interests of the child must be strategically taken into account to aim for an integrated approach.³⁶ Similarly, the Commission has called for the CRC to be at the heart of any action taken with respect to unaccompanied children under the Action Plan for Unaccompanied Children and the EU Agenda for the Rights of the Child.³⁷ The EU Agenda explicitly states that *'effective access to justice and participation in administrative and court proceedings are basic requirements to ensure a high level of protection of children's legal interests.'*³⁸

Under the Charter, Article 47 guarantees the right to an effective remedy, and to this effect, it expressly states that 'legal aid shall be made available to those who lack sufficient resources in so far as such is necessary to ensure effective access to justice'. This provision reflects the EU principles of effective judicial protection and effectiveness. The explanations to the Charter show that Article 47 is derived from Article 6 and Article 13 ECHR but under the Charter the scope of this provision is wider with the possibility to provide more extensive protection in accordance with Article 52.³⁹ Legal aid

³⁰ FRA, *Separated, asylum seeking children in European Union Member States*, Summary Report 2010.

³¹ For further information on the benefits of early legal advice see ["Providing Protection: Access to early legal advice for asylum seekers"](#) by Bridget Anderson & Sue Conlan.

³² TEU Art. 3 *"The Union ...[.] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child."*

³³ Art. 2 and Art. 6 TEU.

³⁴ See for example the Charter of Fundamental Rights of the European Union Articles 1, 24, 20, 21, 41, 47 Charter of Fundamental Rights O.J. C 83/3/89 30.3.2010.

³⁵ The explanations to the Charter show that this is derived from the UN Convention on the Rights of the Child and in particular Articles 3, 9, 12 and 13 therein. See further: Explanations relating to the Charter of Fundamental Rights O.J. C 303/17 14.12.2007.

³⁶ European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens O.J. C 115/1 4.5.2010.

³⁷ Communication from the Commission to the European Parliament and the Council, *Action Plan on Unaccompanied Minors (2010 - 2014)*, 6 May 2010, COM(2010) 213/3; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child*, COM (2011) 60 final, 15.2.2011.

³⁸ *Ibid.*

³⁹ The procedural guarantees under Art. 6 ECHR have been restricted in ECHR jurisprudence to a person's civil right or obligation or a criminal charge and exclude asylum and migration decisions. See for example ECHR *Maouia v France* Application no. 39652/98, 12 January 1999. However, that limitation does not apply as

and assistance enables access to an effective remedy in practice and in law and empowers individuals to assert their rights in practice reflecting the principle of effectiveness. This includes ensuring effective access to a lawyer and/or legal advisor.

Within the Council of Europe framework the Convention on exercises of children's rights contains a number of relevant provisions for quality legal assistance such as the right to the child to be informed and to express his or her views in proceedings (Art. 3), procedural rights for children including in appropriate cases the appointment of a lawyer (Art. 5) and the obligation to provide legal aid and advice (Article 14).⁴⁰

The Parliamentary Assembly of the Council of Europe has also acknowledged the necessity of providing quality legal assistance and representation to asylum seekers in Europe within the context of accelerated asylum procedures and for persons in detention.⁴¹ The Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures also specifically state that persons in accelerated asylum procedures should be guaranteed the right to access legal advice and assistance as does the Twenty Guidelines of the Committee of Ministers on Forced Return. More broadly the Committee of Ministers Recommendation R(81) 7 on measures facilitating access to justice recognises that legal aid is an important component in achieving that objective.⁴² The Council of Europe Guidelines on Child Friendly Justice also obliges States to provide children '*with their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties*'.⁴³

In addition, over the years the European Court of Human Rights (ECtHR) has developed jurisprudence of relevance to the right to legal aid. This is mainly related to challenges in civil and criminal law with respect to Art. 6 ECHR. The leading case on legal aid in civil law is *Airey v Ireland* ⁴⁴ where the Court found a violation of Article 6(1) because the applicant was unable, in the absence of legal aid and not being in a financial position to meet the costs involved, to find a solicitor to assist and represent her in judicial separation procedure. The Court has also found that free legal assistance may be necessary in civil matters in order to ensure that access to a court is both effective and fair.⁴⁵

Similarly, the Court has found violations of Article 6 ECHR where no legal aid is available in particularly complex proceedings and where legal aid is available without adequate guarantees such as

regards Union law and its implementation under the Charter of Fundamental Rights. Accordingly the provisions of Article 47 of the Charter are applicable also in the field of asylum and migration in European law.

⁴⁰ Other relevant provisions of the European Convention on the Exercise of Children's Rights includes Art. 4, Art. 7, Art. 8, Art. 9 and 10.

⁴¹ Council of Europe, Parliamentary Assembly, Recommendation 1645, *Access to assistance and protection for asylum-seekers at European seaports and coastal areas*, 2004; Council of Europe, Parliamentary Assembly, Resolution 1707 (2010), *Detention of asylum seekers and irregular migrants in Europe*, para. 9.2.9. With respect to unaccompanied children seeking asylum the Parliamentary Assembly has called upon the Committee of Ministers to draw up a recommendation urging Member States to "*amend their legislation and remove any administrative obstacles so as to ensure that separated children can have a legal guardian and a legal representative appointed as a matter of urgency and not later than two weeks of their presence coming to the knowledge of the authorities*"; See Council of Europe Parliamentary Assembly, Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum. The recommendation also calls upon the Committee of Ministers to urge Member States to amend their legislation so as to exempt separated children from accelerated or admissibility asylum procedures.

⁴² Council of Europe Recommendation 81(7) of the Committee of Ministers to Member States on measures facilitating access to justice, 14 May 1981.

⁴³ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 November 2010.

⁴⁴ ECtHR *Airey v Ireland* Application no. 6289/73, 9 October 1979; For further information on relevant ECtHR jurisprudence see also FRA [Access to Justice in Europe: an overview of challenges and opportunities](#), March 2011.

⁴⁵ ECtHR *P, C and S v UK*, Application no. 56547/00, 16 July 2002; in terms of criminal law the Grand Chamber ECtHR judgment of *Salduz v Turkey*, Application no. 36391/02, 27 November 2008 also illustrates the importance of access to a lawyer and legal aid.

sufficient time and facilities to properly provide legal assistance.⁴⁶ In the case of *Sialkowska v Poland*, the Court has held that it is ‘also essential for the legal aid system to offer individuals substantial guarantees to protect those having recourse to it from arbitrariness’.⁴⁷

The availability of legal assistance is also relevant in examining whether there is effective access to a judicial remedy in facts as well as in law. In *MSS v. Belgium and Greece*, the ECtHR held that Greece had breached the applicant’s right to an effective remedy as among the factors hindering access to justice the Court took note of the fact that the claimant did not have the means to pay for a lawyer to represent him and was not provided with any information on the organisations providing free legal assistance. The Court also highlighted that the shortage of lawyers providing legal aid in the country had rendered the whole Greek legal aid system ineffective in finding overall that there was a violation of Art. 3 in conjunction with Art. 13 ECHR.⁴⁸

Further to the question of access to Court and access to legal assistance, the issue of the quality of the assistance and its impact on the effectiveness of the remedies has also been addressed in the jurisprudence. It explicitly requires representation by a qualified lawyer who was able to familiarise with the case and who can properly guarantee the person’s right in practice as well as in law.⁴⁹

The Court of Justice of the European Union (hereinafter CJEU) has also addressed the importance of legal aid for example in the case of *D.E.B.* concerning the provision of legal aid for a person who was seeking to bring a damages claim against Germany for the failure to transpose a Directive. The Court noted that the principle of effectiveness for the purpose of the exercise of a person’s rights derived from EU law should not be rendered impossible in practice where a person did not qualify for legal aid but was also unable to afford the cost of taking a case to court, since this could deny them their right to effective access to justice and therefore also to effective judicial protection.⁵⁰

Legal assistance in the field of EU asylum and migration law

There is no specific standard for quality legal assistance for unaccompanied children in the European legal framework. However, most of the EU legislation related to asylum, detention of migrants, return and trafficking has provisions relating to the right to access legal assistance and representation depending on the procedure concerned which equally apply to adults and children alike. Before addressing the issue of legal assistance provisions in the EU legislation it is important to note that there are also specific procedural guarantees in place for unaccompanied children including the appointment of a representative to represent and assist children in relevant procedures such as under the recast Asylum Procedures Directive.⁵¹ The Anti-Trafficking Directive also obliges Member States to ensure that there is a representative in place for child victims of trafficking to ensure their best interests are safeguarded.⁵² Equally the legislation obliges Member States to provide information to applicants on

⁴⁶ ECtHR *Steel and Morris v UK* Application no. 68416/01, 15 February 2005 and ECtHR *Sakhnovskiy v Russia* Application no. 21272/03, 2 November 2010 respectively.

⁴⁷ ECtHR *Sialkowska v Poland* Application no. 8932/05, 22 March 2007 para. 107

⁴⁸ ECtHR, *MSS v. Belgium and Greece*, Application no. 30696/09, 21 January 2011, par. 319. See also ECtHR, *I.M. v. France*, Application no. 9152/09, 2 February 2012, para. 155 and ECtHR *Hirsi Jamaa v. Italy*, Application no. 27765/09, 23 February 2012, paras. 185 and 202.

⁴⁹ For further information see Joachim Stern, *Rechtsberatung und Rechtsvertretung im Asylverfahren Völkerrechtliche, europarechtliche und verfassungsrechtliche Grundlagen (Kurzfassung) sowie Standards für Rechtsberatung und Rechtsvertretung* ;See also ECtHR, *Artico v Italy* Application no. 6694/74, 13 May 1980.

⁵⁰ CJEU *D.E.B.* C-279/09 22 December 2010.

⁵¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, L 180/60 O.J. 29.6.2013 (recast Asylum Procedures Directive).

⁵² Art. 15 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA L 101/1 O.J. 15.4.2011 (Anti Trafficking Directive).

organisations that provide specific legal assistance to enable them to contact such organisations. In this section reference is made to both the current applicable legislation in place as well as the recast EU asylum acquis which must be transposed and implemented at the national level by July 2015.

In terms of legal assistance the 2005 Asylum Procedures Directive⁵³ entitled asylum seekers to consult a legal counsel at all stages but only required Member States to provide free legal assistance at the appeal stage, though Member States may also grant free legal assistance as well in line with the discretion available to provide more favourable conditions.⁵⁴ The recast Directive has added the obligation to provide legal and procedural information at the first instance stage of the international protection determination procedure.⁵⁵ The Directive nevertheless allows for States to operate a system whereby mandatory free legal assistance at appeals is submitted to a merits test, i.e. an assessment of the “*tangible prospect of success*” of the case.⁵⁶ Free legal assistance can also be limited to persons who do not have the necessary resources and/or limited to first instance appeals. The Directive also gives Member States the discretion to impose monetary and/or time limits on the availability of legal assistance and applicants may also be asked to reimburse the costs of legal aid if their financial situation subsequently improves.⁵⁷ The recast Directive explicitly states that free legal information at first instance may be provided by non-governmental organisations, by professionals from government authorities or from specialised services of the States but free legal assistance in appeals has to be provided by persons who are competent and admitted under the law.⁵⁸

In addition the recast Asylum Procedures Directive addresses the scope of the legal assistance to be provided. Legal assistance providers should have access to information on the applicants file upon the basis of which a decision is or will be made.⁵⁹ It also obliges Member States to permit legal advisers to access closed areas such as detention facilities and transit zones in order to meet their client⁶⁰ and guarantees the right of the applicant to bring their legal adviser to the personal interview.⁶¹

As far as unaccompanied children are concerned, the recast Asylum Procedures Directive distinguishes the role between the child’s “representative”⁶² and “legal advisor”. Furthermore, Article 25(4) requires that unaccompanied children and their representative be provided with free legal and procedural information not only at first instance but also in procedures for the withdrawal of protection. Recital 22 of the recast Asylum Procedures Directive states that “*it is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances.*” This is applicable to children and adults alike and obliges information providers to tailor the information provided taking into account the particular circumstances of the person concerned.⁶³

⁵³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, L 180/60 O.J. 29.6.2013.

⁵⁴ Member States always have the ability to provide more favourable conditions in accordance with Art. 5 of the recast Directive.

⁵⁵ See also Art.19 Recast Asylum Procedures Directive.

⁵⁶ Article 20 recast Asylum Procedures Directive.

⁵⁷ Article 21 recast Asylum Procedures Directive.

⁵⁸ Art 21(1) recast Asylum Procedures Directive.

⁵⁹ Article 23(1) recast Asylum Procedures Directive.

⁶⁰ Article 23(2) recast Asylum Procedures Directive.

⁶¹ Art. 23(3) recast Asylum Procedures Directive.

⁶² A “representative” is defined in the Directive under Art. 2(n) as a person or an organisation appointed by a the competent bodies in order to assist and represent the unaccompanied minor in [asylum] procedures, with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.

⁶³ See Art. 19 of the recast Directive for further information.

The recast Reception Conditions Directive⁶⁴ provides for the availability of free legal assistance and representation upon request for appeals to decisions concerning the granting, withdrawing or reduction of reception benefits in so far as such aid is necessary to ensure effective access to justice.⁶⁵ The previous Dublin Regulation was silent on the availability of legal assistance. However, the recast Dublin Regulation now explicitly obliges Member States to ensure access to legal assistance for appeals to Dublin transfer decisions. If a decision not to grant legal assistance is made by an authority other than a Court or Tribunal Member States must also provide the right to an effective remedy before a Court or Tribunal to challenge that decision.⁶⁶ In terms of the Returns Directive Member States must also ensure that legal assistance and/or representation is granted for appeals on request free of charge according to national rules regarding legal aid or it may be subject to the same conditions as outlined under the Asylum Procedures Directive.⁶⁷ With regard to trafficking victims, the Anti-Trafficking Directive recognises the importance of legal counselling and representation to enable victims to be informed and receive advice about the various possibilities open to them as well as for the purpose of claiming compensation.⁶⁸ It stipulates that legal aid should be free of charge, specifically for child victims of trafficking given that they are unlikely to have resources in practice.

Overall there are some general standards in place in EU legislation concerning access to legal assistance and representation but many of the modalities are still determined at the national level. It is important in the context of unaccompanied children to also take into account the obligations Member States have to conduct procedures in accordance with the best interests of the child and in line with obligations under the Convention on the Rights of the Child. This applies equally with respect to access to quality legal assistance.

1.3. Unaccompanied children in the EU: context and statistics

Unaccompanied children migrate to Europe for a number of reasons: they might be fleeing persecution and therefore seek protection, they may be trafficked into Europe or they may be seeking family reunification, economic or educational opportunities. Irrespective of their nationality or immigration status, these children are entitled to the safeguards and protection measures enshrined in the UN Convention Rights of the Child (CRC).

There is no comprehensive data on the total number of unaccompanied children present in the EU or arriving each year. The most reliable statistics are those related to unaccompanied children who applied for asylum. A total of 12,375 asylum applications were lodged by unaccompanied children in 2013 across the EU, a stable number compared to the previous years (12,475 in 2012 and 11,695 in

⁶⁴ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), L180/96 O.J. 29.6.2013 (recast Reception Conditions Directive)

⁶⁵ See Art. 26 recast Reception Conditions Directive for further information; the previous Reception Conditions Directive only stated that procedures for access to legal assistance in such cases shall be laid down in national law.

⁶⁶ See Art. 27(6) of Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person (recast), : L180/31, O.J. 29.06.2013 (recast Dublin Regulation).

⁶⁷ Art. 13 of Directive 2008/11/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals L348/98 O.J. 24.12.2008 (Returns Directive).

⁶⁸ See Recital 19 and Art. 12. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, O.J. L 101/1, 15 April 2011.

2011).⁶⁹ This represents about two thirds of the asylum claims from unaccompanied children worldwide (21,300).⁷⁰ The main receiving countries are Sweden, Germany and the UK (3850, 2485 and 1175 applications respectively). Those children are mainly male teenagers, coming from war torn countries such as Afghanistan (3275), Somalia (1570), Syria (1005) or Eritrea (710).⁷¹

Yet, asylum seekers only represent a small portion of unaccompanied children present in some countries like **Italy** and **Spain**. According to Eurostat, **Italy** issued residence permits to 3871 unaccompanied children in 2012 and **Spain** to 579.⁷²

The need for specific focus on unaccompanied children and the design of common responses has been acknowledged both by the Council of Europe and the European Union. In 2000-2010 the Council of Europe's Parliamentary Assembly⁷³ and Committee of Ministers⁷⁴ published a number of recommendations and resolutions on the topic. The Council of Europe has been engaged in the Action Programme "Building a Europe for and with Children" since 2007, with the aim of introducing a child-rights perspective into all actions of the Council of Europe.⁷⁵

At the EU level, the European Commission issued, in 2007, a *Green Paper on the future Common European Asylum System*,⁷⁶ where it stated that unaccompanied children are among most vulnerable asylum seekers, and that ways to enhance national capacities to address their special needs must be found. In June 2009, the European Commission envisaged the need for greater coherence and cooperation on the issue within the EU and with the origin and transit countries of those children. It announced an Action Plan on Unaccompanied Minors, to be based on the legislative protection framework set by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.⁷⁷ The Action Plan⁷⁸, adopted for the years 2010-2014, is based on ten principles to help guide EU institutions and Member States in their approach towards unaccompanied children. The Council of the European Union subsequently adopted Conclusions on Unaccompanied Minors,⁷⁹ which together with the Action Plan identify and set out three main strands for action: prevention, protection and durable solutions. The same actions were identified as priorities by the European Parliament in its Resolution on the Stockholm Programme, where it was stated that an Action Plan should address issues such as protection, cooperation with third countries and durable solutions in the best interests of the child.⁸⁰ A Mid-term Report on the Action Plan was published in 2012: it highlights the developments up to June 2012 and identifies the areas requiring more attention

⁶⁹ Data for the EU 27. Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded) [migr_asyunaa]*, accessed on 7 May 2014. Last update: 07-05-2014

⁷⁰ UNHCR, *UNHCR Global Trends 2012: Displacement, The New 21st Century Challenge*, 19 June 2013,

⁷¹ Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded) [migr_asyunaa]*, accessed on 7 May 2014.

⁷² Eurostat, *First permits issued for other reasons by reason, length of validity and citizenship [migr_resoth]*, accessed on 7 May 2014. Figures for 2013 are not available. See also the section 2.2 – Numbers and categories of unaccompanied children.

⁷³ See in particular: Parliamentary Assembly, *Recommendation 1596: Situation of young migrants in Europe*, 2003, and *Recommendation 1703: Protection and assistance for separated children seeking asylum*, 2005.

⁷⁴ Committee of Ministers, *Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors*.

⁷⁵ Council of Europe: Parliamentary Assembly, Committee on Migration, Refugees and Population, *Unaccompanied children in Europe: issues of arrival, stay and return*, 21 March 2011.

⁷⁶ *Green Paper on the future Common European Asylum System*, COM (2007) 301 final, 6 June 2007, Para 2.4.1.

⁷⁷ European Commission, *Communication to the European Parliament and the Council. An area of freedom, security and justice serving the citizen*, COM (2009) 262, June 2009

⁷⁸ European Commission, *Action Plan on Unaccompanied Minors (2010-2014)*, 6 May 2010,

⁷⁹ Council of the European Union, *Council Conclusions on unaccompanied minors*, 3018th Justice and Home Affairs Council meeting, Luxembourg, 3 June 2010

⁸⁰ European Parliament, *Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme*, P7_TA(2009)0090.

and targeted action: information sharing and data gathering, engagement with countries of origin and transit, re-establishment of family links and safe return of children.⁸¹ The Treaty of Lisbon itself identifies the protection of the rights of the child as an objective of the EU, further strengthening the obligation of the EU to respect children's rights.⁸² The special need and particular vulnerability of unaccompanied children was also mentioned in the EU Agenda for the Rights of the Child⁸³ and reaffirmed in a recent Resolution of the European Parliament on Unaccompanied Children.⁸⁴

At the EU legislative level, the situation of unaccompanied children is addressed directly and indirectly by a variety of instruments on asylum, immigration and trafficking in human beings, including in the asylum legislative instruments and the Anti-Trafficking Directive.⁸⁵

In recent years, a number of studies regarding unaccompanied children were carried out by European Agencies, networks and NGOs. In 2010, two large comparative studies were published: one on reception, return and integration by the European Migration Network, which looked at all EU Member states⁸⁶; and a child-centered participatory study on unaccompanied asylum seeking children in 12 Member states was published by the Fundamental Rights Agency.⁸⁷ France terre d'asile also published a comparative study on the "Right to asylum for unaccompanied minors in the European Union" in 2012.⁸⁸ In addition, thematic tools and studies were issued both by NGOs and EU Agencies, among others, on guardianship⁸⁹ and age assessment.⁹⁰ It is also worth highlighting the upcoming report and tools to be published in the framework of the CONNECT project (Identifying good practices in, and improving, the connections between actors involved in reception, protection and integration of unaccompanied children in Europe) coordinated by Save the Children Sweden.⁹¹

⁸¹ European Commission, [Mid-term report on the implementation of the Action Plan on Unaccompanied Minors](#), 28 Sep. 2012,

⁸² 2007 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (entry into force: 1 Dec. 2009).

⁸³ European Commission, [Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Agenda for the Rights of the Child](#), COM(2011) 60, 15 February 2011.

⁸⁴ European Parliament, [Resolution of 12 September 2013 on the situation of unaccompanied minors in the EU](#), P7_TA(2013)0387

⁸⁵ See the Anti-Trafficking Directive, the Dublin Regulation and the recast Asylum Procedures, Qualification and Reception Conditions Directives.

⁸⁶ EMN, [Policies on Reception, Return and Integration arrangements for and numbers of Unaccompanied Minors - an EU comparative study](#), May 2010. This research will be updated in 2014, see EMN Belgium, [EMN Work Programme 2014](#)

⁸⁷ FRA, [Separated asylum-seeking children: An examination of living conditions, provisions and decision making procedures in selected EU Member States through child centred participatory research](#), December 2010 or the FRA [Handbook on the guardianship systems in EU](#) which has been developed in cooperation with the EU's Anti-Trafficking Coordinator's Office and will be published in the second quarter of 2014.

⁸⁸ France terre d'asile, [Right to asylum for unaccompanied minors in the European Union](#), 2012

⁸⁹ See Defence for Children International – ECPAT The Netherlands, [Core Standards for guardians of separated children in Europe](#), 2011. Fundamental Rights Agency, [Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), 2014

⁹⁰ See EASO publication [Age assessment practice in Europe](#), December 2013; SCEP, [Position Paper Age Assessment](#), 2012 and [Review Report on Age Assessment](#), 2011

⁹¹ See a summary of the project [here](#).

Chapter 2. General overview of the situation of unaccompanied children in seven countries

2.1 Definitions of unaccompanied children

Although each country covered by this research uses a slightly different definition of an unaccompanied child, all refer to a child as being under 18 and link the status of being “unaccompanied”, not only to a separation from their parents but also to other responsible adults.

While in some countries the definition of responsible adult seems rather broad, such as in **Bulgaria**, **Denmark** and the **UK**, it is limited to legal guardian or people assuming legal representation for the child in the other countries covered by this study.

EU definition	A minor [a third-country national or a stateless person below the age of 18 years] who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States
UNCRC General Comment n°6	Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
Austria	A foreign child who is not accompanied by a legally responsible adult.
Belgium	A person that (1) is younger than 18 years old (2) is not accompanied by a person, who exercise parental authority or guardianship, (3) is not a national of an EEA country and (4) has either applied for asylum or does not satisfy to the conditions for access to the territory or legal stay.
Bulgaria	A foreign minor who finds himself on the territory of the Republic of Bulgaria and who is not accompanied by a parent or other adult responsible for him/her by law or custom'
Denmark	A foreigner under 18 who enters Denmark without being accompanied by his or her parents or any other adult persons who have taken the role of a parent, is considered as unaccompanied.
Italy	<ul style="list-style-type: none"> - A minor who is not a national of Italy or another EU State, and who has not applied for asylum, therefore finds himself/herself for different reasons on the territory of the State without any assistance and legal representation of his/her parents or other responsible adults. - A foreign national under 18, who is present for any reason in the national territory without legal representation and assistance. - With regard to unaccompanied minor asylum seekers, the Qualification Decree 251/2007 provides the following definition: “the foreign person who is under 18 and who finds himself/herself for any reason in the national territory without legal representation and assistance.”
Spain	Foreigners under 18 years old who reached Spanish territory without being accompanied by a responsible adult or any foreign children who are in Spain in the same situation.
UK	A child who is under 18 years of age when the application for asylum is submitted, is applying in their own right and is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

2.2 Numbers and categories of unaccompanied children

Existing data at national and EU levels does not allow for a complete picture of the number of unaccompanied children arriving each year or present in the EU. Eurostat gathers statistics on asylum applications from unaccompanied children (see table below) but does not collect data on other categories of unaccompanied children. At the national level information is collected by various authorities, such as the police, border guards, immigration authorities, asylum authorities or child protection services, and data they collect sometimes overlaps, making it difficult to get a global view of the number of unaccompanied children present. Finally, States do not all use the same definitions and do not all collect the same type of information: some gather statistics on children referred to the guardianship system, other on residence permits granted or on detection by the police.

In the seven countries surveyed,⁹² the profile of unaccompanied children remains quite varied. While in some countries, like **Austria**, **Bulgaria**, **Denmark** and the **United Kingdom**, most unaccompanied children seek asylum, it is not the case in **Italy** and **Spain**, where they mostly go through other types of immigration procedures. In **Belgium**, around half of the total of unaccompanied children seek asylum while the other half get channelled through a specific procedure for unaccompanied children where they can obtain a residence permit, following an individual assessment (see figures in the table below).

Within the seven countries studied, the number of children arriving every year varies greatly. **Bulgaria** and **Denmark** registered 185 and 367 asylum claims from unaccompanied children in 2013, while the number of unaccompanied children was much higher in **Austria**, **Belgium**, **Italy** and **Spain**. In **Italy**, in 2013 alone, more than 5000 unaccompanied children arrived by boat.⁹³ From January to May 2014, the numbers of arrivals by sea have already exceeded 4.500⁹⁴ and the total number of unaccompanied children registered by the end of May 2014 reached over 9.000.⁹⁵

Table 1: Available statistics on unaccompanied children in 2012 and 2013

Austria	1574 asylum applications from unaccompanied children (recognised as such by the State) in 2012 (Ministry of Interior); 935 in 2013 (Eurostat)
Belgium	2811 children present in the “newly arrived children” in 2012 (Guardianship Service); 975 asylum seeking unaccompanied children in 2012 and 470 in 2013 (Eurostat).
Bulgaria	62 asylum seeking unaccompanied children in 2012 (State Agency for Refugees) , 185 in 2013 (Eurostat)
Denmark	355 asylum seeking unaccompanied children in 2012 and 367 in 2013 (Danish Immigration Service)
Italy	7575 non asylum seeking unaccompanied children registered on the territory at the end of 2012 and 8.461 at the end of 2013 (Ministry of Labour and Social Affairs); 970 asylum seeking children in 2012 and 805 in 2013 (Eurostat)

⁹² Austria, Belgium, Bulgaria, Denmark, Italy, Spain and the United Kingdom.

⁹³ Save the Children Italy *Dossier Minori Migranti in Arrivo Via Mare 2013* (Dossier Minor Migrants arrived by sea, 2013). They mostly came from Syria, Egypt, Somalia and Eritrea.

⁹⁴ Save the Children Italy, “[The boat is safe and other lies](#)”: [Why Syrian families are risking everything to reach Europe](#), June 2014, p 6.

⁹⁵ Ministry of Labour, *Report nazionale minori stranieri non accompagnati. Aggiornato al 30 maggio 2014* (National report on unaccompanied foreign minors – Up to date 30 May 2014)

Spain 3261 unaccompanied children registered in 2012 (Commissioner general for Immigration and Borders); among those, 17 sought asylum in 2012, 10 in 2013 (Asylum and Refugee Office and Eurostat)

United Kingdom 1125 unaccompanied children applied for asylum in 2012 and 1174 in 2013 (Home Office).

NB: This table compiles information collected during the research. Definitions used across countries vary.

Table 2 : Unaccompanied asylum seeking children

Country/year	2011	2012	2013
Austria	1.005	1.375	935
Belgium	1.385	975	470
Bulgaria	25	60	185
Denmark	270	355	350
Italy	825	970	805
Spain	10	15	10
United Kingdom	1.400	1.125	1.175

Source: Eurostat⁹⁶

Though unaccompanied children are of various nationalities depending on the host country, Afghans still represent a large portion of the total number of unaccompanied children arriving in Europe, as shown in the table below. Other main countries of origin include Algeria, Syria, Morocco and Somalia.

Table 3 : Main countries of origin of unaccompanied children in 2013

Host country	Countries of origin in 2013
Austria	Afghanistan (about half of the total numbers), Algeria, Syria
Belgium	Afghanistan and Guinea for asylum seekers; Algeria, Serbia, Morocco for the others
Bulgaria	Afghanistan, Syria, Iraq, Algeria
Denmark	Afghanistan, Morocco, Somalia
Italy	Egypt, Bangladesh, Afghanistan (non asylum seekers); Somalia and Gambia (asylum seekers)
Spain	Morocco, Algeria, Mali and Guinea
United Kingdom	Albania, Afghanistan, Eritrea

Sources: Eurostat and national sources as mentioned in Table 2

⁹⁶ Eurostat, *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded) [migr_asyunaa]*, extracted on 30 April 2014. Eurostat rounds up statistics to the nearest five. Remaining variations between data from national authorities and Eurostat may derive from different definitions used or whether the statistics published by Member states refer to applicants claiming to be children or those considered by the state as children.

2.3 Legal capacity

In all of the countries studied, unaccompanied children only gain full legal capacity at the age of 18. In most states, they can represent themselves in certain legal actions prior to that.

In **Denmark**, the **UK** and **Belgium**, unaccompanied children can submit an asylum application on their own, at any age, and in **Austria** from the age of 14.

In **Belgium**, the asylum application is done with the support of a legal advisor in case no guardian has been appointed yet. Unaccompanied children can also lodge an appeal against a negative decision on their asylum claim with the support of a legal advisor.

In addition, no other steps can be taken without a guardian both in **Austria** and **Belgium**. In the **UK**, where there is no guardianship system, unaccompanied children are only represented by legal advisors.

In all countries the age of majority is 18 but children may have some limited capacity to act prior to that:

- In **Austria**, until the 1st of January 2014, children above 16 years old were deemed legally capable for certain procedures, including those under the Immigration Police Law such as return and detention. This meant they could have a legal advisor but did not have a guardian. Following an amendment of the law, all unaccompanied children now have to be represented in asylum and migration procedures.
- In **Bulgaria**, children under 14 have very limited legal capacity: almost all legal actions can only be taken with the consent of a guardian.
- In **Spain**, unaccompanied children above 16 years old are able to access the courts and appoint a lawyer to represent them in judicial proceedings. Conversely, in the asylum procedure, children must be represented by a guardian throughout the procedure.
- In **Italy**, criminal responsibility can be assigned from the age of 14 but it is determined on a case-by-case basis. In asylum and migration procedures, unaccompanied children need a guardian for all legal actions.

The issue of legal capacity is not clearly addressed in Danish legislation. An unaccompanied child has the capacity of taking most decisions and legal actions, such as to submit an asylum application or to submit legal statements. However, a guardian has to be present for all legal procedures during the processing of an asylum claim. During an asylum interview, the maturity of the child is evaluated by the Danish Immigration Service's case workers, to assess whether the child can form their own views and are able to understand the procedures. Children above the age of 15 are generally considered to be "mature", while children under the age of 12 are usually considered "immature". Yet, decisions are always made on an individual basis. If a child is considered "immature", their asylum case is closed and they may get a temporary residence permit. The asylum application is then examined once they are mature enough, and at the latest when they turn 18.⁹⁷ In addition, the legal guardian has responsibilities similar to those of parents and can take decisions against the child's wish if it is considered to be in their best interest – mainly on accommodation and social issues.⁹⁸

⁹⁷ Most unaccompanied children arriving in Denmark are older than 15 and very rarely declared "immature".

⁹⁸ Stakeholders interviewed noted that the child would still be consulted and the issue discussed. In the stakeholders' experience such a case has not happened with regard to the asylum procedure but it does happen more regularly on reception related issues.

The concept of maturity is also relevant to the Spanish system. Children must always be heard in proceedings if they are deemed to be mature enough by the judge and they have a right to take decisions. Yet, the guardian and the prosecutor must ensure the decisions are in their best interest. In case of a conflict of interests between the guardian and the child they can be appointed a *guardian ad litem* by the judge.

2.4 Main procedures unaccompanied children go through

2.4.1 Asylum and residence permits procedures

The vast majority of unaccompanied children go through an asylum procedure in **Austria, Bulgaria, Denmark** and the **United Kingdom**.

In **Austria**, unaccompanied children can also get a residence permit for “special protection” based on a best interest assessment and if the child is permanently in the care of foster parents or the youth welfare authorities. However, as of January 2014, it is no longer possible to apply for this permit after a final negative decision on an asylum claim. Prior to January, unaccompanied children were only eligible for this permit if they had not been issued an expulsion order (for example based on criminal charges) together with a final negative decision.

In the rare case that an unaccompanied child does not apply for asylum, in **Bulgaria**, they may apply for a residence permit.

In **Denmark**, asylum applications from unaccompanied children may be processed under a so-called “manifestly unfounded procedure”. This happens when the Immigration Service considers that there are no obvious grounds for international protection in the asylum claim. Under this procedure, the Danish Refugee Council (DRC) is responsible for providing an independent assessment on the merits of the case. Appeal on the decision of the Immigration Service after DRC’s assessment is only possible in cases where DRC considered the case was not unfounded.

A third country national who has applied for asylum in **Denmark** can also be granted a residence permit on humanitarian grounds or if return is not possible.⁹⁹ In addition, unaccompanied children can be granted two other types of residence permits:¹⁰⁰

- If a child is considered too “immature” to go through an asylum procedure they can be granted a temporary residence permit, up to their 18th birthday.¹⁰¹
- In case of a negative decision on their asylum application, unaccompanied children can be granted a temporary residence permit, until their 18th birthday, on the ground that they would find themselves in a “*de facto* emergency situation” upon return to their country of origin. This is based on an evaluation of the child’s access to family or relatives present in the country of origin, the state care available and whether they would have to provide for themselves without external support.¹⁰²

⁹⁹ This is provided, respectively, in section 9b(1) and section 9c(2) of the Danish Aliens Act.

¹⁰⁰ Section 9c (1) of the Alien Act foresees a third residence permit possibility, but this applies only to unaccompanied children who arrived in Denmark prior to January 1st, 2011 and can be granted only in exceptional circumstances.

¹⁰¹ Based on section 9c (3)(i) of the Alien Act

¹⁰² Based on section 9c (3) (ii) of the Alien Act. A legislative amendment entered into force on the 1st of January 2011 which means that a residence permit given in accordance with 9c (3)(ii) will be extended only up until the age of 18. Unaccompanied minors who applied for asylum before the 1st of January 2011 will still have the possibility of having their permit extended beyond the age of 18.

In the **UK**, unaccompanied children almost always apply for asylum. If an unaccompanied child's asylum application is rejected, in theory, they could be returned based on an assessment of reception arrangements existing in their country of origin. In practice, a procedure for such an assessment has not been developed and unaccompanied children are routinely granted a temporary residence permit, valid for three years or until the child reaches the age of 17 and a half. They can then apply for further leave and are protected against forced return until they are 18.

In **Belgium** and **Italy**, unaccompanied children generally go either through an asylum procedure or through a residence permit procedure.

In **Belgium**, where about half of the unaccompanied children do not apply for asylum, they have several other possibilities to obtain a residence permit: 1) apply for a residence permit based on humanitarian or medical reasons; 2) be recognised as victims of human trafficking and accordingly receive status on that basis, 3) apply for a specific residence permit for unaccompanied children. The latter is the most common procedure for unaccompanied children who do not apply for asylum. This procedure, which is regulated by the Aliens Act (Art. 61/15), offers the possibility for an unaccompanied child to get a temporary and renewable residence permit based on their best interest and the finding of a durable solution.¹⁰³ The permits granted are usually valid for one year, renewable up to a total of three years. Then the child may be granted a permanent residence permit.

In **Italy**, when an unaccompanied child does not apply for asylum, they can obtain a residence permit based on them being under the age of 18. Permits are issued by the Questura (immigration police headquarters), after the police have notified the General Director of Immigration and Integrations of the Ministry of Labour of the child's presence on the territory. This residence permit can later be converted into a residence permit for study or work purposes. If the child attended an integration project that lasted at least two years and they have been in **Italy** for no less than three years, the conversion should be requested directly to the "Questura". In case these requirements are not met, the opinion of the General Directorate, which is binding, should be sought.

In **Spain**, the vast majority of unaccompanied children do not apply for asylum. Unaccompanied children under the guardianship of the Child Protection Services are automatically considered as legally residing in **Spain**.¹⁰⁴ However, a return procedure is also normally initiated. After nine months and if return is not deemed possible, unaccompanied children can apply for temporary residence permits, through the Child Protection Service (which act as guardians).¹⁰⁵ Temporary residence permits are valid for one year and are renewable until the child is 18. A worrying practice was noted in Ceuta and Melilla where unaccompanied children are not always granted a residence permit and if a child is detected there when they are close to turning 18, it is unlikely in practice that a residence permit application is submitted. The decision can be appealed and the Public Prosecutors can themselves take action against the inactivity of the guardians or contest the lawfulness of a negative decision. After 18, residence permits are granted, provided the person has sufficient financial resources or an offer of employment. Returns of unaccompanied children in **Spain** have been halted, in practice since 2009, following a judgment from the Constitutional Court.¹⁰⁶ It has to be noted that very few unaccompanied children seek asylum in **Spain** and several NGOs and UNHCR are concerned that unaccompanied children that

¹⁰³ See specifically the Law of 12 September 2011 modifying the law of 15 December 1980 on access to the territory, stay, residence and return of foreigners, with a view to grant a temporary residence permit to the unaccompanied foreign minor.

¹⁰⁴ Article 35.7 of the Aliens Organic Law (LOEX)

¹⁰⁵ Stakeholders disagree on the interpretation of the 9 months time limit. While NGOs, UNHCR, Bar Associations and the Prosecutor General Office consider that the residence permit should be granted within the 9 month period, the authorities and the guardians consider that residence permit applications should be submitted just after that 9 months period has elapsed.

¹⁰⁶ Spanish Constitutional Court, case 183/2008, 22 December 2008, see ECRE and Save the Children, [Comparative Study on Practices in the Field of Return of Minors](#), December 2011.

may be in need of international protection are not properly informed of the possibility to seek asylum or not referred to the competent authorities.¹⁰⁷

2.4.2 Age assessment

Age assessment is the process by which authorities seek to determine the chronological age of a young person, usually to assess whether the person should be treated as an adult or a child. EU States use a variety of methods to establish a person's age. This process is referred to as the "age assessment procedure" in this report.

In all seven countries studied but **Bulgaria**, unaccompanied children are likely to go through an age assessment procedure when identified.¹⁰⁸ There is an age assessment procedure in place in **Bulgaria**, which consists of an x-ray of the wrist, but it is rarely applied. According to the State Agency for Refugees, most unaccompanied children are given the benefit of the doubt. However, NGOs and UNHCR mentioned that the procedure is rarely applied because it is costly and the results are not binding for the Court.¹⁰⁹ The results of the age assessment cannot be contested, except during appeals against a negative decision on an asylum claim or against return or detention.

In **Spain**, it is the responsibility of the Public Prosecutor Office to decide whether to initiate an age assessment procedure or not, after a referral from the Police. In many areas of the country, unaccompanied children are routinely subjected to age assessment procedures. Various stakeholders argue that the age assessment procedure established under Article 35 of the Aliens Law¹¹⁰ should only be applied to young people without any documents establishing their age. Nevertheless, the Public Prosecutor Office's considers as undocumented any person without an official identity document or whose ID is considered false or possibly forged. A notable exception to this rule is that children thought to be victims of trafficking are never subjected to an age assessment procedure.¹¹¹ Different procedures are used throughout the country but it generally consists of one or more of the following methods: x-ray of the wrist, x-ray of the collarbone, dental examination and sexual maturity examination.¹¹² Results of the age assessment procedure cannot be contested as such, except in Barcelona. Only the cessation of the guardianship, which happens as a result of the young person being declared an adult, can be appealed in court. All unaccompanied children are also fingerprinted and photographed in order to be added to the Register for Unaccompanied Children.¹¹³

In the **UK**, by policy and practice, if an unaccompanied child does not have documents proving their age, their age should be determined by social workers. The assessment usually consists in an interview

¹⁰⁷ Stakeholders interviewed mentioned the lack of awareness on the asylum procedure and international protection status among guardians and other actors in contact with unaccompanied children as one of the reasons for the insufficient information.

¹⁰⁸ For further information on age assessment methods and practices throughout the EU, see EASO, [Age assessment practice in Europe](#), December 2013 and SCEP, Review of current laws, policies and practices relating to age assessment in sixteen European Countries, May 2011.

¹⁰⁹ See Judgment of 09 November 2009 of the Supreme Administrative Court of the Republic of Bulgaria in case No.7749/2009, available online in Bulgarian language [here](#).

¹¹⁰ Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, LOEX (Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and on their integration).

¹¹¹ See "[Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos](#)" (Framework Protocol to protect victims of Human Trafficking). Available also in [English](#) and [French](#).

¹¹² For more information on age assessment in Spain, see the Spanish Ombudsman's (Defensor del Pueblo) report: [Menores o Adultos. Procedimientos para la determinación de la edad \(Minors or Adults. Age assessment procedures\)](#), 2011. Conclusions and recommendations in English are available [here](#);

¹¹³ The Register is a database managed by the Police where every unaccompanied child referred to the Public Prosecutor is registered. See [Instrucción 1/2012, de 29 de marzo de 2012, sobre la Coordinación del Registro de menores extranjeros no acompañados](#) (Instruction of 29 March 2012 on the coordination of the register for foreign unaccompanied minors).

looking at cognitive, behavioural, developmental and visual elements. Age assessment practices remain varied and there is no statutory guidance on how to assess the age. Age assessment decisions can be challenged through judicial review and must be done with the support of a legal advisor.

The Danish Immigration Service and the Refugee Appeals Board can decide at any moment of the procedure to subject an unaccompanied child to an age assessment in case of doubt on their age. The age assessment comprises different medical examinations: wrist and teeth x-rays, dental observation and physical development assessment. The decision can be appealed before the Ministry of Justice, though in practice it is very difficult for the child to contest such decisions unless they have recognised identification documents to prove their age.

In **Belgium**, if there is doubt as to the age of the unaccompanied child, the Guardianship service carries out a medical examination (a so-called “triple medical test” including examination of the teeth and x-ray of the hand and wrist and collarbones), which takes a margin of error of two years into account. The lower age is then taken into consideration. The decision can be appealed within 60 days after notification of the decision of majority before the Council of State, the highest administrative court.

Similarly, an age assessment can be initiated, in **Italy**, at any stage of the asylum and migration procedures, if there are doubts about the young person’s age (e.g. lack of identification documents, no possibility to verify the age through consular representatives, dispute on the claimed age).¹¹⁴ Age assessment is usually based on an x-ray of the wrist but other medical methods may also be used, such as dental observation, sexual maturity examination or physical development examination by a paediatrician.¹¹⁵ The results of the age assessment can only be contested through measures taken as a result of the young person being declared an adult, such as a return decision.

Age assessments can be ordered at any stage of the asylum and migration procedures by the Federal Asylum Agency, the Asylum Court or the Immigration Police in **Austria**. The law stipulates that an age assessment should only be initiated at last resort, if there is doubt about the unaccompanied child’s age and they have no documentary evidence to prove their age.¹¹⁶ In practice, an age determination is not always undertaken at last resort. The vast majority of age assessments are carried out during the admissibility stage of the asylum procedure. The assessment mostly relies on an x-ray of the wrist, a medical and dental examination, which can be complemented by a further CT scan of the collarbone. The declaration of majority is made through a procedural instruction (*Verfahrensanordnung*) which cannot be appealed. The results of the age assessment can only be contested together with an appeal against a negative decision on an asylum application, which is concern for a number of stakeholders.¹¹⁷

¹¹⁴ Article 19 (2) of the Legislative Decree 25/2008 regarding the ‘Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status,’ and article 2 of the Circular on the identification of migrant children, adopted by the Minister of Interior on 9 July 2007 (Circolare Ministero dell’Interno, 9 luglio 2007 - Identificazione di migranti minorenni.)

¹¹⁵ The necessity to use an integrated method in carrying out age assessments was emphasised in the ‘Guidance on age assessment –the so-called Ascone Protocol’- which was published in 2009, but has not yet been adopted by the competent authorities.

¹¹⁶ Asylum Act (*Bundesgesetz über die Gewährung von Asyl*) and Alien Act (*Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil*)

¹¹⁷ For legal arguments on this point see Daniela Lukits, Rainer Lukits, *Die Alterfeststellung im österreichischen Asylverfahren* (The age determination in the Austrian asylum procedures), *MigraLex : Zeitschrift für Fremden- und Minderheitenrecht*, vol. 9, pp 17-26, 2011

2.5 Guardianship of unaccompanied children and the guardian's role

Unaccompanied children come in contact with a wide range of actors, such as guardians, legal advisors, social workers, reception centre staff, NGO staff, medical and psychological experts, national authorities' caseworkers or police staff.¹¹⁸ The guardian usually plays a central role in ensuring protection and care for unaccompanied children. Research also indicates that guardians play a central role in accessing legal assistance. Yet, the qualifications, functions and extent of the responsibilities of guardians vary between countries.¹¹⁹

In **Belgium, Bulgaria, Italy** and **Spain**, guardianship is entrusted to a single entity, an independent body or governmental authority or an assigned individual. In **Austria** and **Denmark**, the guardianship system is divided into different levels. There is no guardianship system in the **UK** and instead other actors such as social workers support children in the process.

In **Austria**, guardianship of unaccompanied children is divided into two levels.¹²⁰ Asylum seeking unaccompanied children accommodated in the initial reception centre are appointed a legal advisor, who also acts as a temporary guardian (called "legal representative"), as soon as they applied for asylum and for the duration of the asylum admissibility procedure. Two organisations (*ARGE Rechtsberatung* and *Verein Menschenrechte Österreich*) are currently contracted by the Ministry of Interior to provide legal advice and representation to unaccompanied children during that phase. Once admitted to the asylum procedure, unaccompanied children are transferred to a youth care centre in one of the Federal provinces, where the local Youth Welfare Authorities take on guardianship after a decision of the Court. For asylum seeking and non-asylum seeking unaccompanied children outside the initial reception centre, the practice is not consistent: in some cases legal representation is exercised by the legal advisor and in other cases by the Youth Welfare Authorities. Until the 1st of January 2014, unaccompanied children above the age of 16 subject to procedures under the Aliens Police Law, such as detention or return, did not receive legal representation those procedures. This has now changed and unaccompanied children are now appointed a legal advisor that acts as a temporary guardian. Legal advisors acting as temporary guardians only represent the child in the procedures and do not have full custody of the child.

In **Belgium**, each child is appointed an individual guardian by the Guardianship Service (Service des Tutelles).¹²¹ Guardians assist and represent the child in all legal actions and procedures related to access to the territory, residence permit, return, international protection application and relevant appeals, as well as any other administrative or judicial procedures. Guardians also ensure that the child is legally represented during these procedures through the appointment of a qualified lawyer and they take part in interviews and hearings of the child by authorities and courts. Guardians can be "professionals" (NGO's employees) or "volunteers" (individuals who become guardians as independent workers and can take up maximum two guardianship duties per year). In rare cases, a

¹¹⁸ See the upcoming report and tools to be published as part of the CONNECT project, coordinated by Save the Children Sweden.

¹¹⁹ See also Fundamental Rights Agency, [Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking](#), June 2014 and DCI Netherlands (ed.) [Core Standards for guardians of separated children in Europe : Goals for guardians and authorities](#), 2011 .

¹²⁰ Guardianship at the first level is regulated by the Asylum Act (AsylG) and at the second level by the Austrian civil code (Allgemeines Bürgerliches Gesetzbuch)

¹²¹ See 2002 Guardianship Act (Loi-programme du 24 décembre 2002 sur la tutelle des mineurs non accompagnés. M.B. 31 décembre 2002) The Royal Decree of 22nd December 2003 (Arrêté royal du 22 décembre 2003 portant execution du Titre XIII, Chapitre 6 "Tutelle des mineurs non accompagnés" de la loi-programme du 24 décembre 2002) set the requirements to become a guardian.

temporary guardian can be appointed if there is a doubt about the child's age and the child requires immediate assistance in an emergency situation.

In **Bulgaria**, even though guardianship is provided by law, in practice guardians are not appointed to unaccompanied children. By law, children deprived of parental care fall under the guardianship of the director of the specialised institution where they reside, such as orphanages or detention centres for delinquent children.¹²² However, foreign children are rarely placed in orphanages and reception centres for asylum seekers, managed by the State Agency for Refugees (SAR), are not considered "specialised institutions". Furthermore, the SAR considers that it would create a conflict of interest for their staff to act as guardian as they are also the determining authorities in the asylum procedure. The law foresees the possibility for a guardian to be appointed by the Mayor of the city of residence of the child for children not housed in "specialised institutions". To that effect the SAR sends a formal letter to the Mayor's Office requesting a guardian to be appointed, However, Mayors systematically ask for the SAR to propose a volunteer guardian, while the SAR considers the Mayor to be responsible for finding those volunteers.

For unaccompanied children who do not seek asylum, the Law on Foreign Nationals in the Republic of **Bulgaria** foresees that the State Agency for Child protection temporarily ensures "appropriate guardianship". However, as all unaccompanied children apply for asylum, they do not fall under this provision. Social workers from the Child Protection Directorate of the Agency for Social Assistance assume limited representation of the child in the asylum procedure. In practice, the question of representation of unaccompanied children has reached a deadlock and children are not appointed any guardian responsible for their general care and exercise legal capacity for the child.

In **Denmark**, the guardianship system is composed of three different levels. The Regional State Administration appoints a guardian (called a "personal representative"), as soon as possible, following referral from the Danish Immigration Service. The guardian is selected based on a "recommendation" from the Danish Red Cross, from a pool of volunteers. Prior to the appointment of this guardian by the Regional authorities, unaccompanied children are represented in the asylum and migration procedures by a so-called "observer (*bisidder*), who is a professional employed by the Red Cross. Observers also assume guardianship if no volunteer can be found, if the child is very young, during a Dublin procedure, if the child is thought to be trafficked, is detained, or in other difficult situations where additional support is needed. The guardian is responsible for safeguarding the child's best interests and providing guidance with regards to asylum or migration related procedures and the role of the Danish authorities. The guardian is mainly involved in the residence permit procedure but also supports the child on a more personal level. The roles of "observers" and "personal representatives" are broadly equivalent, though observers cannot exercise parental authority over the child and children are not appointed a specific observer: they can therefore meet with different observers. Once a child is granted a residence permit (including based on the granting of international protection), the regional authorities appoint the child with a "legal guardian".¹²³ Both types of guardians have similar roles and duties and sometimes the "personal representative" is appointed later as a "legal guardian".

In **Italy**, the guardian is a central figure in the child protection system. The guardian is appointed by a guardianship judge. The guardianship is usually formally assigned to the Mayor of the city where the child resides, with daily tasks of guardians undertaken by individual staff members of relevant municipal departments. The guardian should be appointed as soon as the guardianship judge is informed about the situation of the child¹²⁴ or within 48h after referral from the Immigration Police in

¹²² According to article 173 of the Family Code, there is no appointment of a guardian, but the centre director acts as a guardian *ex lege* (without the need for explicit appointment).

¹²³ While the appointment and role of the first guardian (legal representative) is regulated by the Danish Aliens Act (par. 56), the appointment of the "legal guardian" is regulated by the Parent Liability Act (par. 28).

¹²⁴ Article 43 of the Regio Decreto of 30 March 1942, n. 318 (Disposizioni per l'attuazione del Codice Civile e disposizioni transitorie disp. Att. Cc.).

the asylum procedure.¹²⁵ In practice, appointments of guardians are often delayed for several weeks.¹²⁶ On occasion, 17 year old children are not appointed a guardian in time before turning 18. In addition, one person can be responsible for a large number of children. In Rome for instance, a guardian is generally responsible for 80 to 100 children (including Italian nationals). The workload of guardians is less important in smaller municipalities. Until a guardian is appointed the head of the reception centre where the child is accommodated may legally represent the child in a limited number of matters, even if, in practice, a guardian is required to complete almost all procedures concerning unaccompanied children.¹²⁷ Guardians are in charge of the care of the child but also legally represent the child in all their interactions with public institutions. With regards to migration and asylum procedures, this includes the registration of an asylum claim, accompanying the child to the asylum interview or collaborating with the social workers of the child's reception centre on the submission of residence permit application.¹²⁸ The presence of a legally appointed guardian is compulsory to formally register an asylum claim ("formalisation of the claim")

In **Spain**, when an unaccompanied child is detected, for instance by the police, they are referred to their local Child Protection Services of the Autonomous Community and the Public Prosecutor is informed so as to start an age assessment procedure. Child Protection Services are entrusted with the child's guardianship but in practice, actual custody is delegated to public or private children's accommodation centres (children's shelters).¹²⁹ The heads of the children's shelters (or sometimes social workers from the centre) perform in practice the duty of a guardian, representing the child in the various procedures and making contact with the relevant authorities. The legal guardian (Child Protection Services) is responsible for the protection and promotion of the best interests of the child, ensuring the child receives proper care and access to education. In addition, only guardians are allowed to request a resident permit for the child.¹³⁰

The law does not provide for a guardian to unaccompanied children in the **UK**, though in Scotland, the Scottish Guardianship Service provides an adult who assists the child in immigration and welfare matters but does not assume legal capacity. Unaccompanied children are instead assisted by a number of actors, for different situations: social workers, "responsible adults", legal advisors, advisers from the Refugee Council Children's Panel, etc. However, none of those actors exercises full responsibility for the child's welfare and representation. The closest professional role to a guardian is the social worker appointed by the local authority overseeing the care of the child and in practice promotes and safeguards the child's welfare.¹³¹ The day-to-day care of the child is usually delegated to foster caregivers, employed by the local authority or a private agency.¹³²

¹²⁵ Article 26 (5) of Legislative Decree 25/2008.

¹²⁶ A time limit of 48h following the referral of the case to a judge by the Police Immigration Office (Questura) is provided for asylum seekers. For other unaccompanied children, the law stipulates that a guardian should be designated as soon as the judge is informed of the situation of the child.

¹²⁷ The authorities that come in contact with an unaccompanied child or the head of the child's reception centre (within 30 days after the child's arrival) can request the appointment of a guardian to the judge. See more information in France terre d'asile, *The reception and care of unaccompanied minors in eight countries of the European Union*, 2010 and UNHCR, *opus cite*

¹²⁸ For more information see UNHCR, [Protecting children on the move](#), July 2012, at p. 25, or Save the Children Italy, [La situazione dei minori stranieri non accompagnati in Italia](#)

(The situation of unaccompanied foreign minors in Italy –Figures and accounts), July 2013.

¹²⁹ The guardianship system for unaccompanied children is the same than for Spanish children and is regulated by the Civil Code and the Civil Procedural law (Código Civil y en la Ley de Enjuiciamiento Civil).

¹³⁰ This is according to regional and state authorities since other stakeholders interviewed consider legal advisors should be allowed as well to request that permit.

¹³¹ The role of the social worker is regulated by the 1989 Children Act.

¹³² See France terre d'asile, [Right to asylum for unaccompanied minors in the European Union](#), 2012

2.6 Overview of legal assistance systems

This section provides an overview of the general legal assistance system for all migrants and asylum seekers in the seven countries studied and how it applies more specifically to unaccompanied children. Further details on access to legal assistance for unaccompanied children and the scope of assistance provided are included in the relevant sections of this report.¹³³

In all the countries studied except **Belgium** and the **United Kingdom**, legal assistance is generally divided between a first level assistance, that can be provided by various types of organisations, including NGOs and a second level (usually for appeals or representation in Court) where only registered lawyers are able to provide assistance. In **Belgium**, as explained below, there are also two levels of assistance, but the distinction lies in the providers and scope of assistance more than the type of procedures concerned.

Legal assistance provided by NGO's is dependent on project funding, and therefore not always sustainable, in **Bulgaria, Italy** and **Spain**. In **Austria** and **Denmark**, organisations are funded by State authorities based on contracts.

In all countries, legal assistance to migrants and asylum seekers (including children) forms part of the general state funded legal aid system. Access to state funded free legal assistance may be restricted on conditions of financial resources or on a case's prospects of success –so-called means and merits testing. Most countries apply means and merits test to the provision of free legal assistance in asylum and migration cases, especially legal assistance for appeals, although those tests are not always applied to unaccompanied children.¹³⁴

While legal advisors are automatically appointed in some procedures in **Austria** and **Denmark**, in the majority of the countries migrants and asylum seekers need to submit applications to receive free legal assistance, usually at the appeal phase. In **Bulgaria**, filing an application for legal aid without assistance and the absence of information on the procedure to do so constitutes an important barrier to access to legal assistance.¹³⁵

A short overview of the system in each of the seven countries is presented below.

2.6.1 Austria

In **Austria**, every asylum seeker has a right to free legal assistance during the admissibility asylum procedure¹³⁶ and is assigned a legal advisor. The role of the legal advisor is to inform the asylum seekers about the procedure. They can also take part in the interviews with the authorities. As far as unaccompanied children are concerned, the legal advisor also acts as a temporary guardian (called legal representative) in the admissibility procedure for the child. They assume this role until the child is placed under the care of the Youth Welfare Authorities.

After the admissibility procedure, legal advice is also provided for free during the regular asylum procedure, at the offices of the Federal Asylum Agency (Bundesasylamt – BAA). This legal advice is

¹³³ Further information on legal assistance systems in a number of European countries can be found in the country overviews of the [European Asylum Law Database](#) (EDAL) and in the national reports of the [Asylum Information Database](#).

¹³⁴ see section on Access to legal assistance

¹³⁵ see section on Access to legal assistance

¹³⁶ Every asylum seeker in Austria first has to go through an admissibility procedure that will determine if the merits of the claim will be examined in Austria. During this procedure, asylum seekers are accommodated in the initial reception centre-EAST. For more information on the asylum procedure in Austria, see Asylum Information Database, *National Country report Austria*, [overview of the procedure](#), June 2014

co-funded by the European Refugee Fund (ERF) and Ministry of the Interior. One association “Verein Menschenrechte Österreich” (Human Rights Association Austria) is entrusted to provide this legal advice in six out of seven BAA branch offices, while Caritas Styria provides legal assistance in one BAA branch.

The availability of free legal assistance at the appeal stage, as well as for procedures under the Aliens Law (e.g. for procedures related return and detention) was introduced in 2011 by an amendment to the Asylum Act.¹³⁷ Legal advisors are automatically appointed and asylum seekers are notified of the organisation appointed together with the negative decision on their asylum application.

Legal assistance in the admissibility procedure, the regular asylum procedure and appeal procedure under the Aliens Law is provided by two organisations contracted by the Federal Chancellery, “Arge Rechtsberatung” and “Verein Menschenrechte Österreich”.

This legal assistance is mostly limited to legal advice and does not include representation before the Asylum Court. In addition, for procedures before the Administrative High Court and Constitutional Court, legal representation can only be provided by registered lawyers. However some NGO’s are able to provide legal representation before the Asylum Court and two projects offer pro bono representation by a lawyer in front of the other courts.¹³⁸

Some NGO’s, such as Caritas, Asyl in Not or Volkshilfe also provide some legal assistance to asylum seekers but it is limited.

2.6.2 Belgium

Free legal assistance to asylum seekers is guaranteed by the Aliens Act (*Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*) at every stage of the procedure and in all types of procedures related to asylum and migration. For unaccompanied children, the right to free legal assistance extends to all migration and asylum procedures.

The system of legal assistance is regulated by the Judicial Code (*Code judiciaire*) (Art. 508/1 to 508/19bis) and by a series of decrees.¹³⁹ The system is run by the State and funded by the Ministry of Justice¹⁴⁰.

The system is divided into two parts commonly referred to as “first line” and “second line” legal assistance. “First line” assistance consists of initial legal advice provided to anyone for judicial and administrative procedures, including asylum and migration, free of charge. Assistance is limited to the provision of practical information, simple legal advice or referral to a “specialised organisation or instance”, such as NGO's or lawyers registered at the bar associations. First line legal assistance is coordinated by local Legal Assistance Commissions (*Commissions d'Aide Juridique*), which operates

¹³⁷ [Bundesgesetz über die Gewährung von Asyl, StF: BGBl. I Nr. 100/2005](#) – AsylG (Federal Law concerning the granting of Asylum)

¹³⁸ *Rechtsschutz für Flüchtlinge am Asylgerichtshof* (Legal Protection for Refugees at the Asylum Court) and “*Netzwerk Asylanwalt*” (Network Asylum Lawyer) offer legal representation in hearings before the Asylum Court or for complaints at the High Courts. The former project is run by Caritas Austria and aimed at all asylum seekers. More information (in German) can be found [here](#). The Network, also coordinated by Caritas Austria consists of pro bono lawyers and is run in cooperation with a number of Austrian NGOs. See the Network’s website [here](#).

The Royal Decree (18 December 2003) establishes the conditions for second line legal assistance and legal aid fully or partially free of charge)¹³⁹. The Ministerial Decree (5 June 2008) establishes the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge.

¹⁴⁰ The fee is paid by the Office of Legal Assistance (Bureau d'Aide Juridique), which is financed by the Bar Associations that receive subsidies from the Ministry of Justice.

under the auspices of the bar. Legal Assistance Commissions are composed of members of the local bar, members local social welfare organisations and members of other organisations providing legal assistance. Although those commissions should be operating in every judicial district, in the asylum field, only very few are actually functioning in practice. First line assistance can also be provided by a variety of actors, including NGO's.

If it is thought, during the first legal assistance, that additional assistance of a lawyer is required, then the person will be directed to the Legal Aid Offices (*Bureaux d'aide juridique*) in order for a lawyer to be appointed and the person to benefit from "second line legal assistance". This assistance includes legal advice and representation. "Second line" assistance can only be provided by lawyers, registered on a dedicated list at the Bar Associations. The Legal Aid Offices organise the second line legal assistance. Whereas in many countries, state funded legal assistance is divided between the stages of a procedure, in Belgium, the division rather refers to the type and scope of the assistance provided. Thus, "second line" assistance is also available in a number of procedures at first instance.¹⁴¹

While first line assistance is free for anyone in judicial proceedings, some conditions apply to the provision of second line legal assistance, such as a resource criteria. Adult asylum seekers and adults in detention are considered to be without resources, unless the contrary can be proven (refutable presumption). Children (accompanied and unaccompanied) are always entitled to free legal assistance as the presumption of being without resources is *irrefutable*.

The Belgian government had put forward an important reform of the overall legal aid system in 2013, which was subsequently abandoned. This proposal would have rendered access to legal assistance more difficult, in particular to migrants and asylum seekers. The plan foresaw among others the inclusion of a minimum access fee and more strict means testing.¹⁴²

2.6.3 Bulgaria

The general legal assistance system, funded by the State, is regulated by the Law on Legal Aid (Закон за правната помощ). According to the Law on Child Protection (Закон за закрила на детето), unaccompanied asylum seeking children are entitled to legal assistance.

Free state legal assistance is available for appeals in front of the courts.¹⁴³ Prior to the March 2013 amendment of the Law on Legal Aid, asylum seekers and migrants without a long term or permanent residence permit were not eligible for free legal aid to prepare documents to submit an appeal (which has to be done in Bulgarian), but only for advice and representation during Court proceedings. Eligibility has now been extended to "children at risk", victims of trafficking, asylum seekers and foreigners to whom a return decision was issued, as well as detained foreigners. Asylum seekers are now entitled to legal assistance at all stages of the procedure. The granting of free legal assistance is in certain cases subject to means testing.¹⁴⁴

Requests for free legal assistance must be submitted, in Bulgarian, to the National Bureau for Legal Aid, or before the relevant court if proceedings have already started. It has to be noted that the updated form to request legal aid, following the amendments of the law of 19 March 2013, was only

¹⁴¹ See the section on the scope of legal assistance.

¹⁴² See: CIRE, [Points sur le projet de réforme de l'aide juridique](#) (Update on the draft reform of legal aid), May 2013.

¹⁴³ The law states that it can be granted 1) to reach pre-trial agreement or bring a case to court; 2) for the preparation of documents for bringing a case to court 3) for representation at hearings 4) for representation during detention by the police

¹⁴⁴ Under the amended Law on Legal Aid, legal assistance including legal advice and preparation of documents to file a case is granted free of charge to victims of trafficking and foreigners under return procedures or detention, provided they do not have resources (means test). No resources criterion is foreseen for "children at risk" and asylum seekers. However, the amended law is not fully implemented to date.

made available on the site of the National Bureau some seven months later, in October 2013 and is only available in Bulgarian.¹⁴⁵ The website also does not provide any information on the right to legal assistance of asylum seekers and migrants. Furthermore, in 2013, the National Bureau budget did not foresee funding for legal assistance to asylum seekers during status determination at first instance.¹⁴⁶

Free state legal assistance is provided by lawyers listed in the National Register on Legal Aid. There is no specific requirement for professional lawyers to be accredited to provide legal assistance.¹⁴⁷

Some legal assistance is also provided by NGOs, under projects. The main NGO providing legal assistance to asylum seekers and migrants is the Bulgarian Helsinki Committee (BHC), which is partly funded by UNHCR. To compensate for the lack of funding for legal assistance to asylum seekers by the National Bureau for Legal Aid, the BHC and the Bureau received funding co-financed by the European Refugee Fund to assist with the provision of legal advice and representation during eligibility interviews and assistance to appeal negative decisions before the court. This project started in April 2014.¹⁴⁸ Other smaller NGO's, such as the Legal Clinic for Refugees and Immigrants, the Center for Legal Aid-Voice in Bulgaria and the Foundation for Access to Rights, also offer legal assistance.

2.6.4 Denmark

Legal assistance in asylum and migration procedures forms part of the general legal assistance system in Denmark. Free legal assistance for asylum seekers is regulated by the Danish Aliens Act (Udlændingeloven)¹⁴⁹, and divided into two levels: legal counselling and advice provided by NGOs, and legal advice and representation provided by private lawyers under the state legal aid system. In addition, although guardians provide information and help unaccompanied children in accessing legal assistance, they are not allowed to offer legal assistance *per se*.

The Danish Refugee Council (DRC) is the main NGO providing legal assistance to asylum seekers in Denmark. Other smaller NGOs are also active in the field, such as 'Refugees Welcome'. Some NGO's are also specialised in specific themes and issues, such as LGBT rights and anti-racism and discrimination, and sometimes provide assistance only to relevant cases.

Legal assistance from DRC is accessible to all asylum seekers (adults and unaccompanied children) through an "open door" policy on Wednesdays,¹⁵⁰ via emails and phone, videoconference, or through visits to reception centres. Since the 1st of January 2014, DRC is also appointed to provide legal assistance to asylum seekers, including unaccompanied children, under a Dublin procedure.¹⁵¹ According to the Danish Alien Act (Section 37 (4)) the Danish Police must inform detained asylum seekers about their right to receive legal advice from DRC. Detained asylum seekers are also allowed to receive unsupervised visits from DRC legal advisors (Section 37 (d)). DRC is however not present in detention centres, and detainees need to contact the organisation in order for a meeting to be arranged. However, unaccompanied children are not often detained.

DRC are an independent organisation but receive funding from the state in order to provide independent legal counselling to asylum seekers in Denmark.

¹⁴⁵ See the form in Bulgarian [here](#).

¹⁴⁶ National Bureau for Legal Aid, 2013 Annual Report

¹⁴⁷ Those lawyers need only to have fulfilled the general conditions to be a private lawyer: to have a law degree, to have passed the mandatory state internship and a respective exam for acquiring lawyer's capacity and to have had two years' experience in law and pass an exam for accessing the Bar.

¹⁴⁸ Bulgarian Helsinki Committee and ECRE, [AIDA National Report Bulgaria](#), April 2014

¹⁴⁹ Section 48a (3) of the Danish Aliens Act.

¹⁵⁰ Every Wednesday from 10 am until 1pm, asylum seekers can come to the DRC offices in Copenhagen to receive legal information and advice.

¹⁵¹ Few unaccompanied children go through a Dublin procedure in practice.

Further free legal advice and representation is provided by lawyers under the state legal aid system in specific procedures or at the appeal stage in the asylum procedure. All asylum seekers have a right to free legal assistance and will be automatically appointed a lawyer for proceedings before the Refugee Appeals Board (RAB) unless they personally select a lawyer from a list of accredited practitioners. The automatic appointment of lawyers also applies to detained asylum seekers and unaccompanied children whose application is channelled through a “manifestly unfounded” (accelerated) procedure.

Unaccompanied children are also entitled to free legal representation during the procedure to be granted a residence permit under section 9c(3)(ii) of the Danish Aliens Act.¹⁵² However, legal assistance by lawyers is not provided during: border procedures, the appointment of a guardian, the age assessment, first instance asylum procedures, return procedures as well as upon the expiration of a temporary residence permit when turning 18.¹⁵³

2.6.5 Italy

Free legal assistance is not provided by law in administrative procedures. Legal counselling is provided by NGOs or lawyers appointed by municipalities, depending on available public or private funds. As far as asylum is concerned, legal assistance is provided mainly within SPRAR (System of Protection for Asylum Seekers and Refugees) centres and some other reception centres, through grants from the National Fund for Asylum, funded by the Ministry of Interior, through local authorities (municipalities or provinces).

In addition, desk information points have been established at the borders to provide information and advice, including to unaccompanied children. Part of that advice includes information on the possibility to seek asylum.¹⁵⁴

The state legal assistance system applicable to unaccompanied children is part of the general state legal assistance.¹⁵⁵ The law foresees free legal assistance of a lawyer during the judicial phase of the asylum procedure as well as in administrative, civil and criminal court proceedings. In practice, assistance by a lawyer is mostly requested to appeal negative asylum decisions, to appeal a return decision in age disputed cases, to convert a residence permit, in issues related to the child’s custody or if the child is facing criminal charges.

The state run legal aid system (*gratuito patrocinio*) is available to adults and unaccompanied children, in criminal, administrative and civil proceedings for those who do not have sufficient financial means.¹⁵⁶ The rules are the same for Italian citizens and any third country nationals, including asylum seekers. The law provides that free legal assistance is granted to those who can demonstrate that they have a yearly taxable income of less than 10,628.16 euros. This should normally be proven through official documentation, including from consular authorities if revenues were

¹⁵² A temporary residence permit for unaccompanied children whose asylum application was rejected but who would be at risk if returned (“in a de facto emergency situation”). See section 2.4.1 – Asylum and residence permits procedures.

¹⁵³ This is considered problematic by a number of NGOs and lawyers. A few lawyers continue to offer assistance, but they have to do it pro bono. The Danish Refugee Council, if contacted, may assist the young person in applying for a residence permit under section 9c (1) of the Aliens Act.

¹⁵⁴ See section on information for further details.

¹⁵⁵ Legislative Decree n.25/2008 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Decreto Legislativo 28 gennaio 2008, n.25)

¹⁵⁶ State funded legal aid is regulated by Presidential Decree 115/2002 – Consolidated rules and regulation on legal costs (*Decreto del Presidente della Repubblica 30 maggio 2002, n. 115, Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia*).

acquired abroad.¹⁵⁷ However, the law states that when a person is not able to obtain the necessary documents they can instead provide a self-declaration of income. In practice, unaccompanied children are usually considered *de facto* without resources. Access to free legal assistance is also subject to a merits test. Assessment of both the means and the merits of a claim are undertaken by the competent Bar Council (*Consiglio dell'ordine degli avvocati*). The tribunal may also revoke the decision from the Bar Council to grant free legal assistance if it considers the merits and means requirements are not fulfilled.

Legal assistance under the *gratuito patrocinio* is provided by lawyers registered on specific lists with the Bar Councils.¹⁵⁸

2.6.6 Spain

The legal assistance system applicable to unaccompanied children in asylum and migration procedures is part of the general legal assistance system and is regulated by the Legal Aid Act (*Ley de asistencia jurídica gratuita*)¹⁵⁹ and its Regulation¹⁶⁰. Free legal assistance is available in asylum procedures, for appeals against a return decision or for remedies against detention, following a means test.

According to the Legal Aid Act, unaccompanied children should be entitled to free legal assistance in all procedures, i.e. the means test is not applied to them, except in some administrative procedures such as age assessment, residence permit at first instance or complaints related to guardianship.

Legal assistance is provided by Bar Associations, through their legal orientation services. There is at least one Bar Association per province. Most Bar Associations have specialised legal assistance units (“pools”) on specific topics, such as victims of gender violence, immigration and children. A few Bar Associations (e.g. Barcelona) have a pool of lawyers specialising in the issue of unaccompanied children. Lawyers providing legal assistance need to be registered with the Bar Association. Qualification or experience requirements, including being part of the specialised pools, depend on each Bar Association. Bar Associations are financed by the Autonomous Communities, by the State if competences in justice matters have not been decentralised or from private funds (e.g. registration fees from lawyers). The level of funding varies from Bar Association to Bar Association.

Legal advice and counselling is also provided by some specialised NGOs under project-based programmes, financed by private donors or under state-run programmes¹⁶¹. In addition, Child Protection Services of each Autonomous Community (Entidad Pública de Protección de Menores) – which acts as a guardian, should have a legal advisor, whose duties include assisting unaccompanied children under their care.¹⁶² Those legal advisors are civil servants attached to a specific Child Protection Service. However, the involvement of those legal advisors in the child’s asylum or migration procedure varies greatly from one region to another.

¹⁵⁷ The law regulating legal aid is not specific to migration and asylum and provides general rules for both citizens and foreigners.

¹⁵⁸ There is a Bar Council in each appeals court’s jurisdiction.

¹⁵⁹ Act 1/1996, of 10th January, on Legal Aid and its Regulation 996/2003, of 25 of July. See text [here](#).

¹⁶⁰ [Regulation 996/2003, of 25 of July](#).

¹⁶¹ E.g. NGOs Fundación Raíces and Fundación la Merced Migraciones in Madrid or Albert Parés in Catalonia provide assistance to unaccompanied children. SOS Racismo also provides legal advice to unaccompanied children. A number of NGOs provide legal advice to asylum seekers, like ACCEM, CEAR, ACSAR, Rescate Internacional, or the Spanish Red Cross.

¹⁶² See section on the scope of legal assistance.

2.6.7 United Kingdom

Provisions for publicly funded legal assistance in asylum and migration procedures in the UK was modified greatly after the adoption of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2012. Changes came into effect in April 2013. Under the new law, free legal assistance is only available for persons (both adults and children), in immigration matters that have applied for asylum or for protection under Article 3 of the European Convention on Human Rights (ECHR). It is also available for immigration matters for victims of trafficking, victims of domestic violence and detained persons. For children, for instance, free legal assistance is not available anymore for procedures related to family reunification or for those seeking discretionary leave under Article 8 of the ECHR (right to respect for private and family life).

In order for legal firms and NGOs to provide legal assistance under the State funded scheme, they must have a contract with the Legal Aid Agency. The contract limits the number of cases that practitioners can take per year (commonly 100 per year per organisation/firm). Legal assistance providers may only operate in a specified geographic area. Legal advisors working with children are not subject to any specific requirements except a requirement to undergo a “Disclosure and Barring Service check” which will divulge offences to their employer.

Provision of free legal assistance is subject to a means test at all stages. At the appeal stage the merits of the case must also be assessed by the legal assistance provider – these tests are subject to an audit to ensure that legal advisors only allow funding for cases that are more than likely to succeed at appeal stage.¹⁶³ In addition, with the changes brought by LASPO, there is now a more stringent test where the age of an applicant is disputed: the decision on whether or not to provide funding for the case as a child (with the special characteristics for those cases) now rests with the government rather than the legal advisor.

Lawyers providing legal assistance under the state system are remunerated based on a fixed fee, for adult cases, while the compensation is calculated on an hourly basis for cases involving children. Remuneration in cases involving children includes attendance at the initial and substantive asylum interviews.

In addition to the general legal aid system, asylum seeking children can receive support and advice from a number of regulated NGOs, however they cannot represent clients before courts. The British Refugee Council provides assistance to unaccompanied children through their Children’s Panel. The Advice Service has been operating since 1994, and aims to provide “holistic” assistance. It includes information and advice on asylum procedures and support securing legal representation before the authorities and courts. They also provide advice to carers and social workers working with unaccompanied children and may accompany the child to their asylum interviews and tribunal hearings. Unaccompanied children are referred to the Panel by a variety of actors (e.g. Home office, local authorities, foster carers, community organisations, etc).

¹⁶³ In Scotland there is no merits test for the first appeal.

Chapter 3. Accessing legal assistance and assessing its quality: practices in seven Member States

3.1 Information on the procedures and right to legal assistance

The first step to ensure unaccompanied children have effective access to legal assistance is to guarantee they are promptly and properly informed of their right to legal assistance and the process by which it can be accessed. It is equally important that they also receive information on the relevant asylum or migration procedure. EU legislation provides minimum standards on legal and procedural information for asylum seekers, as well as on information to be provided by authorities when first making contact with asylum seekers regarding how to lodge an asylum claim.¹⁶⁴ These standards do not address providing information prior to claiming asylum or information for third country nationals who do not claim asylum.

In terms of legal assistance, it is important, in particular, that unaccompanied children receive information on their right to legal assistance, how to access it (through automatic appointment, referral or application), and the role of legal advisors. Guardians, who should be appointed as soon as possible, have a central role to play in the provision of information to unaccompanied children, both on the steps of the procedures and on legal assistance. This information should remain distinct from legal advice provided by qualified professionals.

They shouldn't assume everyone knows about asylum and lawyers and rights – I didn't know anything, just because some people know they should still tell you.

Former unaccompanied child, 21, UK

It is also essential that information be tailored to children and to the specific needs of individuals. It is also essential that providers of information clarify that children understand the information provided and that information is repeated where necessary throughout the procedures.

In practice, information on legal assistance is often provided together with general information on procedures. This section addresses both information provided on procedures and on legal assistance.

3.1.1 Means of information

A number of countries use leaflets or brochures, either general ones or child specific, to convey information on procedures. General leaflets, edited by the authorities or NGOs are available for all asylum seekers in all countries surveyed. However these general information leaflets are not always used (because they are not updated regularly, not widely distributed, etc.) or easily understandable for children. For instance, stakeholders interviewed in **Austria** highlighted that the information leaflet, which is available in 50 languages and distributed to all asylum seekers during the first interview, is written in a complex language, that both adults and children find difficult to understand. In **Bulgaria**, the leaflet has only been recently updated to include an important amendment in the law

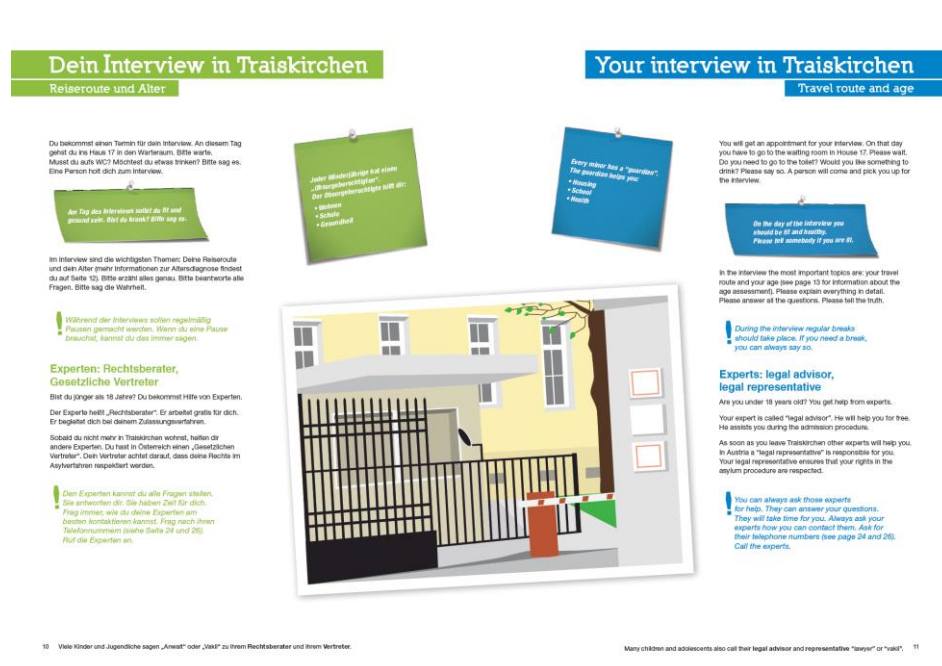
¹⁶⁴ Article 6.1 and 19 recast Asylum Procedures Directive. See also the section on international and European legislation and legal standards.

which was passed in May 2011. In the **United Kingdom** as it is not up-to-date and thus does not contain relevant information, the leaflet is seldom distributed.¹⁶⁵

In **Austria, Belgium, Denmark, Italy, and Spain**, authorities, NGOs or UNHCR have also published leaflets or brochures specifically targeted at unaccompanied children. However, most of those leaflets focus on the asylum procedure and do not cover migration procedures or other related procedures a child may be subject to.

Good practices

In **Austria**, UNHCR developed, as part of a project entitled UBAUM II (support provided to offices during the asylum procedure in relation to claims submitted by unaccompanied children),¹⁶⁶ an information brochure for unaccompanied children on the asylum procedure. The brochure is written in simple language, using questions and answers formulations as well as explanatory drawings and images and it provides simple definitions of key terminology used in **Austria**. The brochure is used by the legal advisors (who act as a guardian in this phase of the asylum procedure in **Austria**) to explain the asylum procedure to the children. At the initial reception centres, legal advisors provide the information brochures to the unaccompanied children before or after the first interview with the police, and brochures are also used as an aid to explain the asylum procedure. The brochure is available in German, English, Farsi/Dari and Pashto. The brochure was developed in 2013, in consultation with a number of organisations and with 50 unaccompanied children. It was first piloted and received positive evaluation by all participants. The brochure was updated in June 2014, to reflect the changes brought by the amendment of the **Austrian** Asylum and Alien Acts in January 2014. However, the brochure is only available in a limited number of languages and print outs are not always available due to limited funding.¹⁶⁷



UBAUM, Your Asylum Procedure in **Austria**, German-English Brochure, pp10-11, 2014

¹⁶⁵ There has not been an up to date leaflet in the UK for a few years. The UK authorities indicate they plan to produce a new one soon, but the foreseen publication date is not known.

¹⁶⁶ The UBAUM I project ran from January to December 2011 and UBAUM II from January to December 2012. The goal of UBAUM II was to build on the results of the research and work carried out in the first phase to further improve the processing of claims from unaccompanied children. See a short summary [here](#).

¹⁶⁷ The brochure is also available online. See the English version [here](#).

A child-friendly brochure also exists in **Belgium**. It was developed by the NGO Platform Minors in Exile (*Plate-forme Mineurs en exil*) and is available in French, Dutch, English, Arabic and Russian. The brochure explains, in a child appropriate way, the various procedures unaccompanied children may go through (including asylum and migration related procedures), the actors they might encounter, and their rights in **Belgium**. The brochure was last updated in 2012. The Platform tries to update it every other year or when there is a change in the procedure.¹⁶⁸ It is distributed to reception centres and many guardians.¹⁶⁹ The Platform also produced a twelve minute DVD explaining the rights of unaccompanied children and the procedures.¹⁷⁰ Moreover, the Belgian authorities (the CGRS –Office of the Commissioner General for Refugees and Stateless Persons) published a comic book in 2008 on the asylum procedure aimed at unaccompanied children. The comic book is used as an alternative method of communication to provide information by following the fictional journey of an unaccompanied child through the asylum process.¹⁷¹ The comic book is designed to be read through illustrations only. Guardians all have a copy and a number of them use it when explaining the asylum procedure in **Belgium** to children. The CGRS also published a specific brochure targeted at female asylum seekers, including girls, which contains information on the asylum procedure as well as information on issues of health, gender equality, female genital mutilation and trafficking.¹⁷² This brochure is given directly to female asylum seekers when they submit their claim. Guardians can also request it for their female ward, but it is not distributed to a wider audience and not provided upon request unless the request comes from a female asylum seeker. In addition to those targeted publications, a number of more general leaflets, brochures and online information are available for asylum seekers in **Belgium**.

In 2012 the Danish Refugee Council published a visual illustration of the asylum procedure in **Denmark** used as a tool to complement oral explanations.¹⁷³



Danish Refugee Council, Visual illustration of the procedure, 2012

¹⁶⁸ Currently, one section of the brochure on the residence permit for unaccompanied children needs to be updated due to recent changes in national law.

¹⁶⁹ The 14 page brochure is not available online but can be ordered from the Platform directly.

¹⁷⁰ The DVD can be ordered to the Platform and is distributed at conferences and trainings. The DVD needs to be updated to reflect the current changes in legislation.

¹⁷¹ The comic book called “Kizito” is available in English, French and Dutch and only upon request to the CGRS.

¹⁷² The brochure entitled ‘Women, girls and asylum in Belgium. Information for women and girls who apply for asylum’ is available in nine languages (Albanian, English, Arabic, French, Dutch, Pashto, Peul, Russian and Serbian). It is not publicly available.

¹⁷³ In 2004 the Danish Refugee Council published a 16 page booklet entitled “Your Way”, available in Danish, Arabic, Sorani Kurdish, Somali, Farsi/Dari, and English, which explains the main procedures unaccompanied asylum seeking children may go through, the actors involved and provides contacts. However the booklet is now outdated.

In **Spain**, some leaflets and information materials have been developed to raise awareness on the asylum procedure although they are not widely disseminated¹⁷⁴ or used in practice.¹⁷⁵ Save the Children and UNHCR published a leaflet targeted at unaccompanied children, explaining in simple terms what a refugee is, what asylum is as well as what to do and where to go. This leaflet is in Spanish, English, French and Arabic.¹⁷⁶ Indeed, most unaccompanied children do not apply for asylum and it is feared some young people in need of protection are not directed to the asylum procedure due to a lack of information on their rights and the procedures available.¹⁷⁷

In **Italy**, Save the Children produced a leaflet targeted at children “on the move” generally, not only those seeking asylum. It explains, in simple terms, basic rights applicable and the actors who may help unaccompanied children in various situations. It explains for instance the specific rights of children, what happens when children do not have identification documents, what happens after the police takes their fingerprints, who they may contact for help, how to claim asylum or what to do if they have a relative in another European country. The leaflet was revised and updated in 2013 to be used in information activities at the borders (see below). It is available in Italian, English, French, Arabic, Tigrinya (Eritrean language), Somali, Farsi and Bengali.¹⁷⁸



Save the Children Italy, Ministry of Interior, Do You Know Your Rights?, 2013

Most of the information is also generally provided orally, by a variety of actors. An NGO stakeholder in **Denmark** noted that providing most of the information orally is beneficial because it enables the adaptation of content to the individual child.

Good practice

The Danish Refugee Council organises group information sessions for newly arrived asylum seekers, including specific sessions for unaccompanied children. The sessions provide initial information but no individual legal advice as such, on procedures, including through the visual illustration described above, as well as some information about what to expect at interviews and hearings and how to contact the Danish Refugee Council legal advisors for further legal advice and the help they can get. For unaccompanied children, sessions are organised on a weekly basis at the reception centre, for groups of one to fifteen participants.¹⁷⁹ Groups are formed by language: at each session only one language is used with one translator. In addition, written information about the open door “legal

¹⁷⁴ UNHCR stated that they try to distribute those leaflets whenever they provide trainings to immigration authorities, staff working with asylum seekers, social services, NGOs, etc. Some NGOs also distribute them when organising seminars or workshops. Yet, this does not fully address the awareness gap on the asylum procedure.

¹⁷⁵ See for example UNHCR, *Menores no acompañados y la protección del asilo (unaccompanied children and the asylum protection)*, 2012. This informative brochure is targeted at professionals who come in contact with unaccompanied children.

¹⁷⁶ An online version of the leaflet is available [here](#).

¹⁷⁷ Concerns have been expressed by NGOs and UNHCR during interviews in the context of this project.

¹⁷⁸ The English version of the leaflet is available [here](#).

¹⁷⁹ At the time of writing this report (July 2014), the sessions have been halted due to limited capacity but DRC plans to resume them as soon as possible.

counselling Wednesdays”¹⁸⁰ and ‘business cards’ with email address, telephone numbers and addresses open are handed out at those sessions.¹⁸¹ The initial guardians of unaccompanied children (so-called ‘observers’ from the Red Cross)¹⁸² also arrange group meetings for newly arrived unaccompanied children on a regular basis. Meetings include explanation about the role of the ‘observers’ and the guardians to be appointed at a later stage, about the procedure, the reception arrangements as well as on legal assistance and persons to contact to access legal assistance.

Save the Children **Italy** has recently set up an online service for unaccompanied children seeking legal information. Children can contact the organisation via email (in Italian, English or French) or through a form on the website, to receive information on their rights and procedural guarantees.¹⁸³ However, only few children have used the platform so far. Those who do mostly ask information on how to obtain a residence permit.

Save the Children Italy also coordinates a European project in partnership with organisations and universities in **Italy**, **Spain**, and Greece entitled CLAIM: Child Law: Action for an Innovative Methodology.¹⁸⁴ The project aims to strengthen children’s access to justice. As part of the project, in **Italy**, a website in Italian was launched, providing information on children’s right and how to access them.¹⁸⁵ It includes information on legal assistance for asylum and residence permits. On the website, a guide targeted at teenagers on their rights is available to download.¹⁸⁶ The guide also provides information on the judicial system. Finally, a web series made by Italian and foreign children on access to justice is also being developed.¹⁸⁷

Furthermore, in the framework of the same project, in **Italy**, in Rome¹⁸⁸ and Madrid, **Spain**¹⁸⁹, free legal counselling offices were opened by Save the Children Italy and La Merced Migraciones, respectively, for children or those working with children. The Rome legal office opened in 2005 and the Madrid legal office in January 2013. It is not only targeted at unaccompanied children, it looks at children’s rights in general. Information about the offices is disseminated through leaflets¹⁹⁰ and websites.¹⁹¹ Save the Children Italy disseminate leaflets about the office in children accommodation centres, hospitals, train stations, etc. They stated, however, that among unaccompanied children, word of mouth about the service seems to be most effective means of information.

3.1.2 Timing of the information provision

In some countries like **Austria**, **Denmark**, and the **UK**, most of the information is provided at the initial stages and additional information may be provided later in the procedures. At the first encounter or first stages, information is often provided by the authorities or the police.

¹⁸⁰ See section on the overview of the legal assistance system.

¹⁸¹ For a short period of time in 2013 those sessions were suspended because of a change of location of the unaccompanied children, a change of staff and a change in the asylum procedure.

¹⁸² See section 2.5 – Guardianship of unaccompanied children.

¹⁸³ <http://legale.savethechildren.it/Generica/Consulenza>

¹⁸⁴ See a description of the project [here](#).

¹⁸⁵ <http://www.claimyourrights.it/>

¹⁸⁶ Save the Children Italy, *Galactic Guide to Ac(knowledge) Your Rights*, 2013. Available in [Italian](#) and in [English](#)

¹⁸⁷ A pilot episode, in Italian, is available [online](#). The series was featured in an article by [La Repubblica](#).

¹⁸⁸ See more information (in Italian) [here](#).

¹⁸⁹ See more information in Spanish [here](#).

¹⁹⁰ Italian [leaflet](#); Spanish [leaflet](#).

¹⁹¹ www.claimyourrights.it and <http://www.lamercedmigraciones.org/tenes-derecho/>

When I arrived, I came to a port. I didn't even know the word asylum, I was only 14 and I didn't know rights and that, I was hungry and tired, I was even thirsty, nobody gave me any drink or said I could rest, they didn't look after me at all, they just asked me questions then used it against me, I was confused and a child. They shouldn't have done it that way.

Former unaccompanied child, 21, UK

In **Austria**, most of the information on the procedure is given at the beginning of the asylum procedure. If unaccompanied children have to go through specific procedures, such as age assessment, they are informed prior to each step. Unaccompanied children seeking asylum are not however, specifically informed about their right to legal assistance. They go through the admissibility procedure upon arrival and legal advisors are appointed automatically. Part of their responsibility is to inform the child about the asylum procedure as well as their own role. For unaccompanied children under procedures ruled by the Immigration Police Law, such as return or detention, the police are obliged to inform the child about their right to free legal advice.

An interview took place the second or third day in Traiskirchen [the initial reception centre]. The interviewer said, there is your legal representative, he is here for you, he protects you and will support you during your procedure. The representative was present during the interview, but he didn't say a word. I neither spoke to my legal representative in the initial reception centre before the interview nor afterwards. The only information I received on the asylum procedure was a leaflet which was given to me by the authority. After the interview I wondered what the purpose of the presence of the legal representative was."

Former unaccompanied child, Austria

Unaccompanied children are mostly informed about procedures at the initial stages in the **UK** but actors other than legal representatives may also provide information at a later stage: decision makers (e.g. during the asylum interviews); social workers (as part of their general duties); the Refugee Council Children's Panel (see below).

In **Italy**, unaccompanied children make first contact with the police or border guards who have a duty to provide them with information, including on the possibility to seek asylum. As provided by the law, NGOs provide information at the main legal entry points, including to unaccompanied children.¹⁹² An example of cooperation between NGOs, Intergovernmental organisations and the authorities is the Praesidium project which started in 2006, at the initiative of the Ministry of Interior, in places where people arrive in Italy by boat (e.g. Lampedusa or Southern Italy coasts).¹⁹³ Partners in the project include UNHCR, IOM, the Italian Red Cross and since 2008 Save the Children Italy. One of the project's activities is the provision of information and initial legal advice to people who just disembarked. Save the Children provides specialised information and assistance to children. They inform newly arrived children about where they are, about the procedures they will go through, such as identification, the possibility to claim asylum, their rights as children (including on guardianship and specific accommodation), etc. However, the capacity of the *Praesidium* project is limited. It does

¹⁹² Article 11(6) of the Consolidated Act 286/98 on Immigration.

¹⁹³ See a summary of the project in Italian, [here](#).

not cover all disembarkation points and does not allow the provision of information to all unaccompanied children arriving by sea.

The effective provision of information may be hampered by the insufficient training (on child friendly language in particular) of authorities or actors likely to provide information, such as police, border guards, or social workers, and by the lack of interpreters. This was raised as a concern particularly in **Austria** and in some cases in **Italy** and **Belgium**.

In **Italy**, research shows that information given is often very general and does not specify the details of the procedure at hand. In addition, the police do not always inform unaccompanied children about the age assessment procedure that they will be subject to. NGO stakeholders interviewed also mentioned that standard terminology is used to provide information and no effort is made to adapt the language to the level of understanding of children. Finally one of the main obstacles to the provision of information is the lack of interpreters and cultural mediators¹⁹⁴ in police stations.

Representatives from the authorities and legal advisors in **Austria** often lack skills and training to be able to effectively convey complex legal information in a child friendly way.

The police or other authorities who may first come into contact with unaccompanied children in **Belgium** do not seem to always be well informed about legal assistance, or do not possess the rights tools, skills and methods to adapt information to children. Therefore, they sometimes provide incomplete or incorrect information that later needs correction, for instance by the guardian or legal advisor.

3.1.3 The central role of the guardian in providing information

In **Austria, Belgium, Denmark, Spain**, guardians have a central role in the provision of information to children even though they are not the only provider of information in the relevant procedure at hand.

In **Austria**, when unaccompanied children claim asylum and are accommodated in the initial reception centre, they are appointed a legal advisor acting as temporary guardian who provides them general information on procedures.

In **Belgium**, it is the responsibility of the guardian to provide information on the procedure the unaccompanied child is going through,¹⁹⁵ be it the asylum procedure or the specific procedure for unaccompanied children.¹⁹⁶ In practice, guardians inform children on the various procedures but also on their rights during the procedure, including their right to free legal assistance. Yet, an NGO legal advisor stated that some children do not seem properly informed because their guardians have not told them they have a lawyer and what his or her role is.

It was noted, in **Denmark**, that the guardian is the only 'stable' contact of the unaccompanied child and is therefore able to provide information throughout the procedures. Yet, guardians are not

¹⁹⁴ Cultural mediators are persons who are usually of the same nationality or ethnic origin as the child and can help the child understand and face the differences between their home culture and the situation in the host country.

¹⁹⁵ Article 11.2 of the Guardianship Act states that the guardian has regular contact with the child, develops a relationship of trust, gets to know the views of the child regarding decisions to be made and explains the consequences of all legal and administrative decisions.

¹⁹⁶ In Belgium, unaccompanied children can be granted a residence permit based on the law on durable solutions (Law of 12 September 2011 modifying the law of 15 December 1980 on access to the territory, stay, residence and return of foreigners, with a view to grant a temporary residence permit to the unaccompanied foreign minor).

allowed to provide legal assistance as such. Their role is to support and guide the child during the various procedures. It was stated that guardians are well informed about the right for children to get legal assistance and how to contact the Danish Refugee Council or appointed lawyers in the relevant procedures. Guardians also have a key role to provide information on procedures and legal assistance for detained children.

The Danish Red Cross edits a manual for their guardians on information to provide unaccompanied children, in particular on the asylum interview. It covers, among other things, the way the interview is conducted, the role of the interpreter and what the child can do if they feel uncomfortable.¹⁹⁷

The centrality of the role of the guardian may raise some issues in the effectiveness of the provision of information: issues might arise in particular related to the delays in the appointments of guardians (or even the absence of a guardian) or when the young people do not meet their guardians early in the procedure or regularly enough.

I have been told I have a guardian. She is appointed by the Children Protection Services, it is all I know. Her name is Ana, I have not seen her.
Unaccompanied child, Spain

In **Austria**, in the admissibility asylum procedure, appointed legal advisors are granted time to meet the child before their first interview with police. Until recently this was not possible and as a result could not explain the procedure and their own role to the children prior to the interview.

In **Belgium**, during the so-called reception crisis,¹⁹⁸ there were significant delays in the appointment of guardians. Unaccompanied children accommodated in reception centres received information on procedures and their right to legal assistance from social workers working there, but those housed in hotels did not, until social services organised visits to the hotels to identify unaccompanied children and provide them with support.¹⁹⁹

In **Denmark**, a stakeholder noted that for legal assistance to be effectively accessed, it is important for guardians to be proactive in informing the child and reaching out to NGOs providing legal assistance. For instance, though they may be informed about the possibility, some unaccompanied children may not reach out to the Danish Refugee Council for legal advice on their own initiative. One reason mentioned for this is that unaccompanied children's lives are very "chaotic" as they may have to deal with previous trauma, while adjusting to a new country and figuring out their future. Yet, guardians can only suggest that the child contact legal advisors, they cannot force them. Furthermore, one stakeholder noted that some volunteer guardians do not always have the skills and training on how to interact with the child and convey information. This also affects the trust a child has in their guardian.

¹⁹⁷ This is an internal document of about 11 pages, not publicly available.

¹⁹⁸ Between 2008 and 2012, Belgium was faced with a structural reception problem. During that period, more than 12 000 asylum seekers could not be accommodated in reception centres. Some were hosted in hotels or hostels, including unaccompanied children, while some were left to live in the streets. See EMN Belgium, [The organisation of Reception Facilities in Belgium](#), August 2013.

¹⁹⁹ See section 3.2.4 –Guardians as central actors in accessing legal assistance.

3.1.4 Other providers of information

Other providers of information include legal advisors and social workers, including those working in child reception centres.

In **Spain**, unaccompanied children are generally informed about temporary residence permit procedures by social workers or directors of the specialised reception centres for children.

I have never contacted a lawyer. There were community workers at the first children's shelter in Ciudad Real and later the staff here, in this centre, gave me legal information. They gave me advice, but they didn't tell me about the possibility of getting a lawyer.

Unaccompanied child, Spain

In the **UK**, providing children with information about procedures and legal assistance is the duty of social workers though there is no set requirement for it. It was noted that the amount and quality of information provided often depends on the individual and their capacity.

In **Italy**, social workers and the director (who acts as a temporary guardian until a guardian is appointed) of the centre where the child is accommodated, play an important role in providing information to unaccompanied children procedures and legal assistance. It was noted that the level and quality of information provided varies highly between centres, especially as social workers do not have specialised legal knowledge. In some cases, NGOs running reception centres for unaccompanied children hire a legal advisor to provide legal advice. Social workers may also contact or refer children to specialised NGOs.

In **Denmark**, when an asylum application is channelled through a “manifestly unfounded procedure”, or when a child’s asylum claim is rejected at first instance, a lawyer is automatically appointed. Children are usually informed about this appointment by their guardian and/or the Immigration Service’s case worker. Children are given a certain period of time to request a specific lawyer.²⁰⁰ In addition, when an asylum claim is rejected after a hearing at the Refugees Appeals Board, a representative from the Immigration Service will try to inform the child immediately about their future prospects, including the possibility to be granted a residence permit on other grounds (see the chapter on the overview of the procedures). Normally, the child would have already been informed of this possibility by their guardian and/or lawyer but the Immigration Service representative also checks whether the child wants to change lawyer.

In the **United Kingdom**, the Refugee Council has operated an Advice Service through the Refugee Children’s Panel since 1994. It is the only national service of its kind. The team of advisers provides advice and information to unaccompanied asylum seeking children, carers and other people working with children. Children can contact the service directly or can be referred by actors that come in contact with them such as the Home office, social workers, social services, community organisation, foster carers, etc. The Children’s Panel is based on a holistic approach and seeks to be a stable contact point for the child throughout the procedures, through allocated Advisers. Advisers also play an active role supporting the child in accessing legal assistance, they attend interviews and hearings with the child, as well as accompany them to external appointments. The Advisers assess what information and how much information to give for each individual. Yet, some children are not referred to the Panel and

²⁰⁰ See section 3.2.2 – Lawyers appointed automatically.

will thus not necessarily receive information on legal assistance and advice prior to their screening asylum interview.

My social worker, when I received help from social services, sent me to the Refugee Council and I got an Adviser who helped me find a solicitor.

Unaccompanied child, UK

3.1.5 Challenges and obstacles to the provision of information

Insufficient level of information

The provision of information is largely insufficient in **Bulgaria** in law and practice. The law only guarantees the obligation to provide information on the procedure and on legal assistance to asylum seekers within 15 days after the submission of their claim (Article 58(6) Law on Asylum and Refugees). Although new leaflets have been edited, they are not widely distributed and it does not contain all relevant information on legal assistance. The leaflet is also a general one and does not use child friendly language. In addition, there is a lack of interpreters, especially in detention centres.²⁰¹

I did not receive information about legal assistance. At the end of the first [asylum] interview, I got a brochure where it was written about legal help and advice.

Former unaccompanied child, Bulgaria

In **Spain**, unaccompanied children are generally insufficiently informed about the legal assistance system and their right to legal assistance in the various procedures. For instance, when applying for a residence permit, unaccompanied children receive support from staff working in the child's accommodation centre, which is generally considered as insufficient by actors involved. Similarly, it is considered by many Spanish authorities that legal assistance is not required during an age assessment procedure or the procedure to appoint a guardian. On the contrary, several NGOs and the Spanish Ombudsman consider legal assistance should be provided in all the procedures, including the age assessment procedure. An important concern of NGOs and UNHCR is the lack of awareness of actors involved with children regarding providing information about the asylum procedure and protection statuses. Insufficient information is often provided to unaccompanied children about the possibility to seek asylum. It is thought that children who may be in need of international protection are not identified and not referred to specialist NGOs, UNHCR and relevant authorities.²⁰²

On the contrary, the level of information provided to unaccompanied children is considered generally sufficient in most cases in **Belgium, Denmark, and Italy**.

²⁰¹ See Open Society Institute, *Independent custody visiting in Special Centres for Temporary Accommodation of Foreigners Operated by the Ministry of Interior between January and June 2011*, Sofia, February 2012, , pp.16-18

²⁰² Unaccompanied children in Spain are not returned in practice and can receive a permit to stay until they turn 18 (see section 2.4 - Main procedures unaccompanied children go through). Guardians and social workers do not generally see the point of the child applying for asylum because of this..

Multiplicity of actors providing information

When information is provided by various actors and repeated to children throughout the process, it generally contributes to children becoming sufficiently informed and prepared. This was highlighted as a positive practice in **Denmark**. However, if there is a lack of coordination between actors and if information is not harmonised and consistent, it can have the reverse effect. Belgian Danish, Italian, and British stakeholders also emphasised that it does not always guarantee that the unaccompanied child understands the information provided. Asylum and migration procedures are usually very complex, as is legal assistance system, making it difficult, both for adults and children, to fully understand the procedures and system and the importance of legal assistance.

Stakeholders in **Italy** mentioned that children feel sometimes lost and lose trust in authorities or entities in contact with them, as a result of information being provided by too many different actors and at too many different times.

In the **UK**, various actors may give information at various stages (state authorities, social workers, legal advisors, NGOs, etc). While this generally helps ensure the child is properly informed, one stakeholder expressed the concern that children sometimes receive conflicting information from the different providers. Some reasons put forward were that children do not necessarily have access to the right actors at the right time or that some of the actors providing information do not always have a perfect understanding themselves. They may thus provide inaccurate information, and confuse the child.

Lack of understanding of the information provided

In addition, stakeholders in all countries surveyed highlighted the difficulty conveying explanations to children with low education levels, or children who are illiterate. This is further hindered by the fact that most of the information is often provided in the initial phase when children have multiple issues to deal with and information may get lost.

The information I received was not so good. I didn't understand all the words, not because I didn't speak English but because there are words that are just used in these proceedings and I had never heard them before.

Former unaccompanied child, UK

As children can only process a certain amount of information at one time, one stakeholder in **Denmark** mentioned that in his view it is more beneficial that information is provided as it is needed and most relevant in the process. A legal advisor in **Denmark** added that in an asylum procedure, children receive too much information and that can impact their ability to understand it all.

A stakeholder in the **UK** noted that legal advisors sometimes see children with a poor understanding of what legal assistance they are entitled to and its function. They may have received information early on in the process, but either the information was not sufficient, not appropriately delivered or was not followed up with further details at appropriate times.

Practical and procedural obstacles

In **Spain**, the lack of interpreters available for social workers and guardians to communicate with the child means that those actors sometimes have to wait for the child to speak sufficient Spanish to provide them information. This can have consequences on the child's awareness of their right to legal assistance when they actually need it.

Police authorities of the Rome Questura, where I went when I arrived, tried to give me some information in English. But I did not speak English and there was no interpreter there.

Unaccompanied child, Italy

In **Denmark**, some unaccompanied children are accommodated in a reception centre in a remote part of the country (north of Jutland), making it difficult to ensure they receive all the necessary information and can access legal assistance in practice. Indeed, the Red Cross in **Denmark** experience difficulties in recruiting volunteer guardians, as they are not compensated for travel cost or for their time off work. The Danish Refugee Council (DRC) does provide legal assistance via videoconference, including to unaccompanied children.

Another obstacle mentioned in **Denmark** was that with the introduction of a new asylum procedure in May 2013, the first asylum interviews take place much earlier than before and it is sometimes difficult for guardians from the Red Cross and the Danish Refugee Council to provide the relevant information and assistance prior to the interview.

3.2 Accessing legal assistance

Asylum and immigration procedures are complex for all those who have to go through them but these difficulties are amplified when it comes to unaccompanied children, given their inherent vulnerability. Legal assistance is crucial to navigate the system. Even when free legal assistance is available for unaccompanied children, understanding how to benefit from it or how to find a legal advisor can be very difficult for unaccompanied children. Whether legal advisors are automatically appointed or not, in addition to be properly informed about their rights and the procedure, it is essential that unaccompanied children are guided and supported in accessing legal assistance, to ensure their right to justice and right to effective remedies are met.

3.2.1 Procedures to request free legal assistance

In most of the countries studied, the rules and system on provision of free legal assistance in immigration and asylum procedures vary between first instance procedures and appeals.²⁰³ This also impacts the procedure on accessing legal assistance. In most countries, some form of initial legal assistance is provided by NGOs, and legal presentation before the courts are provided by registered lawyers, as part of a state legal aid system.

²⁰³ See section 2.6 Overview of legal assistance systems

In **Belgium**, all unaccompanied children, notwithstanding whether they are asylum seekers or under the special procedure for unaccompanied children²⁰⁴ are entitled to free legal assistance. In order to obtain free legal assistance, either the guardians contact the relevant Legal Aid Office of the Bar Associations and ask for a lawyer to be appointed; or they can directly contact lawyers they know, who will inform the Legal Aid Office and ask to be formally appointed.²⁰⁵ In theory, children can request a change of lawyers, for instance in cases where a child would disagree with their guardian on the choice of the procedure, but it is very rare in practice.

Free legal assistance under the Law on Legal Aid is not foreseen for first instance procedures in **Bulgaria** but NGOs do provide some assistance at that stage. To access legal assistance under the Law on Legal Aid ([Закон за правната помощ](#)), unaccompanied children, like other asylum seekers or migrants, have to submit an application in Bulgarian.²⁰⁶ If legal assistance is sought to submit an appeal, an application should be submitted to the national Bureau for Legal Aid. If the case is already pending in front of the court, an application for legal assistance can be submitted directly to the relevant court. Only lawyers registered in the national Register on Legal Aid can be appointed when free legal aid is granted. Children face serious obstacles in accessing any legal assistance as legal advisors are not appointed automatically and there is no referral or support system, both for NGO provided legal assistance or state regulated legal assistance. Unaccompanied children are rarely informed of their right to legal assistance and how to access it.²⁰⁷ A further obstacle is that by law, an unaccompanied child needs the consent of their guardian or needs to be represented to appoint a legal advisor or to take legal actions. In 2013, virtually no guardians were appointed to unaccompanied children.²⁰⁸ In addition, when requesting legal assistance under the State legal aid system, for appeals, the deadlines are so tight that it is in practice very unlikely that children would effectively access legal assistance. The deadline for appeals is 7 or 14 days, during which the child would need to submit an application for legal aid, have the application examined, and in case legal aid is granted, have a lawyer prepare the case.

In **Italy**, free legal assistance can be provided through state funded legal aid (*gratuito patrocinio*) for appeals in front of the courts. In order to benefit from this free legal aid in administrative and civil procedures, the child's guardian must submit a specific application to the competent Bar Council (Consiglio dell'ordine degli avvocati). NGOs also provide some legal advice to unaccompanied children during the first instance phase in immigration and asylum procedure, as well as some legal assistance during the appeals.

If a child needs legal representation in front of a court in **Spain**, the guardian or staff from the reception centres may help the child apply for free legal aid by filling in a legal aid application and submitting it to the relevant Bar Association, though they are not legally obliged to do it.²⁰⁹ The procedure to access free legal aid is regulated and organised by the General Councils of the Spanish Bar Associations.²¹⁰ The lawyers are appointed by the relevant Bar Association and it is not possible to choose a specific lawyer in this context. NGOs may also provide free legal assistance.

²⁰⁴ See section 2.4.1, Main procedures unaccompanied children go through – asylum and migration procedure.

²⁰⁵ There are three bar associations in Belgium, the Flemish bar, the French-speaking bar and the Brussels Bar. The Brussels Bar is further divided into two, based on languages. The relevant bar will depend on the location of the child and the language assigned to their procedure. The language is set for the whole procedure and cannot be changed.

²⁰⁶ See the form in Bulgarian [here](#).

²⁰⁷ See section 3.1.5 – Challenges and obstacles to the provision of information.

²⁰⁸ The Bulgarian Helsinki Committee noted, however, that this did not prevent them from providing legal advice to unaccompanied children. The need for the guardian's consent and signature to get a legal advisor has been in some cases invoked by the State Agency for Refugees to refuse acceptance of power of attorneys signed only by the unaccompanied child.

²⁰⁹ Not all Bar Associations require the filling of an application. The Barcelona BA does.

²¹⁰ Article 22 Legal Aid Act

The situation in the **United Kingdom** differs from other countries as there is no guardianship system and no automatic appointment of a legal advisor. Within the free legal assistance system, the child has to appoint their own legal advisor, for any immigration or asylum procedure, among legal advisors contracted by the Legal Aid Agency. Nonetheless, unaccompanied children are supported in this regard by the Refugee Council Children’s Panel²¹¹ (for asylum seeking unaccompanied children) or other actors (e.g. NGOs, social workers). Personal details of the asylum seeking child should be sent to the Panel by the authorities²¹² and a Panel Adviser will get in touch with the child. Social workers may also facilitate the referral from the authorities. The Panel Adviser then puts the child in contact with legal advisors with whom they have worked before or who they know have the necessary experience and skills to work with unaccompanied children.²¹³ However, referrals do not always happen automatically and some children are not referred to the Panel.²¹⁴ In the case of social workers or NGOs, they may only be able to refer children to the nearest available legal advisor in their location rather than based of the person’s knowledge, skills and expertise.

Good practice

If an unaccompanied child comes unrepresented at their asylum substantive interview, in the **UK**, the case officers may postpone the interview and provide some information on finding a legal advisor.

The 2011 British Refugee Council’s report *Lives in the Balance* highlighted a worrying practice of some people “scouting” reception centres and unsupervised accommodation to take asylum seekers (including unaccompanied children) to the office of legal advisors they work for. Stakeholders interviewed confirmed such practice is still happening. This is often done by interpreters, from the child’s own nationality or ethnic background, promising “help”.²¹⁵

3.2.2 Lawyers appointed automatically

Good practices

In **Austria** and **Denmark**, unaccompanied children or their guardian do not need to specifically request or apply for legal assistance, as legal advisors are appointed automatically to unaccompanied children by the authorities, for all or some of the procedures.

In **Denmark**, legal assistance at first instance is provided by NGOs such as the Danish Refugee Council.²¹⁶ However, in the rare cases where asylum seeking children are channelled through a “manifestly unfounded procedure”, they are automatically appointed a lawyer by the Immigration

²¹¹ See description of the Panel in section 3.1.4 – Other providers of information

²¹² The UKVI guidance on processing an asylum application from a child states that “all children must be referred to the Refugee Panel within 24 hours of the application being made.” See UK Visas and Immigration, [Processing an asylum application from a child: instruction](#), 16 April 2013.

²¹³ Legal assistance providers who have a contract with the Legal Aid Agency are limited to a certain number of cases per year. Therefore the Panel’s first choice may not be able to take on some of the cases referred.

²¹⁴ This issue was highlighted in a [report](#) of the Independent Chief Inspector of Borders and Immigration published in October 2013.

²¹⁵ Refugee Council, [Lives in the Balance the quality of immigration legal advice given to separated children seeking asylum](#), February 2011

²¹⁶ See sections 2.6.4 on the overview of the legal assistance system in Denmark and 3.1 on information.

Service.²¹⁷ Lawyers are also appointed at the appeal stage of the regular asylum procedure, but by the Refugee Appeals Board. To be appointed, lawyers need to be accredited.²¹⁸ Prior to any appointment, the child is given the opportunity to request a specific lawyer, and the vast majority do so, as they may informally receive advice from their guardians or staff of the reception centres. The Refugee Appeal Board also usually accepts to change the initially appointed lawyer, for instance if the child had not requested a specific lawyer in due time. This generally is only done if appeal proceedings have not yet started or if a hearing is not yet planned.

In **Austria**, the vast majority of unaccompanied children are asylum seekers. Legal advisors may also act as temporary legal guardians (called “legal representatives”) and are appointed by the Ministry of Interior, after unaccompanied children submit their asylum application. The child cannot request a specific advisor/guardian and cannot contest the appointment of a specific legal advisor. Two organisations are entrusted by the authorities to provide legal advice and legal representation: *ARGE Rechtsberatung (ARGE Legal Advice)*²¹⁹ and *Verein Menschenrechte Österreich (Human Rights Association Austria)*²²⁰. However, those legal advisors may not be able to represent the child in proceedings before the higher court, the Administrative High Court (*Verwaltungsgerichtshof*). At that level, they need to be lawyers registered with a Bar to appear before those courts. When cases are at that level, the temporary guardian (legal representative), or guardian have to find a lawyer for the child as children do not have legal capacity to instruct a lawyer by themselves. Expenses are borne by the Youth Welfare Authority. Two projects “*Rechtsschutz für Flüchtlinge am Asylgerichtshof*” (Legal Protection for Refugees at the Asylum Court)²²¹ and “*Netzwerk Asylanwalt*” (Network Asylum Lawyer)²²² offer legal representation in hearings before the Asylum Court or for appeals at the High Courts. In those cases, the necessary information and documentation must be prepared and provided by the legal representative. In the procedures before Immigration Police such as return, detention, or proceedings against illegal entry, since the 1st of January 2014, unaccompanied children older than 16 are appointed a temporary guardian, but they are only entitled to legal assistance for appeals.²²³ Police have the duty to request the appointment of a legal advisor (legal representative) from the two contracted NGOs *ARGE Rechtsberatung*²²⁴ and *Verein Menschenrechte Österreich*.

Good practice

In **Spain** but specifically in Barcelona, when a child goes through an age assessment, the Children’s Public Prosecutor Office (Fiscalía) sends a fax to the Barcelona Bar Association requesting the appointment of a legal advisor from a pool of lawyers specialising in matters relating to unaccompanied children.²²⁵

²¹⁷ In an interview conducted in the context of this research, the Immigration Service stated that they always seek to appoint lawyers with experience in working with unaccompanied children. Few unaccompanied children actually go through a manifestly unfounded procedure.

²¹⁸ See section 3.5.1- requirements to work with unaccompanied children.

²¹⁹ The ARGE legal advice service (legal advice in asylum proceedings and proceedings before the immigration police) is run by the Diakonie Refugee Service. See more information (in German) on Diakonie’s [website](#).

²²⁰ See VMO’s [website](#) for more information (in German).

²²¹ This project is run by Caritas Austria and aimed at all asylum seekers. More information (in German) can be found [here](#).

²²² The Network, also coordinated by Caritas Austria consists of pro bono lawyers and is run in cooperation with a number of Austrian NGOs. See the Network’s [website](#) [here](#).

²²³ Prior to this change, unaccompanied children above 16 were not appointed a guardian but were entitled to legal assistance at all stages of procedures regulated by the Immigration Police Law.

²²⁴ The ARGE legal advice service (legal advice in asylum proceedings and proceedings before the immigration police) is run by the Diakonie Refugee Service and Volkshilfe Oberösterreich. See more information (in German) on Diakonie’s [website](#).

²²⁵ See section 2.6.2 on the overview of the legal assistance system in Spain.

3.2.3 Means and merits test

The provision of free legal assistance may be conditional to certain requirements such as the lack of financial resources, so-called ‘means test’ or the likelihood of success of a case, so-called ‘merits test’. There are no uniform standards for those tests throughout the EU and each State can apply its own requirement.

Legal assistance is often divided between assistance by NGOs at first instance and additional assistance by registered lawyers for appeals and representation in front of the courts. While NGOs may not be able to provide assistance to all of the unaccompanied children that contact them, due to limited funding or capacity, in none of the countries studied do they apply a means or merits test per se. Legal assistance provided under state funded legal aid systems usually provide for the application of means or merits tests for adults. In all the countries studied, even when means or merits test are foreseen in the law, they do not appear to actually constitute an important obstacle for unaccompanied children to receive legal assistance.

In **Bulgaria** and **Denmark**, no means or merit test is applied.

According to the Law on Legal Aid, in **Bulgaria**, free legal assistance is provided to “children at risk”, including unaccompanied children. Article 15(8) of the Law on Child protection stipulates that no means and merits test is applied to children.

Although in **Belgium**, **Italy**, **Spain**, and the **UK**, the law does not exclude unaccompanied children from the means test for state funded legal assistance, this test is usually not applied in practice in **Spain**. Similarly, in **Italy** unaccompanied children are considered *de facto* as without resources, while they are always granted free legal aid in **Belgium** and the **UK**.

A worrying practice was highlighted in **Italy**. The Rome Bar Council systematically requires an official document proving income from the person’s consular authorities, thus preventing many asylum seekers access to legal assistance.²²⁶ As it is rare for unaccompanied children to lodge appeals, no case of unaccompanied children affected by this practice was identified during the research.

With regards to merits tests, the laws regulating state funded legal assistance in **Italy**, **Spain** and the **UK** do not specifically exempt unaccompanied children of merits test that may apply to adults in migration and asylum procedures.

In **Italy**, the application for legal assistance has to demonstrate that the appeal is not manifestly unfounded. Decisions on granting free legal aid are taken by Bar Councils in administrative and civil proceedings cannot be appealed, but there is a possibility to present a new request to the judge. Similarly, the judge may revoke a decision on granting free legal aid from the Bar Council if they consider the criteria were not fulfilled. No example of such revocations affecting unaccompanied children was found during the research period.

Under the **Spanish** Legal Aid Act, lawyers must notify their Legal Aid Commission within 15 days after their appointment if they consider that the claim is “unsustainable”, i.e. does not meet merits tests. If the lawyer does not notify the Commission of such problems, then they are bound to take the case. If legal aid is not granted, the decision can be challenged by submitting a written and reasoned complaint to the Legal Aid Commission. The competent Court would then make a final decision. In practice free legal assistance is usually granted to unaccompanied children.

²²⁶ See UNHCR, advisory opinion sent to the Rome Bar Council, January 2013 and the letter to the Ministry of Interior, the Ministry of Justice and to the Ministry of Foreign Affairs sent by a coalition of NGOs: Italian Council for Refugees (CIR), ASGI, Laboratorio 53, Associazione Progetto Diritti, Associazione Europa Levante, Senzaconfine, Focus- Casa dei Diritti Sociali, Arci – Roma, Save the children Italia, A buon diritto, Fondazione Centro Astalli), in May 2013.

In the **UK**, a merits test is used at the asylum appeal stage and is carried out by the legal advisors themselves.²²⁷ It is possible to contest a decision on refusing free legal assistance but it has to be done through a standard form to be submitted to the Legal Aid Agency. This can constitute an obstacle if the child is not supported in filling the form by a legal advisor or other competent adult.

The solicitor said she couldn't represent me at the appeal - without evidence and more information it was not a strong case.

Former unaccompanied child, UK

Legal advisors in **Austria** may decide not to appeal a decision if they believe the case does not have a strong prospect of success.

3.2.4 Guardian as a central actor in accessing legal aid

In most of the countries studied, the guardian plays a central role in ensuring access to legal assistance for unaccompanied children or in supporting the child in finding an advisor. In some countries, like **Belgium**, the guardian is legally obliged to appoint a lawyer for the child and in **Italy**, no legal assistance can be provided without prior authorisation of the guardian.

In **Belgium**, it is the legal obligation of the guardian, under the Guardianship Act, to find a lawyer (second line legal assistance). The child does not participate in the choice of lawyer, yet, the lawyer is representing the child, not the guardian. Legally, a child can appoint a lawyer, even if they do not have a guardian. In 2011 and 2012, for instance, during the so-called “reception crisis”, there were some significant delays²²⁸ in appointing guardians to unaccompanied children. At that time, those unaccompanied children accommodated in reception centres were assisted by social workers from the centres to find a lawyer.²²⁹ However, several hundred other unaccompanied children were accommodated in hotels and faced difficulties in accessing a lawyer. In the end, support was provided by several social services which were organising visits to hotels where asylum seekers were accommodated to identify unaccompanied children and find them a lawyer.

In **Italy**, the authorisation of the guardian is mandatory to provide legal assistance to an unaccompanied child, as the guardian is the main actor assisting and representing them. In practice, this means that NGOs cannot deliver legal assistance to unaccompanied children without prior approval from their guardian. They therefore systematically need to verify whether the child has been registered and has a guardian.²³⁰ For legal assistance provided by private lawyers, they are appointed by the guardian. The guardian can apply for free state legal aid which is provided by lawyers registered at the bar associations of the Courts. If granted free legal aid, the guardian can choose a lawyer from a list.²³¹ The child has no say in the selection of the legal advisor. Furthermore, some guardians are lawyers themselves and may provide legal assistance, provided there is no conflict of interest. The central role of the guardian can become an obstacle in accessing legal assistance if guardians are not

²²⁷ It is also to be noted that free legal assistance is not available for all immigration procedures since the entry into force of the 2012 Legal Aid Act. This concerns in particular the procedures related to article 8 ECHR.

²²⁸ Sometimes over three months

²²⁹ Even though it is not a formal obligation of social workers to do so, it is standard practice that they assist children when there are delays in appointing guardians. Once appointed, the guardians can always change lawyers.

²³⁰ If the child had not been previously identified and does not have yet a guardian, the NGOs then have to refer the case to the police authorities for the child's identification, the appointment of a guardian and the provision of accommodation.

²³¹ In practice, the guardian sometimes first contact a registered lawyer who would then submit the application for free legal aid on his behalf.

proactive. In order to overcome this barrier, some social workers from the reception centre act as intermediary, informally, to seek the guardian's approval. In Catania, the children's centre (casa famiglia) and the reception centres organise meetings with legal advisors to provide information on the procedures.

On the contrary, in **Denmark**, the role of the guardian is not central and they mostly act as facilitators. They may contact the Danish Refugee Council for legal advice or by taking the child to individual advice sessions with the NGO or by recommending a lawyer for the asylum appeal.

The situation in **Spain** is quite different from the other 7 countries studied. There, where the majority of unaccompanied children are not asylum seekers, they fall under the protection of the Child Protection Services which also assumes the role of guardian. Guardians are the ones to apply for residence permits and the Child Protection Services usually consider that all welfare and protection aspects, including legal assistance are covered by their services. Some Child Protection Services have their own legal advisor, but they do not always follow individual cases and do not always meet the child. Social workers or staff in the children's shelter sometimes refer unaccompanied children on their own initiative to specialised NGOs for further advice, for instance on the asylum procedure, though this depends on the centres and the individual staff member. For instance, in the Canary Island, a social worker from the Child protection Service used to work for an NGO specialised on asylum issues and is therefore better equipped to provide information on the asylum procedure and the NGOs that can provide legal assistance to unaccompanied children who may be in need of international protection. But this depends greatly on the individuals interacting with the unaccompanied children.

Someone at the children's shelter where I stayed contacted a lawyer from an NGO. I did not know a lawyer could help me until I met my lawyer, Nacho

Former unaccompanied child, Spain

Some staff of the Spanish Child Protection Services are also lawyers and can provide legal assistance. However, concerns have been raised in the past, for instance by UNHCR or the Spanish Ombudsman on the risk of conflict of interests.²³² In cases where there could be a conflict of interest between the guardian from the Child Protection Service and the child, the Court can appoint a *guardian ad litem* to represent the child.²³³ Guardians ad litem were often appointed, prior to 2010, in return procedures²³⁴ and are now appointed any time there appears to be a conflict of interest, though some cases of conflicts may not be detected in practice.

In **Belgium** and **Denmark**, even if guardians have a legal background or are lawyers they cannot act as the legal advisor for the child. In the **UK**, providing legal advice is a restricted activity and social workers are not permitted to give legal advice.

²³² See, "[La participación de los menores extranjeros no acompañados: el derecho a ser oído](#) (Foreign unaccompanied children's participation: the right to be heard)" Conclusiones de la Mesa de trabajo.10 de marzo de 2006 or Spanish Ombudsman, [Informe sobre asistencia jurídica a los extranjeros en España](#) (report on legal assistance to foreigners in Spain), 2005

²³³ Article 193 of Royal Decree no 557. The guardian ad litem does not need to be a lawyer but is usually a person of trust.

²³⁴ Since a ruling of the Constitutional court of December 2008, unaccompanied children are not forcibly returned. See ECRE and Save the Children, [Comparative Study on Practices in the Field of Return of Minors](#), December 2011, p. 90.

3.3 Scope of the legal assistance in different procedures

The right to free legal assistance and its availability generally varies between the steps of the asylum or migration procedures as well as between the different types of procedures unaccompanied children may be subject to. Throughout Europe, legal assistance through state funded schemes is generally provided in appeals against negative asylum decisions but not always at first instance. As regards unaccompanied children, research shows that while they can generally benefit from free legal assistance in both stages of the asylum procedures in the countries studied, but availability, in law or in practice, in other procedures is not always guaranteed. All migration and asylum procedures are complex and limited legal assistance, by law or in practice, in certain procedures hamper unaccompanied children's effective access to justice.

The tables in this chapter provide a summary of the legal assistance available, type of assistance available (see definitions used in the methodology) and provider. The tables should be read in conjunction with the previous section on accessing legal assistance, as there may be obstacles, in practice, for unaccompanied children to effectively access legal assistance.

3.3.1 Legal assistance in the age assessment procedure

Countries	Who exercises legal capacity?	Free legal assistance available	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation (approval of the examination and statement)	legal advisors in the initial reception centre
Belgium	Guardian	Yes	Legal advice and representation	Lawyers under the State Legal Aid system
Bulgaria	Guardian (but not appointed in practice)	No	-	-
Denmark	child	Yes	Legal advice and submission of written complaints to the authorities on behalf of the child	Danish Refugee Council legal advisors
Italy	Child and/or guardian	Not always	Legal advice and representation	NGOs
Spain	Guardian but only after age assessment	Not always	Legal advice	NGOs
UK	Child	Yes	Legal advice Legal advice and representation	Refugee Council Children's panel Contracted legal advisors from NGOs or private law firms

While unaccompanied children are likely to go through an age assessment in most countries surveyed, research found that in general, legal assistance is rarely available in the age determination phase.

Good practices

In **Austria**, age assessment is not considered as a separate procedure from asylum and migration procedures. If an age assessment is ordered by the Federal Asylum Agency, the Asylum Court or the Immigration Police, unaccompanied children will be supported throughout by their appointed temporary guardian (“legal representative” who is in most cases also the legal advisor) or guardian. For instance, legal advisors in the initial asylum reception centre have to give their approval prior to the age assessment being carried out. Legal advisors can also support the child in gathering evidence and in writing a statement to argue that the age assessment should only take place, if necessary, after any evidence submitted has been examined.

In **Spain**, legal assistance under the public legal assistance system is not available during the age assessment procedure, except in Barcelona. When an unaccompanied child is referred to the Public Prosecutor, who can order an age assessment, the Prosecutor sends a fax to the Barcelona Bar Association (Ilustre Colegio de Abogados de Barcelona- ICAB) for a lawyer to be appointed. The lawyer provides legal advice and can write a statement to the Public Prosecutor contesting the outcome of an age assessment procedure on behalf of their client (judicial review). However, in practice, the Prosecutor rarely revises their decision following such statements.

In a number of countries, like **Austria, Bulgaria, Italy** and **Spain** the result of the age assessment is not an appealable decision. In those countries, the decision on the age can only be contested as part of an appeal against another decision, directly or indirectly linked to the age determination, such as the loss of guardianship, a return decision or a negative decision on an asylum claim.²³⁵ In **Belgium** and **Denmark**, the age assessment results can be appealed, and subject to judicial review in the **UK**. Unaccompanied children whose age is disputed face a number of obstacles, either in accessing legal assistance to challenge the decision or to have the decision overturned.

Results of the age assessment can be contested before the Council of State in **Belgium** and young persons may benefit from legal assistance for the appeal. Yet, in practice, as they are considered as “potential adults” during the age determination and in most cases not appointed a guardian,²³⁶ few will be effectively informed about their right to legal assistance, on how to find a lawyer or on how to appeal. In addition, even when a lawyer is available, a major obstacle is the length of the appeal, which lasts about two years. As in most age disputed cases, the young person may reach adulthood prior to a judgment being issued, and lawyers may refuse to lodge appeals on those grounds.

In **Denmark**, the Immigration Service’s decision on age can be contested through a written complaint addressed to the Ministry of Justice. Young people are not appointed a lawyer during the age assessment procedure but can receive assistance from the Danish Refugee Council, upon request, to submit a written statement to contest the decision. The temporary guardian appointed to the age disputed child (*observer*) may also help in submitting the complaint. A few years ago, the Danish Refugee Council and the temporary guardians from the Red Cross developed a template complaint form with potential legal arguments to contest the result of an age assessment. Guardians use this standard form to submit the written complaint, together with information about the individual child and possible identity documents. In practice, the Ministry of Interior rarely overturns a decision from

²³⁵ Age assessment procedures and possible appeals are described in the section on the overview of the procedures.

²³⁶ Age disputed young people can be appointed a temporary guardian if they are considered to be in an “urgent situation” (see section 2.5 on guardianship).

the Immigration Service, unless the young person can provide identity documents that the Ministry would consider genuine.

In the **UK**, the decision on age from social workers can be challenged through judicial review before the court. It must be done with legal assistance but young people often face obstacles finding a legal advisor. As social workers are taking the decision themselves, they do not assist with finding a legal advisor. Young people may receive some assistance from NGOs. NGO advisors may not request a review or represent the child in court, but they can provide legal advice and help gather evidence. If necessary, they will also help the child find a legal advisor to apply for judicial review and refer the child to a lawyer (barrister) that can represent them in court.

For countries, like **Bulgaria** or **Italy**, where young people are not, or rarely assisted during the age assessment and where the decisions are not appealable separately, contesting the results of the age assessment is extremely difficult.

In **Italy**, only if the young person gets in contact with an NGO on their own initiative, will they be legally assisted, including to contest the decision on the age as part as an appeal against a measure taken as a consequence of them being considered adults. Recently, for instance, three young Bangladeshi men were detained after being determined as above 18, despite possessing passports issued by the Bangladeshi embassy proving their minority. Their case was taken up by the Association for Legal Studies on Immigration (ASGI), after referral by another NGO, Yo Migro. ASGI appealed against the detention on the basis of a wrong age assessment to a peace judge, who ruled in favour of the three young men.²³⁷

3.3.2 Legal assistance in asylum procedures

In **Austria, Bulgaria, Denmark** and the **UK**, most unaccompanied children apply for asylum. Unaccompanied children are entitled in all countries to free legal assistance, by law, at least at the appeal stage of the asylum procedure and in appeals against a decision of transfer to another Member state under the Dublin Regulation. In **Austria, Belgium, Spain** and the **UK**, free legal assistance under state funded schemes is provided both at first instance and appeal by law. However, in practice it is rare that unaccompanied children are assisted under those systems at first instance in **Spain**, except by some NGOs. In **Bulgaria, Italy** and **Denmark**, while legal assistance at appeals can be provided by registered lawyers under the state legal assistance system, assistance in first instance is provided by specialised NGOs.

Submission of an application for international protection

It is rare, in all countries, that unaccompanied children would be assisted by a legal advisor for the submission of an asylum application, in practice, even when it is foreseen by law.

In **Spain**, the presence of a guardian is necessary to submit an asylum application as the child does not have capacity. In **Italy**, a child can claim asylum on their own but it is necessary for a guardian to be present to formally register the claim (so-called *verbalizzazione*). The procedure is therefore suspended until a guardian is appointed. The guardian may in both countries provide limited help in submitting the claim in practice.

In addition, in all countries studied, unaccompanied children may receive advice and information from legal advisors (usually NGOs) to submit an asylum claim. Assistance is usually only provided if the child is already in contact with an NGO before applying for asylum, or if their guardian has requested legal assistance, either from a specialised NGO or from lawyers working under state funded

²³⁷ See Yo Migro, [Roma - Come mandare tre minorenni al CIE](#) (Rome- How to send three minors to a CIE), 3 April 2013.

schemes. In **Spain**, the law provides for legal assistance by lawyers from the bar associations in all procedures, and unaccompanied children may request assistance prior to the submission of an asylum application. In practice, since most unaccompanied children in **Spain** are not informed about the asylum procedure, very few apply for asylum and therefore are generally not in contact with a legal advisor. Those children who request international protection are mostly assisted in submitting their claim by their guardian (who may also be a lawyer) or by legal advisors from NGOs. In **Belgium**, once a child is detected by the police or the authorities, a guardian should be appointed as soon as possible and then the guardian will appoint a lawyer. Then, the child would be supported both by their guardian and a lawyer in filing an asylum claim. Children can submit an asylum claim on their own, including before a guardian is appointed, and therefore without the benefit of legal assistance.

In **Bulgaria**, applying for asylum includes, in most cases, two steps: the submission of a claim and the registration of the asylum application by the State Agency for Refugees (SAR). There is no time limit to register the application in law and significant delays were observed in 2013.²³⁸ Some asylum seekers sought assistance from private lawyers²³⁹ or legal advisors from NGOs to submit a complaint before the court against the inaction of the State Agency for Refugees to register the submitted application for international protection.

First instance asylum procedure

Countries	Who exercises legal capacity?	Free assistance available	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	Legal advisors (representatives) in the initial reception centres and legal advisors from the Youth Welfare (contracted NGOs)
Belgium	Guardian	Yes	Legal advice and representation	Lawyers
Bulgaria	Guardian but not appointed in practice	Not always	Legal advice and presence at the interview	NGOs
Denmark	child	Yes	Children in the manifestly unfounded procedure: legal advice and representation Children in the regular procedure: legal information and advice	State-appointed lawyers Danish Refugee Council
Italy	Guardian	Yes	Legal advice and support during the interview	private lawyers (pro bono) and NGOs, with the consent of the guardian
Spain	Guardian	Yes	Legal advice and representation	NGOs and lawyers under the state legal assistance system
UK	Child	Yes	Legal advice and representation	Contracted legal advisor from law centres, specialised NGOs or private law firms

²³⁸ See Ilareva, Valeria, *Arbitrariness regarding Access to the Asylum Procedure in Bulgaria. Information Note*, 02 January 2012, and Bulgarian Helsinki Committee and ECRE, *AIDA National Report Bulgaria- registration of the asylum application*, April 2014 .

²³⁹ This assistance would be outside the state funded legal aid system as people claiming asylum are not formally considered asylum seekers until their claim is registered.

In **Austria**, **Belgium**, **Spain**, and the **UK**, free legal assistance in the first instance of asylum procedures is available through state funded legal assistance schemes and can generally consist of both legal advice and legal representation at interviews or in written statements. However, in **Spain** unaccompanied children are rarely assisted by legal advisors at this stage, in practice.²⁴⁰ In **Austria**, the assistance is mainly provided by NGOs contracted by the Ministry of Interior and in the **UK** it is provided by legal advisors from law centres or lawyers from private law firms under a contract with the State. In **Belgium** and **Spain**, unaccompanied children are entitled, by law, to free legal assistance from lawyers under the state funded legal assistance system and can also be assisted by NGOs. Effective access to legal assistance is an issue in **Spain**.

In **Bulgaria** and **Italy**, unaccompanied children may only receive pro bono legal information and advice at the first instance stage of the asylum procedure from private lawyers and NGOs. In practice, many unaccompanied children do not receive any legal assistance at this stage in both countries.

In **Denmark**, legal information and advice is provided by NGOs, mostly by the Danish Refugee Council (DRC), in first instance. DRC visits reception centres but also provides advice at the organisation's premises or via videoconference, upon request.²⁴¹ In the rare cases where unaccompanied children are channelled through a "manifestly unfounded" procedure, they are automatically appointed a lawyer who will provide them with legal advice and representation.²⁴²

I did not received legal advice [in the asylum procedure] from anybody else than my guardian

Former unaccompanied child, Denmark

In all countries, legal advisors are allowed to attend interviews between the child and the authorities²⁴³ and it is usual, in most countries, that legal advisors will meet with the child in advance in order to prepare the interview (see below on involvement of the legal advisors).

In **Austria**, where the asylum procedure is divided between an admissibility procedure and a regular procedure, free legal assistance includes for a legal advisor to be present at interviews with the authority in both instances. The legal advisor is also allowed to submit a written statement at that stage.

Good practice

The presence of the child's lawyer is not mandatory by law in **Belgium** and whilst an interview cannot be conducted without the presence of the guardian, it can be performed without a lawyer. In practice, lawyers are almost always present at interviews. Guardians and lawyers are allowed to intervene, usually through a statement at the end of the interview, that would then be included in the interview report.

In the "manifestly unfounded procedure", in **Denmark**, the lawyer attends the interview at the Danish Refugee Council, the organisation in charge of making an assessment on the claim.²⁴⁴ The

²⁴⁰ Reasons for this vary: lack of information, lack of capacity or willingness of guardians to contact legal advisors, limited capacity of NGOs offering legal assistance, etc.

²⁴¹ See the section 3.1 on information and 3.2 on access to legal assistance for further details on how children are informed about this possibility.

²⁴² See section 3.2.2 - Accessing legal assistance: lawyers appointed automatically.

²⁴³ In Italy, it is only possible if the guardian consents.

²⁴⁴ See section 2.4 - Main procedures unaccompanied children go through.

lawyer can also submit a written statement to the Immigration Service prior to a decision being issued.

In the **UK**, a “responsible adult”²⁴⁵ and a legal advisor are allowed to participate, and intervene, in the two interviews with the authorities at first instance, even though the law only requires one of the two to be present at the substantive asylum interview.²⁴⁶

In **Bulgaria**, legal advisors may intervene in the interviews, upon consent of the interviewer, and request corrections of the interview report where relevant.

Appeal stage of the asylum procedure

Countries	Who exercises legal capacity ?	Free assistance available	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	legal advisors from the Youth Welfare (contracted NGOs)
Belgium	Guardian	Yes	Legal advice and representation	Lawyers under the State legal Aid system
Bulgaria	Guardian (but not appointed in practice)	Yes	Legal advice and representation	Lawyers under the State legal Aid system
Denmark	child	Yes	Legal advice and representation at the Refugee Appeals Board. Assistance in applying for a reopening of the asylum case after a final negative decision Legal advice	State-appointed lawyers Danish Refugee Council legal advisors
Italy	Legal guardian	Yes	Legal advice and representation	State appointed lawyers
Spain	Guardian	Yes	Legal advice and representation	NGOs and lawyers under the state legal aid system
UK	Child	Yes	Legal advice and representation	Contracted legal advisor from law centres, NGOs or private law firms

²⁴⁵ A responsible adult is a person who is independent of the Secretary of State and has responsibility for the child. It can be a social worker, Local Authority key worker, relative, foster carer or even a doctor, priest, vicar, teacher, charity worker or Refugee Council representative. The legal advisor (legal representative) can also act as a responsible adult if the child consents. See UK Visas and Immigration, [Processing an asylum application from a child: instruction](#), 16 April 2013, par. 4.3

²⁴⁶ The initial “screening interview” may go ahead even if the child is unsupported by a legal advisor or a responsible adult, in order not to slow down the process. See UK Visas and Immigration, Processing an asylum application from a child: instruction, 16 April 2013, par. 6.2

Free legal assistance for asylum appeals is provided to unaccompanied children in all of the countries studied, through state funded legal assistance, and by some NGOs. In **Bulgaria**, such assistance is provided only since the amendment of the Law on Legal Aid in March 2013.²⁴⁷

All countries provide for qualified lawyers to represent the child in court under the state legal assistance system. Assistance also includes lodging an appeal and preparing for the hearing. In the majority of cases, legal advisors will meet the child prior to the hearing.²⁴⁸

The system in **Austria** is somewhat distinct from other countries as most of the legal assistance is provided by NGO legal advisors contracted by the authorities or lawyers contracted by the regional Youth Welfare authorities, but not by registered lawyers under the public legal aid scheme. Those advisors attend hearings, provide information to the child and submit relevant statements to the court. During the procedure before the Administrative High Court (onward appeal) unaccompanied children have to be represented by a registered lawyer. It is the duty of the guardian to provide for a lawyer. In addition, The Netzwerk Asylanwalt, coordinated by Caritas **Austria**, offers legal representation in hearings at the Asylum Court and sometimes help to lodge appeals at the High Courts, but mostly in the context of strategic litigation.

In **Denmark**, the appointed lawyer may also prepare a written statement prior to a hearing with the Refugee Appeals Board.

In **Italy**, an appeal can only be lodged with the guardian's consent and the guardian makes the request for free legal assistance from the state funded scheme (*gratuito patrocinio*). Yet, in practice, unaccompanied children are usually granted some form of protection and it is rare for the decisions on the asylum claim to be appealed.

In **Spain**, the National High Court, located in Madrid, rules on all appeals against a negative decision on the merits of the claim.²⁴⁹ Under the free state legal assistance scheme, lawyers registered at the bar association of Madrid are appointed to represent clients before this court. Appointed lawyers are not always able to locate and contact their child client prior to a hearing,²⁵⁰ making it difficult to prepare the case. Decision of the High Court can be subject to an onward appeal to the Supreme Court. For appeals before this Court, a solicitor (*procurador*) must also be requested, in addition to a lawyer through the same legal assistance system.

²⁴⁷ See the section 3.2 - Accessing legal assistance on the obstacles for unaccompanied children to actually benefit from free legal assistance.

²⁴⁸ See section 3.4.5 - Preparation for hearings and interviews.

²⁴⁹ For appeals against decision on admissibility it is the Central Administrative Court. See ECRE/ELENA Legal Aid Survey, 2010, p.120 for more information.

²⁵⁰ The child may have moved to a different centre or a different province while the lawyer was being appointed and it may be difficult to find them again. If they can't contact their clients, lawyers prepare the hearing based on the administrative file of the child.

Dublin procedure

Countries	Who exercises legal capacity ?	Free assistance available?	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	legal advisors in the initial reception centre
Belgium	Guardian	Yes	Legal advice and representation	Lawyers under the State Legal Aid system
Bulgaria	Guardian (but not appointed in practice)	Yes, for appeals, not always at first instance	Legal advice and representation	NGOs (first instance) lawyers under the State Legal Aid system (appeals)
Denmark	child	Yes	Legal advice and representation	Danish Refugee Council
Italy	Legal guardian	Yes	Legal advice	NGOs with the consent of the guardian
Spain	Guardian	N/A	-	-
UK	Child	Yes	Legal advice and legal representation	Contracted legal advisor from law centres, specialised NGOs or private law firms

Unaccompanied children are not subject to the Dublin procedure in **Spain** and are rarely transferred to other Member states under the Dublin Regulation in **Denmark, Italy** and the **UK**.²⁵¹

Legal advice and representation through the initial stage of a Dublin procedure and to contest a transfer decision are available in **Austria, Belgium, Denmark** and the **UK**. Legal assistance is provided by law to contest a Dublin transfer decision in **Bulgaria** but is not always available at first instance. At that stage, assistance may be provided by NGOs under projects awarded by the Bulgarian State Agency for Refugees and co-funded by the European Refugee Fund. In **Italy**, legal assistance in the Dublin procedure is not foreseen by law but may be provided, upon request from the guardian, by NGOs.

In **Austria**, the determination of the State responsible for assessing an asylum claim is part of the admissibility procedure. Unaccompanied children are therefore supported in this procedure by the same appointed NGO legal advisors, who also act as the temporary guardians in the admissibility procedure. The legal advisor attends the interview, may submit statements with regards to the application of the Dublin Regulation and can submit an appeal.

In **Bulgaria**, in the initial stage, legal assistance from NGOs includes legal advice and the presence of the legal advisor at the Dublin interview.

²⁵¹ For further information on the application of the Dublin II Regulation see the Dublin Transnational Network Project: Dublin II Regulation Lives on Hold, February 2013. Also the way the Dublin system applies to unaccompanied children has fundamentally changed in law, in light of the CJEU C-648/11 M.A. and Others and the recast Dublin III Regulation no. 604/2013 whereby unaccompanied children shall only be sent to other Member States under the Dublin system in situations where a family member or relative are present following a best interests of the child assessment and determination.

Legal information on the Dublin procedure is provided at border points in **Italy** by NGOs running information services.²⁵² They also provide information to asylum seekers, including unaccompanied children transferred from another Member state to **Italy** under the Dublin Regulation.

3.3.3 Legal assistance in border procedures

Countries	Who exercises legal capacity ?	Free assistance available?	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	legal advisors in the initial reception centre
Belgium	N/A	N/A	-	-
Bulgaria	N/A	N/A	-	-
Denmark	child	No	-	-
Italy	N/A	N/A	-	-
Spain	Guardian after age determination	N/A	-	-
UK	Child	No	-	-

N/A: Not applicable

Unaccompanied children may go through a border or airport procedure in **Austria** and in the **UK**

In **Austria**, the law states that unaccompanied children may go through an “airport procedure” (Flughafenverfahren) and are entitled to legal advice and representation during that procedure. The law further stipulates that a rejection of an asylum application during an airport procedure can only be done with the approval of UNHCR.²⁵³ In practice, unaccompanied children who seek asylum at the Vienna airport are always immediately admitted to the territory.

In the **UK**, unaccompanied children seeking asylum are admitted to the territory. Other categories of children, including trafficking victims do not benefit from legal assistance at the border and do not benefit from an automatic referral to the relevant local authority for care and protection. This was identified as a concern by legal advisors interviewed.

In **Denmark**, when an unaccompanied child claims asylum at the border, police will register them and collect information, such as name, age, and country of origin. There is often no assistance by a guardian or a legal advisor at this stage. Children are transferred to a reception centre. Some police stations ask children more questions about their travel route and reasons they are seeking asylum. However, in practice, asylum determining authorities generally do not use information from these early screenings in credibility assessments.

There is no border or admissibility procedure in **Bulgaria** and **Italy**, therefore unaccompanied children are automatically granted access to the territory. Unaccompanied children detected at the borders in **Belgium** and **Spain** are also granted access to the territory automatically. In **Spain**, young persons claiming to be children at the borders are generally subject to an age assessment and if they are determined to be adults, can benefit from legal assistance from NGOs or lawyers under the state legal assistance system to contest a refusal of entry, as any adult.

While there is no border procedure for asylum and migration in **Bulgaria**, migrants and asylum seekers can be prosecuted for illegal entry on the territory. Free legal assistance under the state

²⁵² On the basis of A.11(6) of the T.U. Immigration

²⁵³ Para. 33.2 of the Asylum Act. See also AIDA, *National Report Austria*, [Border procedure](#), May 2014.

funded legal assistance scheme is available for challenging prosecution for illegal entry. It is regulated by the Code on Criminal Procedure.

3.3.4 Legal assistance for residence permits applications

Countries	Who exercises legal capacity ?	Free assistance available	Scope	Legal assistance providers
Austria	Guardian	No	-	-
Belgium	Guardian	Yes	Legal advice and representation	Lawyers under the State legal Aid system
Bulgaria	Guardian	No	-	-
Denmark	child	No	-	-
Italy	Legal guardian	No	-	-
Spain	Guardian	Yes	Legal advice Legal advice and representation	NGOs, legal advisors of the Child Protection Services Legal advisors (inc. from NGOs) registered with bar associations and lawyers under the state legal aid system
UK	Child	Not always	Legal advice and representation	Contracted legal advisor from law centres, specialised NGOs or private law firms

In **Austria, Bulgaria, Denmark** and the **UK**, the vast majority of unaccompanied children apply for asylum. However, it is not the case in **Belgium, Italy** and **Spain**.

In **Belgium**, the law provides for a specific residence permit and a specific procedure for unaccompanied children, the so-called “durable solution procedure” or “unaccompanied foreign minor stay”²⁵⁴. The application for this residence permit has to be submitted by the guardian and even though free legal assistance is available, the guardian may submit an application without legal assistance. In practice, guardians often consult a lawyer. Legal advice includes discussing whether the child should apply for asylum or a residence permit and legal grounds for the application for a residence permit.

In **Italy**, unaccompanied children are entitled by law to a residence permit until they turn 18. The application for the permit does not require legal arguments as all unaccompanied children are entitled to such a permit. Therefore, legal assistance is not necessary. The application has to be done by the guardian to the Questura (Immigration Police). When an unaccompanied child turns 18, they may apply for the conversion of their residence permit based on their minority to a work permit, or for studies or based on health grounds. NGOs can provide legal assistance for the application and young people are also supported in practice by staff of their reception centres.

²⁵⁴ “Procédure solution durable” or “procédure MENA.” See section 2.4 – Main procedures unaccompanied children go through.

I received legal advice and support mainly by the staff of the reception centre where I am hosted

Unaccompanied child, Italy

Applications for residence permits for unaccompanied children in **Spain** are completed by legal advisors of the Child Protection Services. State funded legal assistance is not provided by law for submission of an application and as the Child Protection Services are responsible for the application, they consider legal assistance unnecessary. In case of a negative decision on the residence permit, children can obtain support from NGOs or lawyers under the state legal aid scheme to appeal the decision. However, a major obstacle is the lack of information on available legal assistance for children.

The head of the children's shelter where I'm staying is the one who helped me to get my residence permit

Unaccompanied child, Spain

In countries where most unaccompanied children apply for asylum, like **Austria**, **Bulgaria**, **Denmark** and the **UK**, legal assistance for permits to stay on other grounds than international protection is not always guaranteed.

Unaccompanied children in **Austria** seldom apply for residence permits as they almost all go through an asylum procedure. If they do apply for a residence permit, they receive support from the Youth Welfare authorities or foster carers to fill in the application forms and collect evidence to support their application but free state funded legal assistance is not provided by law in such situations. Unaccompanied children may also obtain legal advice from NGOs.

In **Bulgaria**, NGOs may assist children in submitting a residence permit application and gathering the necessary evidence, but it rarely happens in practice. Advice and representation could also be provided for appealing a negative decision refusing a residence permit. The major obstacle, as in other procedures, is information and access to providers of assistance.²⁵⁵ In addition, most children apply for asylum in Bulgaria.

In **Denmark**, almost all unaccompanied children apply for asylum. Outside the asylum procedure, humanitarian residence permit and temporary residence permits can be granted in case of a negative decision, or an unaccompanied child may receive a residence permit for work or study. Free legal assistance is not provided by law for residence permits for work or study, but the Danish Refugee Council can, in practice provide, upon request, legal advice on these issues.

In the **UK**, free legal assistance is only available for temporary permits based on Article 3 of the European Convention on Human Rights.²⁵⁶ In such situations, legal advisors help the child submit the application. For permits under other “immigration” grounds, such as the right to private and family life no free legal assistance is provided since the amendment of the law on Legal Aid (LAPSO) in 2012.

²⁵⁵ See section 3.2 - Accessing legal assistance.

²⁵⁶ Article 3 of the European Convention on Human Rights provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

3.3.5 Legal assistance in return procedures

Countries	Who exercises legal capacity ?	Free assistance available	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	legal advisors from the Youth Welfare (contracted NGOs)
Belgium	Guardian	N/A	-	-
Bulgaria	Guardian (but not appointed in practice)	Yes, for appeals	Legal advice and representation	NGOs and lawyers under the State Legal Aid system
Denmark	child	Yes	Legal advice	NGOs
Italy	Legal guardian	N/A	-	-
Spain	Guardian or child above 16	Yes	Legal advice and representation	NGOs and lawyers under the state legal aid system
UK	Child	Yes (part of the appeal)	Legal advice and representation	Contracted legal advisor from law centres, specialised NGOs or private law firms

N/A: Not applicable

Unaccompanied children are not forcibly returned, by law, policy or in practice in **Belgium, Bulgaria, Denmark, Italy, Spain** and the **UK**. In **Austria**, it is rare in practice for unaccompanied children to be subject to forced return after a negative decision on an asylum application, although it happens more frequently for those who did not seek asylum.²⁵⁷

Free legal assistance is provided by law in **Austria** for return procedures.²⁵⁸ Legal advisors are appointed from the organisation *Verein Menschenrechte Osterreich (VMO)*. Unaccompanied children also receive support from their guardian or temporary guardian, the latter usually also a legal advisor. Legal assistance includes information, legal advice and representation in appeals. Legal advisors can attend the oral hearing with the authorities. Asylkoordination expresses concerns about the actual independence of advisors from VMO and the risk of conflict of interest because of the links of the organisation with the Ministry of Interior and their participation in assisted voluntary return programmes. If a child wants to return voluntarily, the consent of the guardian or legal representative is mandatory. Return may only be approved if it is in the best interest of the child, including whether there are guarantees of adequate reception facilities in the country of origin, and of the security and possible positive development of the child.

In **Bulgaria**, third country nationals, including unaccompanied children are not effectively informed they are under a return procedure, and often realise it only when a return decision is issued, thus not being able to benefit from legal assistance. Legal assistance can be provided for appeals by NGOs or under the state legal aid system, provided unaccompanied children manage to have access to a lawyer

²⁵⁷ The vast majority of unaccompanied children apply for asylum in Austria, therefore not many unaccompanied children are returned.

²⁵⁸ Aliens Police Law

under that system (see section 3.2 on accessing legal assistance). Legal assistance in the return procedure includes lodging an appeal and representing the child in court.

In **Spain**, returns are currently halted, in practice, following a judgment from the Constitutional Court in 2008²⁵⁹. Forced returns of unaccompanied children are still allowed by law. Under the law, as in any other procedure affecting them, unaccompanied children are entitled to free legal assistance. Children above 16 years old can instruct a lawyer to represent them in court proceedings and those under 16 are represented by a guardian.

In the **UK**, by law, if a return decision is taken while the child is under 18, they can benefit from free legal assistance to appeal that decision, but only if the appeal is made on asylum grounds or grounds based on Article 3 of the European Convention on Human Rights. However, return decisions are rarely issued to unaccompanied children in practice.

3.3.6 Legal assistance to challenge detention

Countries	Who exercises legal capacity ?	Free assistance available	Scope	Legal assistance providers
Austria	Guardian	Yes	Legal advice and representation	Contracted NGOs
Belgium	N/A	N/A	N/A	N/A
Bulgaria	Guardian (but not appointed in practice)	Yes, for appeals	Legal advice and representation	NGOs and lawyers under the State Legal Aid system
Denmark	child	Yes	Legal advice and representation	State-appointed lawyers and NGOs
Italy	N/A	N/A	-	-
Spain	N/A	N/A	-	-
UK	N/A	N/A	-	-

N/A: Not applicable

Unaccompanied children are not detained by law, in **Belgium, Italy, Spain** and the **UK**. The law also precludes the detention of unaccompanied children in **Bulgaria** but cases of detention of unaccompanied children are reported.²⁶⁰ Unaccompanied children are rarely detained in **Denmark**, even though detention is allowed under the Aliens Act. If detained, in Denmark, it is often following criminal charges. In **Belgium** and the **UK**, unaccompanied children may be detained for short period of time at border points –only for those who do not claim asylum in the UK. If detained, in both countries, they are entitled to legal advice and representation under the state funded legal aid system. Access to legal assistance in the **UK** may be difficult if children are not supported in finding a legal advisor from detention centres.

In **Austria**, unaccompanied children aged between 16 and 18 years old may be detained but it is rare in practice.²⁶¹ For children between 14 and 16, the law provides that only alternatives to detention may be applied.²⁶² Legal assistance is provided by law and includes legal advice and representation to

²⁵⁹ Constitutional Court, case 183/2008, 22 December 2008, see ECRE and Save the Children, [Comparative Study on Practices in the Field of Return of Minors](#), December 2011, p.90.

²⁶⁰ Including by UNHCR and the Bulgarian Helsinki Committee.

²⁶¹ Unaccompanied children are rarely detained in the return procedures but they may be detained on other grounds.

²⁶² § 76 of the Alien Police Act.

request a review of the lawfulness of detention. Legal assistance is provided by legal advisors from two organisations contracted by the Ministry of Interior, ARGE Rechtsberatung and Verein Menschenrechte Österreich.

Unaccompanied children may be detained in practice in **Bulgaria**, often pending the registration of their asylum claim, as asylum seekers are released from detention. Legal assistance, both from NGOs and under the state funded legal assistance system is available for all detainees to appeal against a detention order. As in all procedures, unaccompanied children face obstacles in accessing such assistance.²⁶³

3.3.7 Interpretation for legal assistance

Interpretation is key to the effective delivery of legal assistance in asylum and migration procedures as migrants and asylum seekers rarely speak the language of the host country. It is important that interpretation is not only available for meeting with the authorities but also for meetings between the child and their legal advisor. Indeed, building trust and effectively informing the child is crucial for legal advisors to be able to provide quality assistance. This is significantly challenging if they cannot interact through an interpreter. Insufficient qualifications, skills or disrespectful attitude of an interpreter, can undermine the quality of legal assistance provided and the respect for the child's rights.

Interpreters for meetings with legal advisors, both from NGOs or lawyers providing assistance under a state funded scheme, are generally available in **Austria, Belgium, Denmark** and the **UK**.

In **Austria**, where legal assistance is provided by two contracted NGOs in the asylum admissibility procedure, organisations are required to provide interpretation services. Some issues have been raised with regards to interpretation when the child is under the protection of the Youth Welfare authorities. In one province, interpretation is envisaged only for the first meeting with the legal advisor and the preparation for the hearing before the Asylum Court. For other meetings, interpreters must be provided by the reception centres, which is not always possible. If the child has been in **Austria** for an extended period and speaks sufficient German, some meetings may be held without an interpreter.

Good practices

In **Belgium**, interpreters are available for meetings with legal advisors, upon request of the guardian, as it is funded by the Guardianship Service. Guardians can request interpreters as often as needed. If an interpreter cannot attend the meeting, interpretation can be done by phone. Interpretation in informal meetings is covered by the Guardianship Service and the interpreter is chosen by the guardian.

In **Denmark**, interpreters are usually available for meetings between the child and their legal advisors. For legal assistance under the state funded legal aid system, the cost of interpretation for those meetings is covered by the authorities and the lawyer chooses the interpreters. The Danish Refugee Council uses interpreters from their own translation service.²⁶⁴ Funding for this service is part of the contract the organisation has with the Ministry of Justice to provide legal assistance.

²⁶³ See section 3.2 on accessing legal assistance.

²⁶⁴ At the "open door" Wednesdays counselling sessions, interpreters are not available, if necessary the legal advisors can schedule a meeting with the asylum seeker at a later date and ensure an interpreter is present.

I was explained the procedures I had to go through and what I had to do. There was always an interpreter available for conversations with my guardian and with the Immigration Service. So I understood everything

Unaccompanied child, Denmark

The cost of interpretation, under the state legal aid scheme is funded at an hourly rate fixed by law in the UK.²⁶⁵ There is a lack of interpreters for some languages and in some areas of the country.

Access to interpreters is difficult in **Spain** and **Bulgaria**, where interpretation is generally provided by NGOs through project funding but rarely available for meetings between children and lawyers working under state funded legal assistance systems.²⁶⁶

Similarly, access to interpreters is often a problem in **Italy**. While interpreters are generally available in the SPRAR centres (System of Protection for Asylum Seekers and Refugees- *Sistema di protezione per richiedenti asilo e rifugiati*), it is not the case in all reception centres, such as those in Calabria or Sicily.²⁶⁷ Some NGOs use their own interpreters, financed through project funding, or may provide interpretation to other NGOs and lawyers.

3.4 Involvement of legal advisors and child participation

The quality of legal assistance is greatly impacted by the involvement and commitment of legal advisors. Commitment mostly depends on the individual legal advisors attitude as well as their knowledge and skills, but the quality of their work may be limited by external factors such as a lack of resources, capacity and time, as well as by obstacles in accessing and contacting their client.

Legal advisors need to be available and dedicate enough time and resources to meet with the children they provide advice to. They must inform and prepare them for interviews and hearings as part of the relevant migration and/or asylum procedure. Legal advisors also need to build a rapport of trust with their client, which usually requires more time with children.

3.4.1 Meetings with the child

In **Austria**, **Italy** and **Spain**, unaccompanied children may receive legal assistance within their place of accommodation. In **Spain**, this allows advisors to meet the children regularly, while this is not always the case in **Italy**. In **Austria** in the initial reception centre, unaccompanied children do not stay long and legal advisors are informed of the interview date shortly before the asylum interview, giving them little time to prepare the child concerned (see 3.4.5 below).

In **Austria**, **Bulgaria**, **Italy** and the **United Kingdom**, individual practice differs so much that it is not possible to generally assess the frequency of meetings between legal advisors and unaccompanied children.

In **Italy**, the number of meetings, their length and content vary greatly depending on each child (e.g. their vulnerability), the procedures they are in and the steps of the procedures. It was noted, for

²⁶⁵ See [Schedule 5](#) of the Civil Legal Aid (Remuneration) Regulations 2013 for the exact remuneration.

²⁶⁶ See section 3.6.3 – Funding for interpretation.

²⁶⁷ Save the Children, *L'Accoglienza dei minori arrive via mare (Reception of minors arrived by sea)*, Praesidium project VII, December 2012

instance, that unaccompanied children in the asylum procedure are more likely to meet their legal advisors at the different steps of the procedures than those in migration procedures. Similarly, the number of meetings is often impacted by the place where the child is accommodated. While unaccompanied children in the centres of the System of Protection for Asylum Seekers and Refugees (SPRAR) benefit from regular meetings,²⁶⁸ those in other centres often have only one meeting with a legal advisor prior to their interview with the determining authority in the asylum procedure.

In the **UK**, it also depends on the child's case and needs. The frequency of meetings may depend on the commitment of the legal advisors but also on their workload. Legal advisors noted that the reduced fee for publicly funded legal assistance and the contracting arrangements with the Legal Aid Agency can impact negatively on the amount of time the legal advisor has to arrange meetings and prepare the child for interviews and hearings.

In **Denmark**, a distinction has to be made between first level legal assistance provided by NGOs and assistance provided by qualified appointed lawyers.²⁶⁹ Appointed lawyers are paid by the hour. The estimated time to prepare a case before a hearing before the Refugee Appeals Board is six hours, but this is only an estimate and hours to be paid are decided in each individual case. Additional hours can be granted depending on the complexity of the case. Lawyers usually meet the child once before the hearing, but they can meet more if necessary. One legal advisor interviewed explained that he usually dedicates three hours for a meeting with the child. In the procedure to receive a residence permit in case of a negative decision on the asylum application,²⁷⁰ lawyers receive funding for three hours of work on the child's case. One legal advisor interviewed stated he would typically arrange a meeting with the child and their guardian to explain the procedures and rules. Danish Refugee Council legal advisors hold group information sessions at the asylum centres²⁷¹ and also meet children individually, either at the Danish Refugee Council office, via video-conference, or at the asylum centre, if the child requests.

In **Spain**, legal advisors, both from NGOs and registered lawyers working under the state funded system, stated that they meet the children regularly to prepare interviews and hearings and to explain the procedures. For instance, legal advisors of NGO La Merced Migraciones may meet with the child several times to prepare for a hearing. The legal advisor prepares a written statement based on the information provided by the child and checks with them if the content in their statement is correct. On the contrary, a bad practice has emerged in relation to unaccompanied children in the asylum procedure in Madrid, who only meet the legal advisor of the Child Protection Service (IMFM) during the interview with the determining authorities. In addition, lawyers from the Bar Associations appointed under the state legal aid regime may face obstacles in contacting their client if they have moved from one centre to the another or from one province to another.

In **Belgium**, in the asylum procedure, legal advisors usually meet the child twice: the first meeting being a general introduction and the second being dedicated to the preparation of the asylum interview. When appealing against a negative decision on the asylum claim, legal advisors meet at least one additional time, depending on the complexity of the claim. In case of a final negative decision, meetings can be arranged as often as necessary. Legal advisors are also present at the asylum interview and hearings. In procedures other than asylum, the number of meetings varies.

²⁶⁸ In SPRAR centres, legal assistance is either available from legal services within the centres or through external legal advisors contracted by the centre.

²⁶⁹ See 2.6.4 on the overview of the legal assistance system in Denmark

²⁷⁰ Section 9c(3)(ii) cases, see section on the overview of the situation of unaccompanied children for more information.

²⁷¹ These sessions are currently (July 2014) not taking place but are planned to be resumed soon.

My guardian and my lawyer were both there for my second interview [with the authorities]. It was good that they were there during the interview. When you go alone, maybe your head is not here and you cannot explain yourself well. We have no one here in Belgium, but the guardian and the lawyer, they are like a mother and father.

Unaccompanied child, Belgium

In all countries meetings are not held in specific places or in specifically arranged child friendly rooms but either at the legal advisors' office –lawyers' office or NGOs' offices- or in meeting rooms of the reception centres. In the **UK**, meetings may exceptionally be held away from the legal advisor's office, e.g. due to particular vulnerability of the child, safety concerns or convenience for the child. A legal advisor explained that if one client had to go to several appointments so she would try to arrange her meetings with the child in the same location as the others.

A number of good practices were highlighted with regards to the organisation and frequency of the meetings between the child and their legal advisors. These examples below in individual instances are illustrative of that practice

Good practices

In **Spain**, an NGO legal advisor noted that he adapts the length of the meeting and their content to the mood and situation of the child. He tries to arrange several meetings if it is necessary to build trust and provide information. Other NGO legal advisors noted that they try to adapt the meetings to the maturity of the child.

A legal advisor interviewed in the **UK** noted that a good legal advisor would try to meet the child up to five times to finalise a statement, allowing time to build a rapport and establish trust with the child. Legal advisors stated they try to limit meetings to two hours for children. It was also mentioned that it is considered good practice for a barrister²⁷² to meet the child and discuss the case with them in preparation for an appeal's hearing. Yet this does not happen often in practice.

In Linz, **Austria**, a first meeting is usually held with the child around two weeks after their arrival in the youth care facility where the task of the legal advisor and the asylum procedure are discussed. The main goal of the first meeting is to establish a rapport with the child and build trust. The children are provided the contact details of their legal advisors and encouraged to contact the advisors at any time, within office hours. Appointments are arranged flexibly, sometimes for the following day if necessary. Similarly, in Vienna, unaccompanied children can request additional meetings with their legal advisor to prepare for the interview with the Asylum Agency. Legal advisors interviewed all stated that they adapt the meetings and their method of communication to the individual child they are representing.

One legal advisor specialised in unaccompanied children cases, in **Belgium**, mentioned that in an asylum procedure she would meet the child four to six times if the case goes to the appeal stage but she would also arrange extra meetings if necessary in relation to an age assessment, new information or in case of changes to the situation of the child.

²⁷² A barrister advocates the case before a court but is not the main legal advisor of the child.

Conversely, a worrying practice was highlighted in **Bulgaria**, in the context of state funded legal assistance. Asylum seekers, included unaccompanied children, normally only meet their lawyer just before the hearing, for a short time, provided that an interpreter is present.²⁷³

3.4.2 Relationship with the child and trust building

The quality of legal assistance is affected by the rapport a legal advisor develops with the child. The rapport will be based on trust building and is an important factor to ensure the child is involved in the procedure and kept informed.

It is generally not possible to evaluate the overall quality of the information on the process and procedures provided by legal advisors to unaccompanied children as it very much depends on each individual and each case. Nonetheless, stakeholders interviewed in **Denmark** and **Spain** expressed general satisfaction about the amount and quality of information provided by legal advisors to the child. In **Spain**, the lack of knowledge and awareness about the asylum procedure was mentioned,²⁷⁴ especially with regards to legal advisors of the Child Protection Services. UNHCR tries to address this gap by organising “awareness” trainings on identifying cases that may be in need of international protection and on referrals to specialised organisations.

Good practices

In all countries it was stated that most legal advisors try to adapt their language. For example, a legal advisor in **Belgium** explained that she adapts the level of detail on the procedure depending on the level of education of the child. For children with a low level of education, she will not refer to the institutions by name or acronyms but mention that the child will simply meet “a judge”. Similarly, in **Denmark**, one legal advisor stated that she always explains complex concepts such as authorities, government, ethnicity, etc. and never assumes the child is familiar with complicated terms.

Legal advisors in **Belgium**, **Denmark** and the **United Kingdom** sometimes use visual aids to explain the procedure or proceedings. For instance, the Danish Refugee Council has produced a visual illustration summarising the asylum procedure.²⁷⁵

In most countries legal advisors mentioned that they will check if the child understands the procedure, often by making them repeat the information they have just been provided. In **Spain** an NGO providing legal assistance stated that they use open questions to check what the child understood. They also sometimes make the child read an explanation of the procedure and ask them to repeat in their own words.

The Danish Refugee Council (DRC) regularly organises small group information sessions for newly arrived unaccompanied asylum seeking children.²⁷⁶ These sessions are held in a casual set-up in the reception centre, with children sitting on couches and with soft drinks available. The size of the groups ranges from 1 to 15 participants. DRC also organises similar sessions for adults but unlike those, sessions for children are held for one language at a time. DRC stated that this contributes to make the children feel comfortable and safe upon arrival and therefore more likely to ask questions and engage in the discussion.

²⁷³ In some cases, court hearings have to be postponed because no interpreter is present. In addition, if interpreters arrive at the last minute they cannot help with translation between the legal advisor and their client before the hearing.

²⁷⁴ See section 3.1.1 – Means of information.

²⁷⁵ See section 3.1.1 – Means of information.

²⁷⁶ Those sessions are not currently running due to limited capacity but are planned to be resumed soon. See section 3.1.1 – Means of information.

Conversely, it was noted in **Belgium**, that legal advisors that are less familiar with the issues or less used to working with unaccompanied children have more difficulties in adapting their language. In those cases they risk talking more to the guardian present than to the child. This issue of addressing guardian more than the child was also mentioned during research in **Denmark**. It was highlighted as an obstacle to building trust between the legal advisor and the child.

Furthermore, in order to create a fruitful relationship with the child and gain their trust, legal advisors use also a broad range of methods. Some good practices arising from interviews include:

Good practices

In **Austria**, **Spain** and the **UK**, the presence of a trusted adult at the meeting was mentioned as a positive factor, as it helps the child feel comfortable, safe as well as help them trust the legal advisor. In **Austria** and **Spain**, this trusted person would usually be a staff member (social worker) from the reception centre where the child is accommodated. In **Belgium** and **Denmark**, guardians attend the meetings with the legal advisor. One Danish legal advisor explained that when the child trusts their guardian, the guardian can be of great support to help the legal advisor be trusted.

Many stakeholders mentioned that it is important to try to create a good atmosphere at the start of the meeting to make the child feel more at ease.

Legal advisors in **Denmark** and in **Italy** mentioned they would offer the child a drink, ask general questions before starting the meeting, etc.

In **Italy**, the interview can be stopped at any moment when the child manifests distress, irritability, or fatigue in recalling traumatic events. The Italian Refugee Council applies a joint legal and psychological approach in assisting traumatised asylum seekers. Psychologists and psychiatrists can help establish a trust relationship and guide legal advisors in adopting an attitude that would not contribute to the re-traumatisation of the client.²⁷⁷

In the **UK**, some legal advisors pay attention to the seating arrangement during the meeting and make sure the trusted adult sits next to the child.

In Linz, **Austria** legal advisors use their first meeting with the child primarily to build trust. The substance of the asylum claim and the procedures is discussed in more details in subsequent meetings.

Many legal advisors stated the importance of explaining their role to the child as well as their status vis-à-vis the authorities (i.e. that they are independent, regarding confidentiality etc).

A legal advisor in **Belgium** stated that it is as important as adapting the language. The child needs to understand the legal advisor is there to help, that they are not being interviewed by the authorities when they meet the legal advisor, etc. It was mentioned that many unaccompanied children think the lawyer is linked to the determining authorities, and that they are not independent.

A legal advisor in **Denmark** noted that it helps to introduce the purpose of the meeting, oneself, and the types of questions that are going to be asked, so the child knows what to expect.

A legal advisor in **Denmark** also explained that she finds that acknowledging and verbalising the child's nervousness may have a positive effect.

²⁷⁷ Italian Council for Refugees (CIR), *Maieutics – Handbook Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international protection status to victims of torture and violence*, December 2012.

Obstacles impacting the provision of information and building of a trust relation are often related to the lack of time and limited capacity of legal advisors that may be representing/assisting many persons at once. Those obstacles were in particular mentioned by stakeholders in the **UK** and **Austria**. In **Austria**, partly because of issues related to time and capacity, the legal advisors do not have regular contact with the unaccompanied children, even in the regular asylum procedure.

Furthermore, in **Austria**, it was noted that legal advisors in the initial reception centre do not have specific qualifications or skills to work with migrant children. In addition, building a relationship of trust is made more difficult because the unaccompanied children have usually just arrived in **Austria** and may feel tired, disoriented and scared.

Another obstacle to building trust is the expectations of the children and limits to what legal advisors can do. Stakeholders in the **UK** mentioned interpreters as a potential obstacle when they do not provide good interpretation.²⁷⁸

3.4.3 Keeping the child informed

Good practice

Children are generally kept informed of the status of the procedure and decisions made by their legal advisors in **Austria**, **Denmark** and the **UK**.²⁷⁹ It is a legal obligation in **Bulgaria** under the Code of Ethics of Attorneys but practice varies from lawyers to lawyers.

I was informed about the decision [on my asylum application] but I had to keep asking and by the time I got an answer I only had two weeks to decide about the appeal

Former unaccompanied child, UK

An NGO providing legal assistance in **Spain** stated that they always keep the child informed about the procedure. They also try to identify the best time in the process to provide some information. For instance, they would not inform their client of a decision on their legal status right away if they know the child is writing a test at school the next day. They also assess with the child what evidence to gather as part of their asylum application. Generally they try to ensure the child is fully involved in the preparation of the case.

In **Austria**, when the child receives a negative decision, the legal advisor will meet with them to explain the outcome of the procedure and discuss the next legal steps. Keeping the child informed of developments and results of the procedure is a central responsibility of legal advisors, who also act as temporary guardians. However, interpreters are not always available for legal advisors to explain the outcomes in details.

Unaccompanied children in **Austria** also stated they appreciated being able to contact the legal advisors, even if no interview was planned.

²⁷⁸ See section 3.3.7 – Interpretation for legal assistance.

²⁷⁹ It does not always happen in practice in the UK.

Good practice

In **Belgium**, guardians may arrange meetings with the legal advisor even if there is not an upcoming interview, hearing or decision to be made, if they see it would help the child. The legal advisor would inform them again about the procedures, the status of the procedure and next steps.

In **Belgium, Spain** or **Italy**, research shows that some of the information is usually relayed to the child by the guardian rather than by the legal advisors themselves.

Stakeholders in **Italy** noted that while some guardians are diligent at keeping the child informed, some are less active. In those cases, information is sometimes provided by staff at the reception centres.

A legal advisor in **Belgium** noted he usually provides information to the guardian rather than the child directly also because of the language barrier.²⁸⁰

3.4.4 Ensuring unaccompanied children's participation

General conclusions on how child participation is guaranteed throughout the seven countries studied is difficult to generalise but a number of illustrative examples can be highlighted, including on taking the child's opinion into account, using child friendly language to convey information, preparing the child to hearings, etc..

A legal advisor in **Belgium** stated, that according to him, it is, only logical that the child is involved in the choices made if they are mature enough. Most unaccompanied children in **Belgium** usually arrive when they are about 16-17 years old. The legal advisor interviewed added that they are often more mature than their Belgian peers, therefore able to make decisions for themselves.

In **Italy**, the opinion of the child should be taken into account during a return procedure and their consent to return is indispensable to start a return procedure.²⁸¹ A legal advisor interviewed highlighted that he would inform the judge when the child had objections to their return and ensure the child's opinion was given due weight in the final decision. The child's opinion should also be considered in family tracing procedures. In practice, tracing is initiated only when the child agrees and provides some information about their family.

Guardians often have the main role in promoting child participation but the legal advisor can also contribute, through preparing the child for interviews and hearings, as well as informing them.

Good practices

Unaccompanied children in **Italy** are informed by guardians, legal advisors, and NGOs about the possibility and importance of playing an active role in procedures, such as helping retrieve documents to assist with the identification of their age (e.g. birth certificates, other documents from relatives, etc.).²⁸²

²⁸⁰ Guardians can request the assistance of an interpreter, in person or through the phone as often as needed. It is paid for by the guardianship service.

²⁸¹ This obligation is guaranteed by Guidelines on unaccompanied children adopted by the Ministry of Labour and Social Affairs on 19 December 2013 ([Linee guida sui minori stranieri non accompagnati](#)).

²⁸² The Italian Refugee Council noted that they were systematically doing this in the framework of an information and advice project for newly arrived children, carried out with Save the Children, in the port of Ancona.

A guardian interviewed in **Belgium** highlighted that it is important to empower the child if they are mature enough and old enough to make them understand it is “their” procedure. Guardians also mentioned the importance for the lawyer to be committed to ensuring the child’s participation. For instance, they criticised the fact that some legal advisors are too focused on the legal aspects and neglect the emotional impact of the procedure on the child. A legal advisor stated she does not believe the legal advisor can involve the child if they do not meet with them. She also highlighted the importance of managing the child’s expectations, informing them and preparing them to plan other options in case of a negative decision.

It was highlighted as a good practice in **Italy** that some legal advisors maintain regular contact with the guardian and share information on the situation of the child to ensure adequate preparation of the child prior to the interview.

In **Austria**, trust in the legal advisor and good preparation were mentioned as crucial elements to help the children express their views and tell their story coherently during the interview.

In **Bulgaria, Spain** and the **UK**, it is up to the legal advisor to ask for the child to be heard in court, if the child is considered mature enough.

In **Bulgarian** asylum appeals hearings, depending on the age and maturity of the child, the legal advisor might ask the judge to hear the child. However, for procedures other than asylum, there is no possibility of participation for children, as for adults.

Stakeholders in the **United Kingdom** stated that using judgment and assessing the maturity of the child prior to involving them in court proceedings is good practice. Research showed that the process itself makes it difficult for the child to participate in appeal proceedings. Children are able to make a written statement and, if they are over 12 years old, to be interviewed, as well as to participate, formally. However, as proceedings are adversarial at the appeal stage, opportunities for the child to actually participate are limited. Thus it was highlighted that the quality of the written statement is key to ensure the child’s views are put forward.

In **Spain**, the legal advisor (lawyer) may request a hearing in appeals against a negative decision in an asylum or residence permit procedure, or in an appeal against the loss of guardianship,²⁸³. One legal advisor mentioned he usually does request it because he feels it is important for children to be able to express themselves. He would explain to the child the goal of the hearing, what to expect and that they do not have to “testify” because they did something wrong.

Returns of unaccompanied children were halted in **Spain** after a decision of the Constitutional Court in December 2008, ruling that the child should be heard, provided they are mature enough, or else be represented independently from their guardian during a return procedure.²⁸⁴ In the case put before the Constitutional Court and many others, children were not interviewed or otherwise heard and only their guardian expressed an opinion. As guardians were not independent from the state, this constituted a conflict of interest and NGOs claimed return decisions were not taken in the child’s best interest. Since this judgment, the role of a court appointed “guardian ad litem” in cases of conflict of interest was introduced.

In **Austria** and **Belgium**, it was highlighted that legal advisors can play an active role to guarantee the views of the child are taken into account during the interview with the authorities.

²⁸³ The former procedures are administrative proceedings while the latter are civil proceedings.

²⁸⁴ Constitutional Court, case 183/2008, 22 December 2008.

Good practices

A legal advisor in **Belgium** noted that during the asylum interview he monitors whether the questions asked are tailored to the age of the child. Legal advisors can complete or correct information provided by the child and might express their impression on the conditions of the interview at the end. This information can be used in an appeal, for instance.

In **Austria**, legal advisors can ask additional questions to the child during or at the end of the interview with the asylum authorities. They can also submit written statements for clarifications or submit further evidence.

In **Italy**, legal advisors can submit a written statement to the determining authorities before the asylum interview to introduce the facts of the case. They may submit medico-legal reports prepared by psychologist and psychiatrist to help authorities evaluate cases of victims of torture or traumatised children, and decide to omit the interview or postpone it if necessary.²⁸⁵

3.4.5 Preparation for hearings and interviews

Preparation was highlighted as an important element for ensuring children's participation in the proceedings. In all countries, except **Bulgaria**, legal advisors will normally meet the child at least once before an interview and hearing (see above). It was noted that in **Spain** and the **United Kingdom**, most legal advisors meet the child several times prior to hearings.

A couple of exceptions were mentioned:

In **Spain**, it can be more difficult for Bar Association lawyers (providing legal assistance and representation at appeals) to meet the child to prepare, as they are not in regular contact with the child.

While the notice for interviews is usually sent several weeks in advance in the regular asylum procedure in **Austria**, legal advisors in the initial reception centre (providing assistance during the asylum admissibility procedure) are only informed of the time of the asylum interview shortly before. Thus, preparatory meetings are usually held the day before the interview or immediately before.

After three months I had the interview at the Federal Asylum Agency. I had a preparation meeting with my legal representative one week in advance. She explained what would await me and that she is there for me. On the one hand that gave me security but on the other hand it did not, because I knew that she is responsible for 70 minors, how should she manage that?"

Former unaccompanied child, Austria

In **Belgium**, interviews are not organised very quickly so there is generally enough time to prepare. This may not be the case when the legal advisor is appointed late in the process.

²⁸⁵ Italian Council for Refugees (CIR), *Maieutics – Handbook Elaborating a common interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper international protection status to victims of torture and violence*, December 2012.

A number of good examples of preparation techniques can be highlighted:

Good practices

In the **UK**, the legal advisor explains to the child questions likely to be asked during the interview or hearing with the authorities or in court. Some legal advisors draw pictures of the courtroom so the child can better visualise.²⁸⁶ Some legal advisors also take the child to other asylum seekers' hearing to better understand what it will be like.

In **Spain**, an NGO providing legal assistance noted they would meet the child several times prior to a hearing and prepare a written statement checked by the child.

Unaccompanied children usually meet the legal advisor prior to the interview with authorities in **Austria**. The meeting often consists of an explanation of the interview process, discussion about the case, clarification on some points of the case and advice on behaviour to adopt during the interview. Some legal advisors ask the child to search for documents or other evidence to substantiate their claim.

In **Denmark**, one stakeholder stated that good lawyers would have the child tell them their whole story, in their own words, prior to an appeal hearing. They would also explain to the child what to expect at the hearing, what questions are likely to be asked and why certain topics will be mentioned. Similarly to the **UK** example, the case of a lawyer drawing a picture of the layout of the room was mentioned as good practice.

Legal advisors in **Italy** prepare unaccompanied asylum seeking children for their asylum interview by informing them about the process, explaining questions likely to be asked and underlining aspects of their story the child should focus on. The role of the legal advisors is also to help the child structure their story.

On the contrary, an individual example of a bad practice was mentioned by a **Belgian** guardian. One legal advisor subjected his child client to a "test interview", although he had not warned the child in advance this was only a preparatory meeting. Only at the end, did the legal advisor state that this was what the child could expect at the interview. This confused the child about the role of the legal advisor. It also impacted negatively on the trust the child had in the lawyer.

3.5 Qualification and knowledge

Working with children and with unaccompanied children in particular requires specific skills. Legal advisors assisting unaccompanied children should not be specialised only in one area of law, such as asylum and migration law, but should also be knowledgeable in child rights and other child related topics. In addition, the quality of assistance provided is increased when legal advisors are also trained and skilled on child adapted working methods.

Qualifications and skills of legal advisors may be set by minimum requirements by organisations or bodies providing legal assistance. It is also dependant on the continuous training legal advisors, as well as guidance and tools available to them and the use of these tools.

²⁸⁶ See section 3.1.1 – Means of information.

3.5.1 Requirements to work with unaccompanied children

As legal assistance is usually provided by different organisations or through different systems in the same country, requirements may vary within each country. For instance, NGOs providing advice in the seven countries examined do not usually require their legal advisors to be qualified and registered lawyers, i.e. to have passed a bar exam.

In **Bulgaria, Denmark and Italy**, qualified lawyers providing legal assistance under the state funded legal aid system, usually for appeals before the Courts, need to be registered either to the relevant Bar Association or Legal Aid Register, but are not required to have particular qualifications and knowledge to specifically represent unaccompanied children before the Court.

There is an accreditation system in the **UK** (from the Law Society) and requirements are set out in the 2013 Standard Civil Contract (Immigration and Asylum).²⁸⁷ In addition to the general requirements, legal advisors working with unaccompanied children need to have gone through a recent and enhanced criminal record check.²⁸⁸

In **Belgium** and **Spain**, qualifications and requirements for lawyers who wish to work under the state funded legal assistance scheme are set by different bar associations and vary from one to the other. For example, the Flemish bar in **Belgium** does not require any specific qualifications or experience to work with unaccompanied children. In **Spain**, the Madrid Bar Association requires three years' experience as a lawyer and general legal training. Both countries require additional qualifications and experience for those lawyers specialised in sections of the bar associations.

In the French speaking Bar of Brussels, in **Belgium**, there are specialised sections, including on unaccompanied children. Lawyers in these specialised sections have to take more than ten cases under legal aid per year on the relevant specialised subject. In addition, they need to engage in continuous training on the topic, for at least ten hours a year, per topic. Trainings may be provided by a variety of organisations, including NGOs and universities (see below, 3.5.2 trainings available).

In Barcelona in **Spain**, lawyers in the immigration and asylum section require specialised training in refugee law. Lawyers in the unaccompanied children pool have to follow a specialised training on that topic (see below).

In **Austria**, where the main part of legal assistance is provided by NGO legal advisors in the initial reception centre, advisors must have a law degree or a minimum of five years' experience in the field of immigration law. They do not need specific training on child rights, such as the child's best interest or experience in working with children.

Good practice

Legal advisors working for the **Danish** Refugee Council (DRC) and providing assistance at first instance have a law degree or other relevant academic background. They are all trained in working with unaccompanied children. A small team of advisors are responsible for following development in the field. Advisors can participate in relevant trainings, provided funding is available.

²⁸⁷ Par 8.15 of the Immigration and asylum specifications. See more information and the various specification on the Ministry of Justice's [website](#).

²⁸⁸ "Enhanced" record check refers to a more in depth check where any conviction would appear. It is quite commonly applied to professionals working with children or vulnerable adults.

Similarly, in **Italy**, legal advisors providing legal assistance in reception centres for asylum seekers (SPRAR centres) need to possess specific knowledge and expertise on asylum law and on working with unaccompanied children.

3.5.2 Trainings available

Lawyers working under the state funded legal aid schemes in **Belgium, Italy, and Denmark** are required to complete continuous professional education on an annual basis.

Good practice

In the French speaking Bar of **Brussels** lawyers specialised in a particular section have to complete ten hours of continuous education per topic, per year. Trainings can be provided by NGOs, legal practitioners or universities. In order to qualify for the mandatory continuous education and be allowed to qualify for “points”, trainings need to be accredited by the training service of the Bar. On the Flemish side, there are no specific trainings on unaccompanied children. In Brussels, specialised trainings on children and unaccompanied children are regularly organised, mostly by NGOs.²⁸⁹

In **Denmark**, registered lawyers are obliged to complete 54 hours every three years of continuous education. Trainings are provided by a variety of actors although few actors offer training on asylum issues.

Mandatory training amounts to 90 hours (“credits”) every three years, in **Italy**, with a minimum of 20 credits per year. Trainings are organised by bar associations, sometimes in cooperation with NGOs or universities or other institutions. There are few trainings focusing on unaccompanied children though trainings are regularly organised on the topic of youth and family law. The Rome bar association organised fifteen training sessions on immigration law from October 2013 and February 2014 where one session was dedicated to children and migration.

By law, in **Austria**, organisations providing legal advice and representation in the initial centre have an obligation to provide training to their staff. The content or duration of trainings is not regulated by law. Practice varies between organisations and depending on cities the legal advisors are located. In Linz, for instance, there is no training provided but attendance to external trainings is encouraged.

Good practice

In 2013, UNHCR and Asylkoordination organised two roundtables for unaccompanied children legal representatives in **Austria**. The meeting included an information exchange on interviews, age assessment, child or country specific information, best interest and return. Asylkoordination reports that the meeting gathered strong interest and it was concluded that meetings should be repeated regularly.

Attendance at trainings is not compulsory for lawyers in **Spain**. Some Bar Associations have specific trainings for lawyers working with children (but not specifically on unaccompanied children).

²⁸⁹ For instance, the Platform Minors in Exile organised a training last year on durable solutions.

Good practices

The **Barcelona** Bar Association organised a 16 hour training for lawyers from the specialised section on unaccompanied children in May- June 2012. The training included both child protection issues and asylum and immigration law.²⁹⁰

In **Bulgaria**, some trainings have been organised as part of projects, for instance by UNHCR in 2013 (as part of the project “Response to Vulnerability in Asylum”)²⁹¹; the Odysseus Network and the Assistance centre for torture survivors-ACET (in 2013, within the project “Protect-able”)²⁹²; and the Association for pedagogical and social assistance for children (FICE) **Bulgaria** (in 2012, within an ERF project assigned by State Agency for Refugees). However legal advisors from the National Bureau for Legal Aid under the Law on Legal Aid have not taken part in these trainings. Trainings were targeted primarily at officials working for the State Agency for Refugees.

In general, in all the States surveyed, training for legal advisors from NGOs are less frequent and often depend on availability of funding, like in **Denmark**. In **Italy** or **Spain**, NGOs themselves organise trainings, either for their own staff or also for external participants.

In **Italy**, some NGOs organise training courses for their staff on subjects relevant to unaccompanied children.

Good practice

In **Spain**, NGOs organised (free) trainings and conferences on unaccompanied children, child protection and trafficking. In January 2013, in collaboration with the Canary Island government a coalition of NGOs, organised a workshop on child protection and trafficking.²⁹³ In June 2013 Fundación Tierra de hombres organised introductory training on unaccompanied children.²⁹⁴

Legal advisors of the System of Protection for Asylum Seekers and Refugees (SPRAR) centres, in **Italy**, can attend trainings organised by SPRAR for its staff on various topics.

3.5.3 Guidance available to legal advisors

Generally, in the seven countries studied, no specific guidance on providing legal assistance to (unaccompanied) children is available for legal advisors working with children. It is worth noting that in **Italy**, general Guidelines on unaccompanied children have been published by the General Directorate of Immigration and Integration Policies which aim to clarify provisions relevant to unaccompanied children.²⁹⁵ They include a definition of unaccompanied children and detail the stages to be followed depending on the different procedures unaccompanied children go through. They are aimed at actors working with unaccompanied children, such as the police, determining authorities, or International Organisation for Migration.

²⁹⁰ It specifically included sessions on civil aspects (guardianship, jurisdictional conflicts, age assessment), administrative aspects (legislation, residence permit), return procedures, family tracing, asylum, right to an effective remedy for unaccompanied children and judicial review, as well as on the functioning of the Pool and case law. More information in Spanish is available [here](#)

²⁹¹ See <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-vulnerable-groups/response-to-vulnerability-in-asylum.html>

²⁹² See <http://protect-able.eu>

²⁹³ See more information [here](#).

²⁹⁴ See more information [here](#).

²⁹⁵ Ministry of Labour and Social Affairs, Guidelines on unaccompanied children ([Linee guida sui minori stranieri non accompagnati](#)), 19 December 2013

In **Bulgaria**, there is no guidance for working with children, but the State Agency for Refugees published a Handbook for lawyers working under the Law on Legal Aid and providing legal assistance to asylum seekers in appeals against a negative decision.²⁹⁶ As immigration and refugee law is not part of the generally required legal qualification, the Handbook aims to fill knowledge gaps. Some stakeholders criticise its relevance and quality as it does not specifically address the topic of unaccompanied children.

Good practice

In 2012 the **UK** based Immigration Legal Practitioners' Association (ILPA) published a number of resources as part of their Refugee Children's project, including two books on "working with children" and a guide on legal assistance to unaccompanied children. It provides helpful information on legal aid provisions and the scope of assistance to be provided.²⁹⁷

In **Spain**, the NGO *DRARI Jurista* and *Coordinadora de barrios de Madrid* (Coordination of Madrid's neighbourhood) published a manual in 2007 on legal assistance to unaccompanied children.²⁹⁸

The specialised pool of lawyers at the Brussels French-speaking Bar exchanges information, jurisprudence and practices relevant to unaccompanied children cases through a web-based "cloud".

3.5.4 Availability of competent legal advisors

Out of the seven countries included in this research, **Denmark** is the only one where stakeholders interviewed generally felt that there were sufficient competent legal advisors to assist the number of unaccompanied children requiring legal assistance. Some concerns were expressed about the fact that there is no guarantee that a specialised lawyer will be appointed for second instance proceedings.²⁹⁹ It happens that in the case of unaccompanied children in detention, appointed lawyers do not have knowledge in asylum or migration law, as they are appointed to review the lawfulness of detention and not in relation to asylum.³⁰⁰

For the other countries, concerns were raised also about the qualifications and quality of some of the legal advisors. For instance, in **Bulgaria**, it was highlighted that lawyers who provide legal assistance under the state legal aid scheme do not necessarily have specific qualifications and knowledge to work

²⁹⁶ [БЕЖАНСКО ПРАВО Наръчник за служебни адвокати, предоставящи правна помощ на лица, търсещи закрила с отказ в хода на съдебното производство](#). The Handbook published in 2012 was co-financed by the European Refugee Fund.

²⁹⁷ Shauna Gillan *et alii*, [Resources Guide for Legal Practitioners Working with Refugee Children](#), Fourth edition, March 2014; Syd Bolton *et alii*, [Working with refugee children: Current issues in best practice](#), ILPA, May 2011; Heaven Crawley, [Working with children and young people subject to immigration control: Guidelines for Best Practice \(second edition\)](#), ILPA, May 2012. See also: Adam Hundt and Zubier Yazdani, [Working with migrant children: community care law for immigration lawyers](#), ILPA, December 2012; Solange Valdez, [Separated Children and Legal Aid Provision](#), ILPA December 2012

²⁹⁸ Coordinadora de barrios de Madrid and DRARI Jurista, [Manual básico de defensa jurídica de los menores extranjeros no acompañados](#) (*Basic manual for legal assistance of foreign unaccompanied minors*), 26 november 2007.

²⁹⁹ See also the section on accessing legal assistance.

³⁰⁰ There is a possibility that a child detained already has a lawyer and the lawyer may be appointed to defend the lawfulness of detention. If children are detained because of the use of false documents and they do not apply for asylum quickly, they can get charged for the use of false documents.

with unaccompanied children. For NGOs who provide legal assistance, challenges lay in their funding being limited.³⁰¹

In most of the countries, it was noted that the availability of competent legal advisors may vary across the country, either between cities, or in more remote or border locations.

In the **UK**, although there are many qualified legal advisors in London, referrals for legal assistance for children are not always immediate.³⁰² In addition, it is more difficult to find publicly funded legal advisors outside of London. Stakeholders interviewed mentioned that it has become more difficult to find available competent legal advisors, since restrictions to the legal system were introduced in 2012. Legal assistance providers under a contract with the Legal Aid Agency can only take a limited number of cases (about 100 per year) and qualified legal advisors may not be able to take some of the cases referred to them.

In **Belgium**, only the French-speaking Bar of Brussels has a section of lawyers specialized to represent and provide legal assistance to unaccompanied children. Lawyers in the Flemish Bar or the rest of the French-speaking Bar do not necessarily have the relevant qualifications and knowledge to work with unaccompanied children.

In **Italy**, the number of legal advisors present at the sea borders is largely insufficient and those available are not always qualified. While in some areas there are sufficient numbers, there may still be a problem of access.³⁰³ Some stakeholders highlighted that there is a lack of specialised lawyers working under the state legal aid system, as most are not skilled or experienced in working with unaccompanied children.

Big cities like Madrid, Barcelona, Bilbao, Valencia or Sevilla, have more specialised lawyers than other areas in **Spain** but there are generally not enough qualified legal advisors to provide quality assistance to the number of unaccompanied children. Funding is not sufficient for most Bar Associations to create specialised pools of lawyers providing assistance to unaccompanied children, especially as the number of adults in need of legal assistance is much higher. In some bar associations there are other specialised pools either on general children's rights or on asylum and migration, but only Barcelona has a specific one for unaccompanied children. It was highlighted by stakeholders interviewed that lawyers in specialised pools for children or groups specializing in immigration and asylum often lack knowledge about unaccompanied children. There are also some specialised NGOs, such as La Merced Migraciones, Fundacion Raices, CEAR, ACSAR or Accem, but they cannot provide assistance to all the unaccompanied children who require legal assistance. Stakeholders interviewed also point to the fact that in border entry points, like Melilla, there is a real lack of qualified legal advisors to assist unaccompanied children.

³⁰¹ See section 3.6.5 – Budget cuts and remuneration obstacles.

³⁰² See section 3.2.1 – procedures to request free legal assistance.

³⁰³ See section 3.2 on accessing legal assistance.

3.6 Funding and remuneration of legal advisors

The lack of sufficient funding for legal assistance can directly impact, not only the availability of legal assistance but also its quality and scope. In recent years, legal assistance in Europe has been affected by budget cuts in most countries, both for funding for NGOs providing legal assistance and for state legal assistance schemes directed towards individual legal advisors/lawyers.

Adequate funding is necessary to not only ensure the sustainability of legal assistance provision but also to ensure a sufficient number of legal advisors are available to provide legal assistance.

Sufficient remuneration of legal advisors and lawyers is necessary so as not to deter qualified legal advisors from providing assistance to unaccompanied children and to ensure high quality in the delivery of legal aid services.

Adequate funding for legal assistance is also necessary for complementary costs such as ensuring legal advisors have access to adequate training and external resources, including interpretation for meetings with their clients and the ability to instruct specialised experts where necessary.

3.6.1 Funding and remuneration systems

In all countries studied –**Austria, Belgium, Bulgaria, Denmark, Italy, Spain** and the **UK**- State funding is available for free legal assistance to unaccompanied children, either through specific programmes or through the general legal assistance funding. Yet, it does not always cover all asylum or migration related procedures or all phases of those procedures.³⁰⁴ In some countries, most of the legal assistance is provided through legal aid systems managed by the bar associations –like in **Belgium** and **Spain**- or specialised governmental agencies, like the Legal Aid Agency in the **UK**. State funding may also be granted to NGOs, generally through public contracts, to provide general information, legal advice and in some case legal representations, like in **Denmark** and **Austria**.

In all countries, a number of NGOs also provide legal assistance through project grants, either through private funding, European funding, or from state funding -that can also be co-funded by the European Union.

As explained in more details in the section on the overview of legal assistance systems, in most countries, a distinction in the legal assistance system in migration and asylum procedures exists between provision of legal information and advice in first instance or administrative procedures and legal advice and representation at appeals before Courts. In most countries, legal assistance at first instance is provided by NGOs, while assistance in second instance is usually provided by registered lawyers. This distinction is also reflected in the allocation of the funds and the remuneration system. While most NGOs provide legal assistance through various projects and have therefore no fixed or regulated remuneration of their legal advisors, legal assistance provided by lawyers or legal advisors under state funded schemes is regulated by law. Fees received can either be by case, by tasks or by hours. An important concern from a number of stakeholders is that in a number of States, the remuneration system does not take into account that more time is generally needed for children's cases compared to adults.

Remuneration for registered lawyers, working under state funded schemes, for unaccompanied children cases, is fixed per task in **Belgium, Bulgaria, and Spain**. In **Italy**, it is determined per

³⁰⁴ See section 2.6 on the overview of legal assistance systems.

tasks and based on the complexity of the case, while it is granted per hour in **Denmark** and in the **UK**.

In **Belgium**, lawyers providing legal advice and representation under the “second line assistance system” –so-called *pro deo* system- are remunerated through a points system.³⁰⁵ Each task is allocated a specific number of points, as provided by a Ministerial Decree.³⁰⁶ For instance, an appeal before the Council of Aliens Law Litigation (CALL) is worth 15 points. If a public hearing is required it increases to 25 points and in case it includes an ‘extremely urgent necessity’ procedure it increases to 35 points. In the period 2012/2013, a point is worth approximately 25.50 euros.³⁰⁷ Points and remuneration are the same for cases involving adults and unaccompanied children. The remuneration is provided by the Legal Aid Offices, which are financed by the Bar Associations that receive themselves subsidies from the Ministry of Justice. The remuneration does not cover procedural costs such as fees for registry, experts, copies etc. Such fees can be supported, totally or partially, under the framework of a “judicial assistance” (“*assistance judiciaire*”) ³⁰⁸ on the same resources conditions as for legal assistance.³⁰⁹

Remuneration for lawyers providing assistance under the state legal aid system in **Bulgaria** is set in the Ordinance on the Payment of Legal Aid (*Наредба за заплащането на правната помощ*).³¹⁰ Remuneration is fixed and provided per task. For instance the payment for submitting an appeal before the court ranges from 10 to 30 **Bulgarian** levs (approx. 5 to 15 Euros) and the fee for representing a client before the court in asylum or immigration cases is 300 levs (approximately 150 Euros). Fees are the same for immigration and asylum procedures than other types of procedures.

In **Spain**, lawyers under the free legal aid system receive a payment per task. There are no time limits imposed per case or task. Remunerations are provided by the different Bar Associations which are financed by the Autonomous Communities, by the State if competences in justice matters have not been decentralised or from private funds, such as registration fees from lawyers. The level of the fees varies from Bar Associations to Bar Associations.

In **Italy**, remuneration of the lawyers providing assistance under the state legal aid system (so-called *gratuito patrocinio*) is decided by a judge, on a case by case basis. The same rules apply for all types of procedures, including migration and asylum. The law provides that the judge should decide based on “the nature, the complexity and the gravity of the proceeding or the process, the charges, the numbers and relevance of issues to deal with”.³¹¹ Lawyers request a certain amount for the tasks performed and

³⁰⁵ State funded legal assistance in Belgium is divided between “first” and “second line” assistance. First line assistance refers to basic legal information and advice, while second line assistance, which is provided by registered lawyers refers to legal advice and representation. First and second line assistance are available at all stages of migration and asylum procedures. See the description of the legal assistance system in Belgium in the section on the overview of legal assistance systems for further information.

³⁰⁶ Arrêté ministériel du 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l’aide juridique de deuxième ligne partiellement ou complètement gratuite.

³⁰⁷ French-speaking and German Speaking Bar Associations, *Aide juridique : une rallonge bienvenue mais très insuffisante* (Legal Assistance: a welcomed increase but still very insufficient), 8 April 2014

³⁰⁸ The Belgian legal aid system distinguishes between legal assistance which refers to free access to the services of a lawyer and judicial assistance which refers to the exemption of the costs related to legal proceeding fees. See the description of the various costs of proceedings on the European justice [portal](#).

³⁰⁹ Means tests are not applied to unaccompanied children. See the section on access to legal assistance for further information.

³¹⁰ Available in Bulgarian [here](#).

³¹¹ Article 4 of Decree of the Ministry of Justice 140 of 20 July 2012, that implement the Legislative Decree n. 1 of 24 January 2012. This decree amended art. 82 of the Presidential Decree 115/2002 concerning the reimbursement for lawyers providing *gratuito patrocinio*.

time spent, based on guidelines and determined scales.³¹² According to those guidelines, the amount granted should represent about half of the average that lawyers would normally charge their clients.

Good practice

Remuneration of lawyers under the state funded legal aid system, in **Denmark**, is calculated per hour.³¹³ Remuneration is decided by the Refugee Appeals Board in the second instance of regular asylum cases and by the Immigration Service in the asylum accelerated procedure and in procedure to obtain a residence permit under section 9c (3) (ii) of the Aliens Act.³¹⁴ Lawyers are usually granted six hours for appeals in asylum cases but additional hours can be granted depending on the complexity of the case. Lawyers can also be reimbursed for travel and accommodation costs if necessary. The hourly fee amounts to 1650 DKR (+VAT) per hour (approx. 220 euros).

Lawyers providing legal assistance to children under the state legal aid system in the **UK**, in England and Wales, are paid at an hourly fee. The fees are set by the 2013 Civil Legal Aid (Remuneration) Regulations.³¹⁵ The hourly fee varies depending on the type of procedure, the stage of the procedure and whether the lawyer is based in London or other parts of England and Wales. The fees cover preparation of the case, attendance of interviews or hearings, as well as travel and waiting time. Fees for “preparation, attendance and advocacy” range from 47 to 74 British pounds (approximately 59 to 93 euros).

The system in **Austria** is rather different from the six other countries studied as there is no state funded legal assistance by lawyers. Most of the legal assistance in asylum and immigration cases is provided by two NGOs contracted and funded by the authorities, "Verein Menschenrechte Österreich" and "ARGE Rechtsberatung".³¹⁶ Those organisations are compensated by a flat rate, per case. The payment rate is 194 euros during the admissibility phase of the asylum procedure, 211 euros for appeals and 191 euros for procedures under the Aliens Law. The rate includes interpretation and travel expenses. The rate is reduced by 25% when an organisation has provided advice in more than 4000 cases and by 35% over 7000 cases per year.

3.6.2 Funding for expert reports

Legal advisors can directly, or through the child’s guardian, request expert reports such as country reports, psychological reports, medical reports, in all countries studied. However, funding for commissioning such reports is a challenge.

The **UK** is the only country, out of the seven studied, where expert reports are specifically mentioned as part of the legal assistance remuneration. Legal advisors can also apply for additional remuneration, but it has to be agreed by the Legal Aid Agency. In practice, interviewed legal advisors highlighted that it often entails long discussions and negotiations, creating a time and administrative burden on the advisor.

³¹² [Liquidazione da parte di un organo giurisdizionale dei compensi professionali](#). Linee guida per l'applicazione dei parametri previsti dal D.M. n. 140 del 20 luglio 2012 (Settlement by a court of professional fees. Guidelines for the application of the parameters of the MD n. 140 of July 20, 2012).

³¹³ Section 55(1) and 58 of the Danish Aliens Act.

³¹⁴ See section 2.4.1 – Asylum and residence permits procedures.

³¹⁵ Statutory Instruments 2013 No. 422, Legal Aid and Advice, England and Wales, [The Civil Legal Aid \(Remuneration\) Regulations 2013](#). See in particular tables 7(d) and 8.

³¹⁶ See section 2.6.1 on overview of the legal assistance system in Austria.

In **Austria**, there is no specific funding for legal advisors to request expert reports. Legal advisors can request expert reports to the Asylum Agency, which then order it if they consider it necessary.

In **Denmark**, it is possible for lawyers appointed to the child to request expert reports from the authorities (Refugee Appeals Board or Immigration Service), such as evidence of torture, ill treatment or to conduct a language analysis), but funding for such reports are rarely granted.³¹⁷

In **Spain**, article 6.6 of the Law on Legal Aid provides that free expert assistance from technical staff assigned to the courts or other bodies or staff that report to the public administration forms part of the right to free legal assistance. The law also stipulates that in exceptional cases and where a judge deems it necessary, external experts may be appointed by the court.

In all countries to complement or cover the lack of funding for expert reports, some NGOs may provide free medical or psychological certificates or reports. For instance in **Spain**, the Red Cross, Caritas or EXIL Barcelona may provide medical or psychological reports to legal advisors for free. In **Denmark**, legal advisors from the Danish Refugee Council may obtain evidence of torture reports from the Medical group of Amnesty **Denmark**, free of charge.³¹⁸

3.6.3 Funding for interpretation

As mentioned in the section on the scope of legal assistance, interpretation services are usually available for meetings between the child and legal advisors, both from NGOs or lawyers providing assistance under a state funded scheme, in **Austria, Belgium, Denmark** and the **UK**. Funding is available for interpretation in all these countries but the source of funding varies.

In **Austria**, the two contracted NGOs which provide legal assistance in the asylum admissibility procedure and some procedures under the Aliens Police law are also required to provide interpretation services for their meetings with their clients. The costs are borne by the organisations, as part as their general contract with the authorities.

Good practices

In **Belgium**, interpretation for meetings between unaccompanied children and their lawyers is covered by the Guardianship service. Guardians can request interpretation as often as needed.

In **Denmark**, the cost of interpretation between the child and the appointed lawyer is covered by the authorities. For legal assistance provided by the Danish Refugee Council, the provision of interpretation constitutes part of the contract and the grant received by the organisation from the Ministry of Justice and the Immigration Service.

The cost of interpretation, including for meetings between the lawyers and their clients, is foreseen under the state legal aid system and regulated by law in the **UK**.³¹⁹ The fixed hourly rate for interpreters is 32 pounds in London (about 40 euros) and 25 pounds (about 30 euros) in the rest of England and Wales.

³¹⁷ The request would generally be formulated during a hearing before the Refugee Appeals Board who evaluate the request. If the request is accepted, the case is postponed. Lawyers interviewed do not rule out that the Board may grant requests for experts reports prior to a hearing, but no such case was known to interviewees.

³¹⁸ The Danish Refugee Council does not have funding for expert reports.

³¹⁹ Schedule 5, Statutory Instruments 2013 No. 422, Legal Aid and Advice, England and Wales, [The Civil Legal Aid \(Remuneration\) Regulations 2013](#).

In **Bulgaria, Italy** and **Spain**, interpretation for meetings between legal advisors, including lawyers and children, is not funded by the states legal assistance scheme which can create serious obstacles for effective communication with the child and proper preparation of cases.

In **Bulgaria**, large NGOs providing legal assistance, such as the Bulgarian Helsinki Committee usually have funding for interpretation, but this is not the case for smaller NGOs providing legal assistance, like the Foundation to Access to Rights. Those organisations have to resort to volunteers or as a last resort, to friends of the clients to ensure basic communication. Some NGOs may have funding available, on an ad hoc basis, for professional interpretation and stakeholders noted that NGOs would try to pool resources. For lawyers under the legal aid system, they usually do not meet their clients prior to a hearing before the Court.³²⁰ They may speak with their clients just before the start of a hearing, and if interpreters from the court are available, they sometimes informally ask them to help communicate with the clients.

In **Italy**, lawyers providing assistance under the state legal aid scheme (*gratuito patrocinio*) do not receive specific funding for interpretation costs. Lawyers may try to request reimbursement for interpretation as part of requested fees for preparation of the case. However, the amount allocated is at the discretion of the judge (see above), and those expenses are rarely reimbursed in practice. Securing interpretation and its financing is also an important issue for NGOs providing legal assistance. Some NGOs may have funding for interpretation through projects, but it is mostly ad hoc. Worryingly, legal advisors from NGOs and lawyers may have to resort to friends of the unaccompanied children to provide interpretation. It was noted that the guardian may ask for interpretation to be covered by funds from the Municipality for meetings between lawyers and children. This rarely happens in practice because of limited funds available in the Municipalities.

Similarly, in **Spain** interpretation is not financed by the state funded legal assistance scheme, creating serious obstacles for lawyers under state funded legal aid to communicate with their unaccompanied child clients. Lawyers and legal advisors from NGOs may benefit from interpreters available in public bodies or centres if meetings with the child are held there. For instance, the NGO ACSAR mentioned that they may benefit from interpreters provided by the Support Service for migrants foreigners and refugees (*Servei d'atenció als immigrants, estrangers i refugiats - SAIER*), a municipal service funded by the Barcelona City Council, when meeting unaccompanied children on their premises.³²¹ Some NGOs may have funding, through projects funded privately or by the State, for interpretation, but not systematically. Legal advisors have to resort to common third languages, such as English or French, to friends of unaccompanied children or may have to wait for the child to learn enough Spanish to be able to communicate.

3.6.4 Funding for translation of documents

The cost of translation of documents in support of the preparation of the case is covered by the authorities in **Belgium, Denmark** and to some extent in **Spain**.

In **Belgium**, the guardian can have documents translated to prepare the child's case and will be reimbursed for the costs incurred by the Guardianship Service

³²⁰ See section 3.4.1 – Meetings with the child.

³²¹ The service itself provides some legal advice to asylum seekers and migrants. See more information on their [website](#).

In **Denmark**, legal advisors can transmit necessary documents to the authorities who will then provide translation. Appointed lawyers can have the documents translated themselves and the costs may be covered by the authorities.

Translation of documents is covered by the state legal aid funding in the first instance of the asylum procedure in **Spain**. In addition, few NGOs (e.g. CEAR and Accem) have funding for translating documents, but generally only in the asylum procedure.

In **Austria**, translations costs have to be borne by the legal advisors as part of their contract in the admissibility procedure (in the initial reception centre). Once the child is under the protection of the Youth Welfare authorities, translation is either covered by these authorities or they may ask the Federal Asylum Agency.

In **Bulgaria**, where translation of documents may be requested to the court, though it is rarely granted. Translations would be accepted only if the court considers that the translation would not only be in the interest of the individual case, but also in the interest of justice.

3.6.5 Budget cuts and remuneration obstacles

In **Austria, Belgium, Bulgaria, Italy** and **Spain**, the remuneration system for lawyers and legal advisors providing free legal assistance under state funded schemes does not differentiate between adult and unaccompanied children cases. This can directly impact quality as legal advisors generally need more time for meetings with the child, including to build a relationship of trust, and for preparing the case.

Insufficient remuneration for lawyers and funding for NGOs was mentioned as an issue to the delivery of adequate legal assistance to unaccompanied children by stakeholders in all countries studied except **Denmark**. For instance, the absence of additional remuneration for unaccompanied children cases in **Belgium**, even though such cases are more time consuming, was mentioned as a deterrent for lawyers to take on such cases under the state funded system. In **Bulgaria**, stakeholders noted that low fees under the state legal aid dissuaded experienced and specialised lawyers to register to the national Legal Aid scheme, therefore impacting on the quality of the free legal assistance. In **Italy**, where the payment for lawyers under the *gratuito patrocinio* is decided by judges, lawyers complain that the remuneration granted is too low and that it discourages some of them from working under this system.

Moreover, legal aid systems have faced reforms and cuts in their budgets in a number of countries in Europe including in **Spain** and the **UK**.

Most of the Bar Associations in **Spain** have had to face severe reductions in funding in recent years. The level of fees for lawyers providing assistance has been impacted by budget cuts in some Bar Associations. Another consequence in some regions has been significant delays in the payment of fees for work carried out by lawyers.³²² The economic crisis also had an impact on the funding of NGOs, which has led to some NGOs having to dismiss some staff.³²³

In the **UK**, major changes to the legal aid system were introduced by the 2012 law on Legal Aid (Legal Aid Sentencing and Punishment of Offenders Act), which entered into force in April 2013. The scope

³²² This issue is in particular highlighted in the 2011 Annual report from the Spanish Ombudsman: Defensor del Pueblo, [Informe anual 2011](#), March 2012, p. 188

³²³ CEAR, for instance now has one legal advisor in Barcelona instead of three, and three instead of six in Sevilla.

of legal assistance was severely restricted for immigration cases.³²⁴ The overall budget for legal aid was reduced by 10% although it did not have an impact on the basic advice and representation in the initial stages of an asylum claim with regard to children. Budget cuts and changes in the payment systems in recent years have also led to the closure of NGOs which provided legal assistance thanks to public funding such as Refugee and Migrant Justice in 2010 and the Immigration Advisory Service in 2011. At the time of closure, Refugee and Migrant Justice had been representing 1000 unaccompanied children.

In **Belgium**, an important reform of the overall legal aid system was envisaged in 2013, but was subsequently abandoned. The proposal envisaged a minimum access fee to be paid by clients, more restrictive access criteria for free legal assistance and a reduction in the remuneration of lawyers.³²⁵ Yet, since 2014, lawyers have to pay VAT and the contribution to the Bar associations has increased.

Research also found that delays in payments of lawyer's remuneration was considered as an important issue, namely in **Belgium, Italy** and the **UK**.

In **Belgium**, lawyers who provide assistance under the free legal aid scheme are remunerated once a year for all cases closed in the previous year. Lawyers therefore usually take on private clients to complement their cases under the free legal aid system.

Payment of the lawyer's fee by the State in **Italy** is often delayed: it can take up to two years after the end of proceedings for lawyers to be paid. This was mentioned as an obstacle for lawyers in accepting to file an appeal on behalf of children, especially in complex cases that would require significant time for preparation of the case.

In the **UK**, payment is made only once the case is closed, which can create problems for cases not closed quickly. Sometimes cases are not concluded for a number of years, during which time the lawyer is not paid for their services.

Limited funding available to NGOs in a number of countries impacts the number of children they are able to assist, the time they can allocate to each case or the territorial reach of the assistance provided. In **Belgium**, the Belgian Refugee Council (CBAR), often has to decline assistance in certain cases because of limited resources, and because they do not have specific funding or a project on unaccompanied children. In **Bulgaria**, it was noted that in 2013, due to financial constraints, it was not possible for NGOs to provide legal assistance throughout the country. For example there was generally no legal advisor available to provide assistance in Banya, one of the two reception centres for asylum seekers.³²⁶

In addition, NGOs working on the basis of project funding cannot always ensure the continuity of their legal assistance services. This was mentioned as a particular issue in **Bulgaria** and **Italy**.

3.7 Monitoring and evaluation mechanisms

Monitoring and evaluation mechanisms are important support tools in improving quality within national legal aid systems. There are also necessary in ensuring that there is some form of independent oversight on the conduct of legal aid providers. Periodic evaluation of the quality of legal assistance delivered at the national level helps proactively identify areas for improvement, and where changes can be made to enhance legal aid service for asylum seekers, refugees and migrants.

³²⁴ See for more information, Coram Children's Legal Centre, Migrant Children's Project Factsheet, [Legal aid funding: what cases are covered](#), April 2013

³²⁵ See: CIRE, [Points sur le projet de réforme de l'aide juridique](#) (Highlights of the draft reform of legal aid), May 2013.

³²⁶ Until September 2013, there were only two reception centres for asylum seekers in Bulgaria, one in Sofia (Ovcha Kupel suburb), and one in Banya (Central Bulgaria). Four other centres were opened at the end of 2013.

Similarly, monitoring mechanisms can help to analyse the effectiveness and quality of legal aid services as well as ensuring that legal advisors have the required competence to conduct their work. A system of monitoring can also be helpful in identifying the impact of changes to the legal aid system, such as the impact of changes to legal aid budgets or other modifications. Systemic monitoring should be conducted by an independent authority and involve the consultation of all relevant stakeholders including the beneficiaries of legal assistance at the national level. Monitoring and evaluation mechanisms can take many different forms such as peer review, ad hoc case file review or periodic audits and can be conducted by several actors such as in-house management, independent authorities or bar associations.

Overall research shows that there is limited monitoring conducted on the quality of legal assistance and that which does exist at the national level, appears to focus on the process of providing legal assistance rather than on the actual technical delivery of legal assistance and the quality of that service. However, some legal aid providers have conducted in-house evaluations and monitoring in order to improve the delivery of their legal assistance service.

Belgium, Bulgaria, Denmark, Italy and Spain have no established formal monitoring mechanism for legal assistance.

Good practice

The Danish Refugee Council (DRC) as the main legal advice provider in **Denmark** monitors the work of new caseworkers in-house who provide legal advice. This is conducted by more experienced staff and forms part of the supervision of new staff within the DRC.

In 2010 the DRC produced an evaluation report of their legal aid services which asked asylum seekers for their own personal views on the quality of legal aid they received from the organisation entitled 'Hvor skulle vi vide det fra'.³²⁷ The outcome of that report was that the organisation established legal advice sessions for newly arrived asylum seekers. Similarly in 2013, the DRC evaluated their legal advice sessions conducted by video interviews in terms of the manner in which legal assistance is provided. A number of employees at reception centres who are involved in the planning and execution of such video counselling services were invited to provide feedback as part of the evaluation process. In 2014 DRC conducted an evaluation on their legal assistance sessions with a general focus on accessibility and communication for asylum seekers. Group interviews with a number of asylum seekers formed part of that evaluation. Also as part of the contract with the Danish Ministry of Justice and the Immigration Service, the DRC reports to the Immigration Service every quarter of year on the number and kinds of counselling session they have conducted.

In **Belgium** there is no established formal monitoring mechanism but there is a form of monitoring by way of specialisation in the French speaking Bar Association, whereby the President of relevant sections checks that lawyers have organised and attended the required hours of training in relevant subjects, in order to provide legal assistance in certain specialised areas. There is no formal evaluation in terms of quality, except the indicator of whether a legal advisor and/or lawyer has attended and completed training in a relevant subject so that they can for example provide legal advice to unaccompanied children. If a legal advisor and/or lawyer does not attend relevant training than he/she can no longer specialise under that area of law within the Bar Association. There is no equivalent monitoring measure in the Flemish speaking Bar Association. In terms of non-governmental organisations in **Belgium**, there is no formal check on quality except information on their reputations.

³²⁷ The report which is only in the Danish language is available [here](#).

Legal assistance in **Austria** is monitored but the focus of such monitoring is not on the quality of legal assistance, but whether it is regulated and reported correctly. The Federal State of Lower Austria has a formal monitoring mechanism which is conducted by way of a reporting procedure whereby information is gathered on how many cases legal representatives are involved, how many appeals were taken or other actions on each case file, with a focus also on the finances involved in legal assistance. There is also a practice in Austria whereby regular meetings are held between legal representatives, State authorities and accommodation providers for children, which is a forum for exchanging information on current practice and rectifying problems which arise. Therefore, in a way this type of meeting is also part of an evaluation mechanism.

There is a monitoring mechanism on legal assistance in the **UK** but it is not focused on quality but more on reporting and auditing actions taken under the national legal aid system. Monitoring is conducted by the funding Legal Aid Agency as part of the funding contract to legal aid providers. In practice there is no form of independent regular monitoring in place on quality of legal aid provision in the UK.

3.8 Complaint mechanisms

Complaint procedures are complementary tools to monitoring mechanisms to react to allegations of poor quality advice in the provision of legal assistance at the national level. Given the serious consequences for incompetent and poor quality legal assistance in the area of asylum and migration, transparent and independent complaint mechanisms should be in place to rectify problems as they arise.

Overall findings show that even if there is a formal complaints mechanism available for issues concerning legal assistance at the national level, it is rarely used. Sometimes its use is further hampered by limited information being made available on its existence and how to submit a complaint to the relevant authority.

In **Austria, Belgium, Bulgaria, Denmark** and **Spain** there are established formal complaint mechanisms for general legal aid matters though in practice these mechanisms are rarely used. When problems arise concerning the provision of legal aid from a particular lawyer, applicants in **Belgium** and **Spain** may change lawyers. In **Italy**, although there is no complaint mechanism in place, children may complain about their lawyer to the guardian who may decide to change lawyers. This rarely happens in practice.

In **Austria** children can complain about their lawyer but need the assistance of a guardian to do this and often in practice guardians are not close to the child, so they do not always assist in such a manner. Complaints about a lawyer can be submitted to the relevant Bar Association (Rechtsanwaltskammer) and in cases of severe breach of the rules of professional conduct, the Bar Association can initiate an arbitral procedure. However, the national expert reported that he was unaware of any such case occurring concerning lawyers working with unaccompanied children. Children can also submit complaints to the Children's Ombudsman 'Volksanwaltschaft'. It is problematic that children are not informed of their right to complain in practice.

There is a formal complaint mechanism in **Belgium** whereby a child and his/her guardian can submit a complaint to the President of the relevant Bar Association concerning the quality of a legal advisor. However, the complaint can take a long time to be processed and it is not viewed as being very effective in practice. It is more common in such situations for the guardian and child to simply change

lawyers.³²⁸ This is a relatively easy method of solving the problem for the individual client but it does not solve the bigger issue of the quality of the previous lawyer, as they can still continue to represent clients. The Plate-forme mineurs en exil information leaflet contains information for children on interacting with his/her lawyer and how to change lawyers in conjunction with his/her guardian.

From the general legal framework in **Bulgaria**, it can be inferred that guardians should monitor the work performed by legal advisors as they have the competence to withdraw the powers of attorney if that is in accordance with the best interests of the child. Under Chapter XIII of the Law on the Bar (*Закон за адвокатурата*), legal advisors are subject to sanctions for wrongdoings. However, unless the unaccompanied child has a guardian, it is unrealistic to believe that the child would be able to submit complaints against the legal advisor before the respective Bar of which the lawyer is a member. A client may also submit a written complaint in **Bulgarian** to a disciplinary proceedings court on the grounds that a lawyer has breached the rules of their profession, but neither adults nor children are informed in practice about the right to complain about their lawyer.

In **Denmark**, it is possible to submit a complaint in written form to the Law Society concerning the conduct of a particular lawyer.³²⁹ However, no instance of complaint has been identified during the research, with regards to asylum cases. Information on complaints mechanism is available on the DRC website but only in the Danish language.³³⁰ Similarly, in **Spain** there is a formal complaint procedure but children are not informed of their right to complain by their lawyer. A complaint form has to be filled out and given to the Bar Association who may impose disciplinary sanctions depending of the gravity of the case. The Legal Aid Commission should be informed of any disciplinary sanction finally taken. A child may also submit a complaint to the Spanish Ombudsman (*Defensor del Pueblo*).

Unaccompanied children in the **UK** can submit a complaint to the relevant regulatory body individually and/or with the support of an NGO worker or social worker, but in practice they rarely do. A good lawyer should, as a matter of practice, inform children of the possibility to submit a complaint however because the complaint mechanism works by way of the child first informing the legal advisor/lawyer in question, means that in practice children are reluctant. Complaints can be submitted by other actors acting on behalf of the child and then a letter of complaint is sent to the provider of legal advice. Yet, such complaints would be limited without the child's consent. If the issue remains unresolved the complaint would be submitted to the management of the legal aid firm and further submitted to the relevant regulatory body i.e. for a solicitor, the Solicitors Regulatory Authority and for other legal aid providers, the Office of the Immigration Services Commissioner.

In the **UK**, the Coram Children's Legal Centre as part of their Migrant Children's Project produced fact sheets, mostly aimed at actors working with unaccompanied children, including on making a complaint and changing solicitors.³³¹

³²⁸ In terms of submitting complaints concerning guardians see Implementing of the core standards for guardians of separated children in Europe, country assessment: Belgium by Katja Fournier

³²⁹ See information concerning formal complaints regarding individual lawyers [here](#).

³³⁰ See the DRC information on the complaint service [here](#).

³³¹ Further information is available [here](#).

Conclusion

Overall, this report has demonstrated that although the infrastructure and legislative basis for legal aid and assistance may be in place at the national level, there are protection gaps in accessing it in practice. Free legal assistance is provided by law in a number of asylum and migration procedures for unaccompanied children in a manner which generally has fewer limitations and procedural obstacles than legal assistance for adults at the national level. In all of the countries surveyed, NGOs play an important role in providing legal assistance and sometimes such organisations engage in full legal representation. However, a number of obstacles remain in the effective access of legal assistance for unaccompanied children. Children are not always properly informed of their right to it, and /or assisted in accessing it, for instance through referral to NGOs or lawyers. The lack of knowledge about this right is illustrated by interviews conducted with young children in the framework of this project whereby a number of the children interviewed were not aware that they could be supported by legal advisors.

Our research shows that guardians, although central to procedures, are often not appointed immediately, and in some States have too high a workload which prevents them from properly engaging and following each of the children under their responsibility. This in turn can impact the child's access to legal assistance.

The findings also aim to contribute to an assessment of the quality of the legal assistance provided in the countries surveyed. While on a number of aspects, the findings cannot provide a fully comprehensive overview, as quality is directly impacted by the individual legal advisors' attitude, skills and commitment, systemic factors, such as limited funding for the remuneration of legal advisors or for interpretation, were highlighted as important obstacles to the provision of quality assistance in practice.

The findings also show a number of examples of good practices in all States in particular concerning efforts by individual legal advisors to provide quality assistance or efforts by organisations and authorities to ensure children are properly informed of their rights to such legal assistance. In order to guarantee unaccompanied children's right to justice and access to effective remedies, it is crucial that legal assistance is not only available in all migration and asylum procedures but is also available in age disputed cases. The project also calls on States and legal practitioners to implement the guiding principles presented in Annex 1 or to ensure that such principles are respected in practice if they are provided by law.

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